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OF COUNSEL: RAYMOND SAYEG

June 24, 2020

VIA EMAIL

Jennifer Raitt, Director
Department of Planning and Community
Development
Town of Arlington
730 Massachusetts Avenue
Arlington, MA 02476

Re: 1207-1211 Massachusetts Avenue, Arlington, MA (collectively
referred to as the "Property") / Docket No. 3602

Dear Director Raitt:

Further to the directives of the Arlington Redevelopment Board (hereinafter referred to as the "Board"), I am providing the Board with the additional information requested and a response to the comments made by members of the Board and certain members of the public:

- Use of the Property

The Property is proposed to be a Mixed-Use project as required by the request for proposal issued by the Town for the property at 1207 Massachusetts Avenue. This proposal is for a restaurant and hotel use. The Bylaw defines "Mixed-Use" as "a combination of two or more distinct land uses, such as commercial, lodging, research, cultural, artistic/creative production, artisanal fabrication, residential in a single multi-story structure to maximize space usage and promote a vibrant, pedestrian-oriented live/work environment." Arlington Zoning Bylaw, Article 2, Section 2 (hereinafter referred to as the "Bylaw"). The use of the property is relevant since the Bylaw provides for certain incentives and bonuses for certain uses.

It has been suggested by a member of the public that the bonus provisions, so-called, for floor area ratio set out in Article 5, Section 5.3.6, do not apply because the combined lots are less than 20,000 square feet and the principal use is "residential". In support of this position, this individual cites Article 5, Section 5.5.3 and the heading in the use regulations section. The headings in the Bylaw are not dispositive on this issue and such a position is incorrect as a matter of fact and law. Indeed, the parking and bicycle space requirements for hotels/motels are listed under the heading of "Business or Industrial Use" in Article 6, Sections 6.1.4 and 6.1.12.

Article 2, Section 2, specifically states, "[i]n this Bylaw and unless the context of usage clearly indicates another meaning, the following terms shall have the meanings indicated herein."

KRATTENMAKER O'CONNOR & INGBER P.C.

Jennifer Raitt, Director

June 24, 2020

Page 2

Where there are definitions in a local bylaw, the Board must rely on the definitions in making its determination. This statement in Article 2 is in accordance with ordinary principles of statutory construction. *Deadrick v. Zoning Board of Appeals of Chatham*, 85 Mass. App. Ct. 539, 545 (2014).

The Bylaw does not define “residential use” but defines “dwelling”. “Dwelling” is defined in the Bylaw as follows:

A privately or publicly owned permanent structure, whether owned by one or more persons or in condominium, or any other legal form which is occupied in whole or part as the home residence or sleeping place of one or more persons. The terms “efficiency,” “single-family,” “two-family,” “duplex,” “three-family” or “multi-family” dwelling, or single-room occupancy building, shall not include hotel/motel, bed and breakfast, hospital, membership club, mixed-use, or mobile home. (emphasis supplied).

Article 2, Section 2 specifically excludes in its definition of “dwelling” “hotel/motel” use and “mixed-use” among other uses. Accordingly, the Board is bound by the definition which clearly states that the definition of dwelling shall not include hotels or motels or mixed-use.

I am informed and, therefore, believe that Attorney Douglas Heim, Town Counsel for the Town, has provided you with a legal opinion that a mixed-use development is permitted in both zoning districts in which this proposed project is intended to be located.

- Floor Area Ratio Calculation for the Building, Bonus and Open Space¹

Article 5, Section 5.3.6 references the exceptions to the maximum floor area ratio (“FAR”) regulations or the “bonus” FAR, so-called. The determination that the proposed project is not a dwelling is relevant to the determination of the bonus FAR provisions contained in Article 5, Section 5.3.6. Article 5, Section 5.3.6C sets out the additional gross floor area or bonus FAR permitted.

The square footage of both lots is 14,030. The GFA would be 21,045 square feet (14,030 x 1.5 – see Article 5, Section 5.5.2. The bonus FAR would be 2,104 (21,045 x .10). See Article 5, Section 5.3.6(D)(5).

¹ The building inspector, Michael Ciampa, has determined that: (a) the floor area of the cellar of the proposed hotel and restaurant is excluded from the calculation of Gross Floor Area as more than one half of its height, measured from finished floor to finished ceiling is below the average finished grade of the ground adjoining the building. Article 2 and Article 5, Section 5.3.22(A)(6); and (b) bay windows that are more than two feet off the floor are likewise excluded from the calculation of Gross Floor Area.

KRATTENMAKER O'CONNOR & INGBER P.C.

Jennifer Raitt, Director
June 24, 2020
Page 3

Section 5.3.6A specifically authorizes the Board to grant a special permit subject to the standards contained in Section 3.3 or 3.4, as applicable, to allow a maximum gross floor area higher than is permitted in the district subject to the requirements set out at 5.3.6A(1)-(3). Accordingly, the total GFA permitted would be 23,149 (21,045 +2,104). The petitioner's proposed GFA is 22,845 square feet.

The petitioner suggests that this proposal satisfies the requirements of Article 5, Section 5.3.6A(1) and (2).

The petitioner is proposing "public access" space, which will provide for a public art and presentation area located in the front right area of the Property. As such, the Property, two lots which are being aggregated with the B-4 use the larger use, is entitled to a 10% increase in FAR. The revised plans which are attached indicate that the petitioner is granting the Town 675 square feet of bonus FAR space, which is substantially more than is required by the Bylaw.

Mr. Benson requested that I provide a draft easement for review by the Board. Attached is the proposed draft, which I have also sent to Attorney Douglas Heim, town counsel, for his review and comment. The easement will be named after Commander James Curley, past commander of the Arlington Disabled American Veterans' Post and a plaque will be installed at the petitioner's expense.

- Corner Lots, Setbacks and Upper Story Stepback

Article 5, Section 5.3.8(A) provides that a "corner lot shall have minimum street yard depths which shall be the same as the required front yard depths for the adjoining lots. The lot adjoining the property at issue on Clarke Street located in an R-2 zone has a front yard depth of 7.9 feet.

The Bylaw requires no front or side yard setback for a Mixed-Use Development, Article 5, Section 5.5.2(B).

The approved correct version of Article 5, Section 5.3.17 provides for an additional 7.5 foot stepback beginning at the fourth story "along all building elevations with street frontage . . ."²

The Board, as confirmed by Town Counsel in his memorandum dated May 13, 2020, has the authority to grant an adjustment to the required setbacks and stepbacks as set forth elsewhere

² Town Counsel's Memorandum dated May 13, 2020, addresses the correct version of Section 5.3.17 to be applied by the Board.

KRATTENMAKER O'CONNOR & INGBER P.C.

Jennifer Raitt, Director
June 24, 2020
Page 4

in the Bylaw to account for specific conditions unique to the proposal. Thus, the Board has the authority to eliminate or reduce the 7.5 stepback referenced in Article 5, Section 5.3.17.

The petitioner suggests that the conditions unique to this proposal are the development of a mixed-use project, which contains a boutique hotel on substantially unimproved lots. In order to be successful, there must be adequate room revenue. The proposed building is located five feet from the property line on Clarke Street at its closest point and goes to twelve feet from the property line on Clarke Street. The petitioner suggests that the setback of the building from the lot line satisfies the spirit and intent of Article 5, Section 5.3.17.

The petitioner suggests that also unique to this proposal is the fact that this Mixed-Use project will convert a vehicular-oriented business district lot to an aesthetically pleasing mixed-use development that will provide amenities for the Town. The Bylaw, in fact, encourages the conversion of B-4 uses "to other retail, service, office, or residential use, particularly as part of a mixed-use development." (emphasis supplied) Bylaw, Article 5, Section 5.5.1(E).

The petitioner suggests that this project comports with the purposes of the Bylaw to, inter alia, "achieve optimum environmental quality through review and cooperation by the use of incentives, bonuses and design review; and to preserve and increase its amenities and to encourage an orderly expansion of the tax base by utilization, development and redevelopment of land." The proposed project also comports with the Master Plan commissioned by the Town.

In the alternative, as a matter of law, the petitioner suggests that on the issue of "frontage" and any fourth floor story stepback along Clarke Street, there is no "frontage" on Clarke Street.

In Cronin v. Zoning Board for the Town of Lunenburg, a 2009 Massachusetts Land Court decision, (Piper, J.), Misc. 08-381588, the court held that the Zoning Board correctly applied the definition of frontage in its bylaw, which provided that frontage was to be measured along a single street bordering the property even if the property bordered two intersecting rights of way. The court held that the Lunenburg bylaw, which references only a single street in defining frontage, intentionally restricted frontage to one street. The court found that the town failed to use less restrictive language in defining frontage to include "any" public or private right of way, thus, requiring an interpretation of the Lunenburg bylaw limiting the definition of frontage to frontage along a single street.

The court concluded, inter alia, in the Cronin case that the definitional language of the bylaw indicated that not more than one street bordering the property would constitute frontage. A copy of the Cronin case is attached.

The definition of "frontage" in the Bylaw is substantially similar to the definition in the Cronin case. Though the Bylaw contains an illustration that references frontage for a corner lot,

KRATTENMAKER O'CONNOR & INGBER P.C.

Jennifer Raitt, Director

June 24, 2020

Page 5

any illustrations in the Bylaw are not dispositive on this issue as the illustrations are “not part of the Arlington Zoning Bylaw.” As such, the Board is to be guided by the applicable case law.

- Parking

The Bylaw requires that in a Mixed-Use project, the number of parking spaces required is the sum of uses computed separately. Bylaw, Article 6, Section 6.1.4. The proposed hotel is fifty (50) rooms, which would require fifty (50) spaces – one space per room. A restaurant use in a hotel requires one space per 400 sq. feet of restaurant space. Bylaw, Article 6, Section 6.1.4. Article 6, Section 6.1.10(C) provides that “[f]or Mixed-Use development, the first 3,000 square feet of nonresidential space is exempt from the parking requirements of this Section 6.1.”

Given that the restaurant space itself is 2,800 square feet or nearly 3,000 square feet, there would be no requirement for parking spaces for this use. Accordingly, the number of parking spaces prior to the application of Article 6, Section 6.1.5 the petitioner is required to provide is fifty (50).

Under Article 6, Section 6.1.5, the Board has the authority to reduce parking in Business zones to 25 percent of that required in the Table of Off-Street Parking Regulations if the proposed parking is deemed adequate and where Transportation Demand Management Practices are proposed.

At the request of Mr. Watson, the petitioner has added an electric car charging station to the project. The petitioner is no longer pursuing his request to include tour bus parking at the proposed site.

The petitioner suggests the proposed parking is indeed adequate and has previously provided a Transportation Demand Management Plan. As such, Article 6, Section 6.1.5(C)(1), (6), (8) and (9) apply, enabling the Board to reduce the number of parking spaces to thirteen (13). The petitioner is proposing twenty-four (24) separate parking spaces, which also includes a handicapped space. Due to various enhancements to the hotel design and to facilitate deliveries in the rear of the project, three spaces were required to be removed. Here, the petitioner seeks a reduction to forty-eight percent of the parking required in the Table of Off-Street Parking Regulations or nearly double the number of spaces required by Article 6, Section 6.1.5. Further, the petitioner has the ability to stack or tandem park eight (8) additional cars due to its use of a valet. The Board may recall this approach was approved for Homewood Suites when it applied for its special permit to expand the number of rooms at the hotel. This brings the number of onsite hotel guest spaces to thirty-two (32) spaces or sixty-four percent (64%) of the spaces required by the Table of Off-Street Parking Regulations or two and one-half times the number of parking spaces required by Article 6, Section 6.1.5.

KRATTENMAKER O'CONNOR & INGBER P.C.

Jennifer Raitt, Director

June 24, 2020

Page 6

Further, as the Board requested, the petitioner has secured ten spaces for employee parking. The Executive Secretary for the Select Board, Marie Krepelka, has advised the petitioner that, once the project is approved, seven (7) parking spaces will be rented to the petitioner in the Ottoson Middle School parking lot when school is not in session, specifically, weekdays from 2:30 p.m. to 7:00 a.m., all day weekends, school holidays and vacation periods or at either the skating rink or Hurd Field. The Town makes available for rental spaces in various Town-owned lots. Further, the petitioner has secured three (3) spaces at 1289 Massachusetts Avenue. See the enclosed letter. These ten (10) spaces would be for employee parking only.

The total available parking spaces would be forty-two (42), thirty-two (32) spaces for use for hotel guest parking and ten (10) parking spaces for use by restaurant and hotel employees.

The petitioner suggests that the available parking provided and the Transportation Demand Management Plan, clearly satisfy the intent and requirements of Article 6, Section 6.1.5.

- Parking Restrictions

The Board has requested that the parking available onsite be exclusively for hotel guests. To best accomplish this, the petitioner suggests that during the hours the restaurant is open that a sign be placed at the drive entrance stating that parking is for hotel overnight guests only. The valet service will only park vehicles for guests staying at the hotel.

- Shadow Study

The petitioner has previously provided the Board with a shadow study. Subsequently, a resident, Don Seltzer, who is not an abutter to this proposed development, submitted an "Extended Shadow Study for Hotel Lexington Project," so-called. Mr. Seltzer is not an expert in the field and his submission is not competent evidence upon which the Board may rely. The Board is required to consider reports and studies prepared by experts in the respective fields.

The enclosed shadow study has been updated based on the site topography and not a flat plane. The study was prepared by Lincoln Architects, a qualified expert in the field.

- Traffic Impact Report

Michael Santos, a professional engineer and a certified professional traffic operations engineer associated with BSC Group, Inc., has previously submitted a traffic information summary dated January 16, 2020.

In his January 16, 2020 summary, he concluded that: (a) the proposed project is expected to have a minimal impact on the surrounding roadway network through most of the day; (b) the

KRATTENMAKER O'CONNOR & INGBER P.C.

Jennifer Raitt, Director

June 24, 2020

Page 7

periods that would experience the most impact will occur during off-peak commuter hours, i.e. hotel check-in and check-out; (c) the proposed restaurant will have the highest impact after the weekday evening commuter peak hours when traffic volumes are typically lower; (d) there will be no right turns from the parking area onto Clarke Street northbound; and (e) all deliveries and trash removal service will occur onsite.

Enclosed is a more detailed traffic impact study performed by Mr. Santos, which contains traffic counts for the area, including intersections identified by the Director of Planning, which confirms and validates Mr. Santos' prior conclusions.

- Plan Revisions

The architectural plans have been revised to reflect various comments from the Board members and residents. Some of the revisions include the reduction in height of the front bay windows, the widening of the band around the front of the building, change in style of the rear fourth floor windows, relocation of the equipment screening on the roof, additional shrubbery and landscaping at the front and side of the property and the removal of the sign facing Clarke Street.

- Submittals

Enclosed is the following additional submittals and/or information as requested by the Board:

- a. Offsite parking letter for hotel and restaurant employee parking.
- b. Passenger loading and unloading will be done in the front driveway and portico. Further, I have spoken with Nilesch Patel, the proprietor of BB Liquors, the package store, which is the entity that will be occupying 1215 Massachusetts Avenue. Messrs. Patel and Doherty have agreed to consult and coordinate deliveries to ensure that there are no delivery conflicts. Further, deliveries to the hotel and restaurant can be made either in the front driveway or the rear parking area. The petitioner will defer to the Board as to its preference. Deliveries will be scheduled to avoid morning and afternoon rush hours.
- c. Updated shadow study, which is contained in the plan set.
- d. Building elevations and a site survey prepared by Engineering Alliance, Inc.
- e. An updated site plan prepared by Lincoln Architects, LLC, which includes, among other things, the "bonus" FAR, totaling 675 as well as the location of

KRATTENMAKER O'CONNOR & INGBER P.C.

Jennifer Raitt, Director
June 24, 2020
Page 8

the proposed drainage system. It also shows the turning radius onto Clarke Street from the proposed project.

- f. Plans for sidewalk upgrades adjacent to the curb cut on Clarke Street are included in the plans. The new sidewalks will be to the Town's specifications and will meet ADA requirements.
- g. Lighting/photometric plan prepared by Shepherd Engineering, Inc.
- h. Updated plans that address design issues raised at prior meetings.
- i. Renderings showing the location of rooftop mechanical equipment.
- j. Information as to the exterior siding have been updated and included on the plans. The petitioner is awaiting delivery of material samples for submission to the Board.

Finally, Mrs. Le Royer expressed a concern as to how the Town will ensure that the project once constructed will not deteriorate and will comport with the permit granted. The petitioner suggests that the Board has the ability and routinely exercises its authority to ensure that a project remains in compliance with the general and special conditions voted by the Board by retaining jurisdiction.

On behalf of the petitioner, I thank the Board and Ms. Raitt for the significant amount of time and input they have provided on this project.

Very truly yours,

Mary Winstanley O'Connor

MWO/ccg
Enclosures
6214

cc: James F. Doherty

June 19, 2020

Andrew Bunnell, Esq., Chairperson
Arlington Redevelopment Board

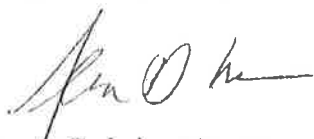
733 Massachusetts Avenue
Arlington, MA 02476

Re: 1207 - 1211 Massachusetts Avenue, Arlington, MA
Docket No. 3602

Dear Mr. Bunnell:

This letter shall confirm that, in the event the special permit is granted in the above-referenced matter, I will rent three (3) parking spaces at 1289 Massachusetts Avenue, to be utilized by employees of the proposed hotel.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Sean Galvin", with a stylized flourish at the end.

Sean Galvin, Trustee
1020-1024 Beacon Street Realty

EASEMENT AGREEMENT

This **EASEMENT AGREEMENT** (this "**Easement**") is made as of this ____ day of _____, 2020, by and among **JAMES F. DOHERTY**, Trustee of the 1211 Massachusetts Avenue Realty Trust, a Massachusetts nominee realty trust under declaration of trust dated November 21, 2012 and recorded in Middlesex So. Registry of Deeds in Book 60543, Page 430 (hereinafter referred to as the "**Grantor**"), and the **TOWN OF ARLINGTON**, a municipal corporation, having an address of 730 Massachusetts Avenue, Arlington, MA 02476, acting by and through its Redevelopment Board (hereinafter referred to as the "**Town**" or "**Grantee**").

WITNESSETH:

WHEREAS, Grantor is the owner of certain property situated at and known as 1207-1211 Massachusetts Avenue in the Town of Arlington, Middlesex County, Commonwealth of Massachusetts, containing approximately 675 square feet (hereinafter referred to as the "**Property**"), and which is more particularly described on Exhibit A;

WHEREAS, the Town in its Zoning Bylaw, last amended on April 22, 2019, specifically Article 5, Section 5.3.6, empowered the Arlington Redevelopment Board (hereinafter referred to as the "**Board**") to grant a special permit to allow for a maximum gross floor area greater than is permitted to an applicant seeking a special permit, when an easement is granted to the Town for public access and use;

WHEREAS, the Grantor has requested that the Board approve additional gross floor area in consideration of the above-referenced grant of a public access and use easement; and

WHEREAS, the Board on _____, 2020 granted a special permit to the Grantor for the properties known and numbered as 1207 and 1211 Massachusetts Avenue, Arlington, MA in Docket No. 3602, which included, inter alia, additional gross floor area for the proposed project referenced therein (hereinafter referred to as the "Project").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easement.

- a. Grant of Easement: Public Use and Access. The Grantor hereby grants to the Town, for the benefit of the inhabitants of the Town of Arlington and the general public, a non-exclusive right and easement over, across and through the land specifically identified in Exhibit "B" attached hereto (hereinafter referred to as the "Easement"). Grantor hereby agrees and acknowledges that the inhabitants of the Town of Arlington and the general public shall have the right, upon the completion of the construction of the Project, to the use and enjoyment of the Easement pursuant to the provisions of subparagraph 1.b. below.

Grantor hereby agrees and acknowledges that Town shall have the right to utilize the Easement for such public activities and events as the Town may desire to sponsor, from time to time, provided, however, that (i) such use by the Town shall be subject to the reasonable rules and regulations as Grantor and the Board may establish from time to time for the Property; (ii) to the extent permitted by law, Town agrees to indemnify and hold Grantor harmless from any and all claims, damages, liabilities, obligations, costs and/or expenses, including, without limitation, reasonable attorneys' fees, incurred or suffered by Grantor as a result any injury, death or property damage suffered by any parties, as the result of the Town's use of the Easement for such purposes; and (iii) to the extent that the Town carries insurance or self-insures against liabilities with respect to public roadways and/or sidewalks within the Town, it will use reasonable efforts to ensure that such self-insurance will cover its use of the Easement for the above purposes. The Easement shall be utilized for cultural, patristic, poetic and educational purposes. It shall not be utilized for any politically partisan purposes. The Easement shall be utilized for scheduled purposes two (2) times per week during the following time periods: Monday-Friday 10:00 a.m.-7:00 p.m. and Saturday-Sunday 11:00 a.m.-8:00 p.m.

- b. Redevelopment of the Property. Grantor shall deliver to Town an as-built plan showing the location of the Easement Area (the "**As-Built Easement Plan**"), which As-Built Easement Plan shall contain the square footage of the Easement Area, shall depict an Easement Area that is materially consistent with the location and extent of the same depicted on the Plans submitted to the Board and shall otherwise be reasonably acceptable to the Town. In the event that the Board does not approve the As-Built Easement Plan within twenty (20) days of its receipt (or deemed receipt) thereof, the As-Built Easement Plan shall be deemed approved by the Board. Upon the Town's approval, whether actual or deemed, of the As-Built Plan, the Grantor shall cause the As-Built Plan to be recorded with the Registry of Deeds and provide the recording information of such Plan to the Town upon the Grantor's receipt thereof.
- c. Grantor's Retained Rights. Grantor hereby agrees and acknowledges that he shall keep the Easement Area open and unobstructed at all times, subject, however, to Grantor's rights contained in subparagraph 1.b. above and to the following further limitations:
 - i. the Grantor specifically reserves the right to construct and install utilities, as well as landscaping, lighting and other amenities, upon, above and below the surface of the Easement Area; provided, however, that such installation of such utilities, as well as landscaping, lighting and other amenities, do not materially interfere with the Town's use and enjoyment of the Easement Area; and

- ii. the Grantor reserves the right to perform any maintenance, repair, and/or replacement of any and all improvements and utilities upon, above, or below the Easement Area, including, without limitation, hardscaped and landscaped elements within such Area, and, in connection with such activities to temporarily close the Easement Area or to restrict pedestrian access to portions thereof. Except in cases of emergency (i.e. occurrences involving an imminent threat of damage or injury to persons or property), which shall be determined in the sole discretion of the Grantor, the Grantor will provide reasonable advance written notice to the Town before commencing any work in the Easement Area that will disrupt, in whole or in part, the Town's use thereof. Whenever any work is to be performed upon the Easement, such work shall be performed (a) in a safe, diligent and workmanlike manner and in compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction thereover and with all necessary permits and approvals having been issued therefore, and (b) in a manner that causes the minimum amount of interference with the Town's use and enjoyment of the Easement Area.
 - d. Name. The Easement shall be named "The Commander James Curley Plaza" and will contain a plaque installed by the Grantor containing information as to Commander Curley's volunteer work for the Town and its disabled American veterans.
2. Term. The rights and easements granted herein shall commence upon the grant of a certificate of occupancy for the Project and shall remain in full force and effect for so long as the Project is constructed and continues to exist on the Property and Grantor is exercising its respective rights with regard to the same under any Special Permit granted by the Town of Arlington Redevelopment Board. Notwithstanding the above, the parties hereby agree that if Grantor does not commence the proposed redevelopment Project referenced in Docket No. 3602, this Easement shall automatically terminate and shall be deemed null and void and without further force or effect, without the need for the parties to execute or record any release or any other document.
3. Miscellaneous Provisions. Notwithstanding anything to the contrary contained herein, the rights with respect to the Easement Area are granted subject to the following:
- a. Non-Interference. The Town's use of the Easement Area shall not materially interfere with the use and enjoyment of the Property by the Grantor or his respective successors and assigns. Except for the rights and easement expressly granted herein, no other easements, whether express or

implied, are granted or created by this instrument. Without limitation of the foregoing, nothing herein shall be deemed to create any rights on the part of the Town outside of the Easement Area or any rights to enter onto the Easement Area for maintenance and repair purposes.

- b. Notices. All notices and other communications authorized or required hereunder shall be in writing and shall be given (1) by hand delivery, (2) by mailing the same by certified mail or registered mail, return receipt requested, postage prepaid, or (3) by overnight air courier or express delivery service with proof of delivery acknowledged. Any such notice or other communication shall be deemed to have been given when received by the party to whom such notice or other communication shall be addressed, or on the date noted that the addressee has refused delivery, or on the date that the notice is returned to sender due to the inability of the postal authorities to deliver. Any party hereto may change the address to which notices to it shall be sent by a notice sent in accordance with the requirements of this Section 3.b. Notice shall be given to the following:

To Grantor:

James F. Doherty, Trustee
c/o 1122 Massachusetts Avenue
Arlington, MA 02476

With a copy to:

Mary Winstanley O'Connor, Esq.
Krattenmaker O'Connor & Ingber P.C.
One McKinley Square, 5th Floor
Boston, MA 02109

To Grantee:

Town of Arlington
Arlington Redevelopment Board
733 Massachusetts Avenue
Arlington, MA 02476
Attn: Jennifer Raitt, Director of Planning

With a copy to:

Douglas Heim, Esq.
The Office of the Town Counsel
50 Pleasant Street
Arlington, MA 02476

- c. Successors and Assigns. The rights, easement, liabilities, agreements and other obligations as set forth shall inure to the benefit of and be binding upon the heirs, successors and assigns of the Grantor; provided, however, that the Grantor shall only be responsible hereunder for matters occurring on or with respect to the Easement Area, and only during its period of ownership of the Property. In no event shall any member, manager, director, officer, employee, shareholder, partner, trustee, tenant, agent or representative of the Grantor, an owner of all or any portion of the Property, or any mortgagee ever be personally liable for the payment or performance of any obligations under this Easement, and the Town agrees to look solely to the Property, in satisfaction of Grantor's obligations under this Easement. The Town acknowledges that it shall not have the right to assign any rights granted hereunder to any party without the written consent of the Grantor, which consent may be granted, withheld, conditioned or delayed in Grantor's sole and absolute discretion. Upon the expiration of the Term as set forth in Section 2 above, Grantors may record an affidavit evidencing such expiration with the Registry.
- d. Subject to Existing Record Matters. The rights and easement herein granted are subject to all restrictions, covenants, easements and other encumbrances of record to the extent in force and applicable.
- e. Amendments. This Easement may be amended or modified at any time by a declaration in writing mutually agreed to, executed and acknowledged by each of the parties hereto, and thereafter duly recorded in the Registry.
- f. Severability. If any term, provision, covenant or condition of this Agreement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability for the remaining provisions (or the application of such term, provision, covenant or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable), except those terms, provisions, covenants or conditions which are made subject to or conditioned upon such invalid or unenforceable term, provision, covenant or condition, shall not be affected thereby, and each other term, provision, covenant and condition of this Agreement, unless conditioned upon such invalid or unenforceable term, provision, covenant or condition, shall be valid and enforceable to the fullest extent permitted by law.
- g. Effect on Other Agreements. This Easement does not affect the rights and obligations of the parties under any other agreement between the parties.
- h. Counterparts; Headings. This Easement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, collectively, shall be deemed one and the same instrument. The headings herein are inserted only as a matter of convenience and for reference and in

no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

- i. Governing Law. This Easement shall be governed by the laws of the Commonwealth of Massachusetts as the same may now exist or may be hereinafter enacted.

[Signatures appear on the following page]

EXECUTED as a sealed instrument as of _____, 2020.

GRANTOR:

1211 MASSACHUSETTS AVENUE
REALTY TRUST, a Massachusetts
nominee realty trust

By: _____
Name: James F. Doherty
Title: Trustee
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss:

On this ____ day of _____, 2020, before me, the undersigned notary public, personally appeared JAMES F. DOHERTY, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the Trustee of 1211 Massachusetts Avenue Realty Trust, and acknowledged to me that he signed it voluntarily for its stated purpose as the Trustee of the realty trust.

Notary Public

Print Name: _____
My Commission Expires: _____

[affix seal]

GRANTEE:

TOWN OF ARLINGTON
REDEVELOPMENT BOARD

ANDREW BUNNETT, ESQ.
Chairperson

EUGENE BENSON

KIN LAU

DAVID WATSON

RACHEL ZSEMBERY



DANIEL W. CRONIN and JACQUELYN M. CRONIN vs. DONALD BOWEN, RAYMOND BEAL, JAMES BESARKARSKI, HANS WENTHRUP DAVID BLATT, SHEILA LUMI, and PAUL DOHERTY, As They are Members of the Zoning Board of Appeals for the Town of Lunenburg; and EDWARD M. CATALDO, As He is Alternate Building Inspector

MISC 08-381588

October 7, 2009

WORCESTER, ss.

Piper, J.

DECISION DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and GRANTING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

This matter came before the court on the motion for summary judgment filed by plaintiffs Daniel W. Cronin and Jacquelyn M. Cronin (¶plaintiffs¶ or ¶Cronins¶). Pursuant to G. L. c. 40A, §17, plaintiffs appeal from the decision (¶Decision¶) of

the Zoning Board of Appeals (□Board□ or □ZBA□) of the Town of Lunenburg (□Town□) whose members are defendants. The Board filed the Decision with the Clerk of the Town on May 28, 2008. In its Decision, the Board upheld the denial--by the Town's Acting Building Inspector (□inspector□), also named as a defendant--of the Cronins' application for a residential building permit.

The focus of this litigation is on the compliance with the dimensional zoning requirements of the Town of a lot owned by plaintiffs. The plaintiffs assert that the Town officials involved incorrectly measured this property's frontage and lot width, and that a proper calculation would show that the relevant portion of plaintiffs' land in the Town, numbered 27 Oak Avenue, shown on a recorded plan as Lot 2, all as described more particularly below, has both sufficient frontage and lot width to comply with the municipal zoning law. Because the inspector took the contrary view, concluding that Lot 2 failed to meet these dimensional requirements, he denied a building permit which plaintiffs had sought for an abutting parcel they own, known as Lot 1B.

The inspector determined that, because Lots 1B and 2 had been owned together, and Lot 1B came to be established separately as a result of a division of the larger holding--which left Lot 2 in violation of the contested dimensional requirements--Lot 1B was not eligible for a building permit. The inspector applied the doctrine sometimes referred to as "infectious invalidity" to determine that, under the circumstances present here, the dimensional shortfalls of Lot 2, which had already been improved with a residential structure, prevented issuance of the requested building permit for construction of a house on currently unimproved Lot 1B. See, on infectious invalidity, *Alley v. Building Inspector of Danvers*, 354 Mass. 6 (1968).

The inspector's stated grounds for denial were that Lot 2 had insufficient frontage and lot width under the dimensional zoning requirements in the Protective Bylaw of the City of Lunenburg (□Bylaw□). The Board, in its Decision, upheld these conclusions. The defendants assert that the inspector properly applied the Bylaw, and correctly denied the Cronins' building permit request.

On June 13, 2008, the Cronins filed in this court a complaint for judicial review of the Board's denial of their administrative appeal from the building inspector's determination that he could not issue the building permit. On November 17, 2008,

plaintiffs filed a motion for summary judgment and a supporting memorandum of law. On December 19, 2008, the defendants filed an opposition to the plaintiffs' motion, a cross-motion for summary judgment, and a supporting memorandum of law. After argument, upon review of the record, and following consideration of the moving and supporting papers, the court now decides the motions before it.

The following facts are properly before the court for its consideration based on materials submitted pursuant to Mass. R. Civ. P 56 (c), and appear to be undisputed:

1. As of 2004, the Cronins owned property in Lunenburg located at 31 Turkey Hill Road. In March of that year, the Cronins purchased the neighboring lot, 27 Oak Avenue, the lot at the intersection of Turkey Hill Road and Oak Avenue.

2. Bylaw Section 2.1.1.17 sets forth the following definition of "Frontage":

The linear extent of the line: measured along a street right-of-way from the intersection of one side lot line to the intersection of the other side of the same lot, provided that; a) The lot is on a street or way legally accepted by the Town Meeting vote, or b) The lot is on a street or a way established by a county, state, or federal authority, or c) The lot is shown on a street or a way established by a subdivision plan approved in accordance with the Subdivision Control Law, or d) The lot is on a street or way on a list maintained by the Town Clerk which is determined to qualify for frontage under the provisions of this section. □

3. Bylaw Section 2.1.1.28(b) defines "lot width" as:

Lot width is the minimum distance between the side lot lines of the lot measured on any line parallel to a line joining the intersection of the side lot line with the right-of-way at any point between said intersection and the nearest point of the principal building and the right-of-way line.

4. At the time of purchase, 27 Oak Avenue had a lot width of 140 feet. In this respect, the defendants concede that 27 Oak Avenue was a lawful, pre-existing non-conforming lot.

5. On March 28, 2005, the Lunenburg Planning Board endorsed, under G. L. c. 41 § 81P, a so-called "Approval Not Required Plan" titled "Plan of Land in Lunenburg, Massachusetts Scale 1 in. = 40 ft. Prepared for: Daniel Cronin" ("ANR Plan"), dated February 15, 2005; the ANR Plan was recorded on April 1, 2005 in the Worcester (Northern District) Registry of Deeds in Plan Book 454, Page 21. A copy of a portion of the ANR Plan is attached to this Decision as an exhibit.

6. As shown on the ANR Plan, Turkey Hill Road and Oak Avenue meet at a rounded corner at the 27 Oak Avenue property, which is shown on the ANR Plan as Lot 2. The ANR Plan shows a curve, as measured along the line of the boundary which Lot 2 has with these adjoining streets, having a radius of twenty feet and a circumference of 31.42 feet.

7. The ANR Plan showed the reconfiguration of the land which had been 27 Oak Avenue and 31 Turkey Hill Road to create, in addition to those two previously built-upon house lots, a new lot ("New Lot" or "Lot 1B") shown on the ANR Plan as Lot 1B, containing 96,762 square feet. It is this Lot 1B for which the unsuccessful application for a building permit was made, giving rise to the appeal now before this court. The New Lot, as shown on the ANR Plan has a 52.88-foot wide stretch of frontage on Turkey Hill Road.

8. According to the ANR Plan, with the creation of the New Lot, 31 Turkey Hill Road, shown as Lot 1A, has 61,043 square feet; 27 Oak Avenue has 40,178 square feet; and the New Lot comprises 96,762 square feet.

9. The ANR plan shows that currently 31 Turkey Hill Road and 27 Oak Avenue each contain one residential building.

10. The ANR Plan also shows that 27 Oak Avenue has two driveways, which enter from both Turkey Hill Road and Oak Avenue. These driveways existed when the plaintiffs purchased the property. 27 Oak Avenue also has a pool located behind the residential structure; the pool is not displayed on the ANR Plan.

11. Neither the New Lot nor 27 Oak Avenue connected to the municipal sewer when the plaintiffs created the New Lot. 27 Oak Avenue depended on a private septic system.

12. In 2004, the plaintiffs proposed to extend the municipal sewer line onto Turkey Hill Road from Oak Avenue, as Turkey Hill Road did not connect to the municipal sewer. This proposal was withdrawn.

13. In January 2005, the plaintiffs' engineer, Mr. Steven Marsden (||Marsden||), met with Building Inspector Sauvageau (| Sauvageau |) to discuss a proposal to connect the New Lot to the municipal sewer present on Oak Avenue. The plan for sewer connection was to have a five foot wide strip of land, at and formerly part of the southwestern side of Lot 2, separated from Lot 2's ownership and transferred to the undeveloped Lot 1B. This strip, denominated Parcel C on the ANR Plan, was to serve as the locus of the sewer pipe connecting Lot 1B to the sewer main in Oak Avenue.

14. On April 5, 2005, the Lunenburg Selectmen, acting as Sewer Commissioners, approved that plan, in the configuration depicted on the ANR Plan.

15. The plaintiffs transferred by deed the fee ownership of the five-foot wide by approximately 260- foot long strip, Parcel C, to serve as an extension of Lot 1B, along the southwestern lot line of 27 Oak Avenue, permitting the New Lot to connect to the municipal sewer in Oak Avenue. The plaintiffs subsequently received the necessary permits, and installed sewer lines in the strip, to connect both 27 Oak Avenue and the New Lot to the sewer main in Oak Avenue.

16. On February 8, 2008, the plaintiffs applied for a building permit to construct a single-family house on the New Lot.

17. In a letter to the plaintiffs dated February 15, 2008, Alternate Building Inspector Cataldo denied the building permit for the New Lot, stating his conclusion that 27 Oak Avenue did not fulfill the minimum frontage requirement of 100 feet in Bylaw § 2.1.1.17, because, in his view, the transfer of the sewer extension strip, five feet in width, had reduced the frontage of what previously had been the 27 Oak Avenue lot from 103 feet to 98 feet (both as measured along Oak Avenue), resulting in less than the 100 feet required; he also took the position that the new lot lines resulted in a reduced lot width of the 27 Oak Avenue property. For these reasons, the inspector determined that infectious invalidity existed, and that the New Lot could not receive the requested building permit.

18. On March 14, 2008, the plaintiffs appealed the denial of the building permit to the Board. The Board heard the plaintiffs' appeal on April 23, 2008 and May 14, 2008.

The Board upheld the Alternate Building Inspector's denial of the building permit for the plaintiffs' New Lot in the Decision. This appeal followed.

Summary judgment is appropriate in those cases where no genuine issues exist as to material fact and where the moving party is entitled to judgment as a matter of law. *Community Nat'l Bank v. Dawes*, 369 Mass. 550 , 553 (1976); Mass. R. Civ. P. 56(c). The moving party must affirmatively show the absence of any triable issues or facts. *Pederson v. Time Inc.*, 404 Mass. 14 , 16-17 (1989). In deciding motions for summary judgment, the court may consider pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *Community Nat'l Bank v. Dawes*, 369 Mass. 550 , 553 (1976). The moving party can satisfy this burden by submitting affirmative evidence showing that the opposing party has no reasonable expectation of proving an essential element of its case or by negating an essential element of the opposing party's case. *Kourouvabilis v. General Motors Corp.*, 410 Mass. 706 , 716 (1991).

On an appeal under G. L. c.40A, §17, the judge hears the matter de novo and determines the validity of the board's decision on the basis of the facts found by the judge. *Gordon v. Zoning Bd. of Appeals of Lee*, 22 Mass. App. Ct. 343 , 348 (1986).

The defendants contend that, notwithstanding the de novo review ordinary in a case such as the one now before me, this matter is one in which the court addresses an issue of local discretion that requires familiarity with local conditions, and so the court ought review the decision of the zoning board with a good measure of deference. It is certainly true that, in appropriate cases, there is a meaningful place in appeals brought under G.L. 40A, §17 for a court to defer to local knowledge and decisionmaking. The local board of appeals brings to the matter an intimate understanding of the immediate circumstances, of local conditions, and of the background and purposes of the entire [zoning] by-law. . . . *Berkshire Power Development, Inc. v. Zoning Bd. of Appeals of Agawam*, 43 Mass.

App. Ct. 828 , 832 (1997) (review of special permit decision) (quoting *Fitzsimonds v. Board of Appeals of Chatham*, 21 Mass. App. Ct. 53 , 57 (1985))(same). The court gives deference to municipal zoning board decisions when the issue requires particularized local knowledge. *Murray v. Board of Appeals of Barnstable*, 22 Mass. App. Ct. 473 , 479 (1986)(same).

In the case at bar, the primary question for decision involves the interpretation of contested provisions of the municipal zoning law, particularly those which define and regulate minimum frontage and lot width. The task for the court is to read and interpret, as a legal matter, the meaning of these enactments, and, having determined their meaning, to apply the provisions to the facts presented by the Cronins' lots, as depicted on the relevant plan. This role is traditionally left to the courts to perform. The language of the Bylaw needs to be read and interpreted, and that is a familiar responsibility of the courts. This is not an instance in which the local Board has made its decision as a discretionary matter, as when a special permit granting authority, exercising the considerable discretion it has in such a case, decides to grant or refuse a special permit. In those kinds of judicial appeals, the court's review is highly deferential.

Here, the question is what the words of the Bylaw mean. The Bylaw is law, locally enacted. To be sure, the view of the zoning board on matters involving interpretation of the bylaw in the municipality is to be sought and considered with respect: at least in the first instance, the board's administrative view is valuable and is wanted. *Fitzsimonds, supra*, 21 Mass. App. Ct. at 57. If, however, the local Board reads the disputed provisions of the Bylaw in a way which the court determines is at odds with their meaning, as a matter of legal interpretation, then the Board's view on the point must yield to the court's. Otherwise, the Board's interpretation of the law might supplant the meaning of it as enacted legislatively in the Town. If there is a reason to look to the local knowledge residing in the Board to aid in the interpretation or application of the meaning of the Bylaw, then some deference certainly is due the Board. Here, on the central questions--the method the Bylaw establishes for the measurement of the minimum frontage length and minimum lot width which corner lots must supply--there is not an obvious reason which especially calls for resort to particularized local knowledge which might reside in the Board in manner which calls for complete deference. Unless the meaning of

the Bylaw provisions is inscrutable as enacted, this is an issue of legal interpretation which focuses on the language of the Bylaw itself. □ Statutory interpretation presents a question of law for the Court. □ *Boston Police Patrolmen Ass'n. v. Boston*, 435 Mass. 718 , 719 (2002).

Locating Frontage of a Corner Lot

The parties disagree how the Bylaw requires the court to measure the frontage of a corner lot, given their competing interpretation of the relevant words of the Bylaw. The plaintiffs contend that by measuring the length along only one right-of-way, the municipal defendants did not correctly apply the legislative definition of frontage to the Cronins' corner lot. Plaintiffs argue that the words of the Bylaw permit (indeed, require) but one interpretation: that the combined length of the boundary lines of their Lot 2 alongside both Turkey Hill Road and Oak Avenue are to be counted as frontage. Counted this way, the Cronins would have more than sufficient frontage for Lot 2 following the splitting off of the five-foot wide strip used to provide the route for the connecting sewer lines.

Bylaw § 2.1.1.17 does not include an additional method for measuring the frontage required of lots that are bounded by two streets, such as the corner lot at issue, Lot 2. To reinforce their contention that Lot 2's sidelines along both streets should be considered, in the aggregate, as frontage, the plaintiffs reach to other sections of the Bylaw, including those relating to driveways, to reinforce their argument. The Bylaw defines "driveway" as "[a] way for the passage of vehicles from the street used to qualify for required frontage to a garage or off-street parking and loading area." Bylaw § 2.1.1.12. The plaintiffs argue that Lot 2's pair of driveways, which enter it from both streets to reach the garage(s) on Lot 2, qualify both streets to be included in the frontage of that lot. The plaintiff looks to *Bosworth v. Whiteside* for the proposition that "in most instances, the frontage will be the place where traffic from the lot enters and exits from the street." *Bosworth v. Whiteside*, 16 LCR 686 , 689 (2008) (Misc. Case No. 340917) (Piper, J.).

Both the definition of driveway in the Bylaw, and the *Bosworth* opinion, describe activities that ordinarily take place across the frontage of a lot, rather than activities that per se designate particular lot lines as supplying frontage for zoning purposes. Entry and exit from a lot across a lot line do not necessarily define

frontage; traffic also may reach a property using a right-of-way easement over land of another, and that does not necessarily convert the line where the easement meets the lot as frontage for the purpose of measuring minimum required frontage of the lot. *Id.* The Bylaw definition of driveway requires that it connect to the street which supplies the lot's frontage, but frontage, as contemplated by the Bylaw, does not necessarily require a driveway.

Defendants argue that the Bylaw requires frontage to be measured along one street, indicating the intention to limit the measurement of frontage to one street. The examples listed in Bylaw § 2.1.1.17 (a)-(c), which all refer, in the singular, to a street or way, reinforce the legislative emphasis on using a single street. The defendants present alternative definitions of frontage from the Bylaws of other towns which use less restrictive language in defining frontage, such as any, to demonstrate that the language used in the Bylaw intentionally restricts frontage to one street. Defendants' position on this is persuasive. It is not possible to ignore the clear meaning and thrust of the Bylaw, which limits the availability of frontage, to meet the required minimum length, to frontage along a single street. Bylaw § 2.1.1.17 limits frontage available to satisfy the minimum required to a length measured along a single street bordering the property, even if the property does border two intersecting rights-of-way.

In determining which lot lines should be designated front, side, or rear, courts have considered [t]he general location, the manner in which the particular lot and its adjacent lots have been laid out, the customs of surveyors in that respect, the uses to which the lot has been put as well as those to which it is proposed to be put, the practices of public officers charged with duties respecting it, and all the other pertinent facts touching the customs of the neighborhood. . . . *Bianco v. Ashley*, 284 Mass. 20 , 25 (1933). Analysis of the uncontested record facts supports the conclusion that Oak Avenue should be designated as the front line for the lot in question, Lot 2. The location of the building on this lot implicates Oak Avenue as the front lot line. Treating Turkey Hill Road as the front of Lot 2, and as the road supplying its frontage, would make the existing building violate front yard setback requirements. What is shown on the ANR Plan as Lot 2 previously had its frontage and its address on Turkey Hill Road, but an application for a residential building permit in 1984 modified the address to what it has been called since, 27 Oak

Street. This deliberate selection of Oak Avenue as the street constituting the front line of the parcel was necessary for the then owners to construct the house now on Lot 2 in its present location without violating the existing setback requirements for front and side yards. Plaintiffs have not shown any use of the property that is inconsistent with classifying Oak Avenue as the street constituting the parcel's front line. Lot 2, 27 Oak Avenue, has its frontage on Oak Avenue. Lot 2 does not have frontage on Turkey Hill Road.

Measuring the Frontage of a Corner Lot

The parties disagree about the proper measurement of the lot's frontage on Oak Avenue. Bylaw § 2.1.1.17 states that frontage is the linear extent of the line: measured along a street right-of-way from the intersection of one side lot line to the intersection of the other side of the same lot. . . . The ANR Plan shows that Oak Avenue and Turkey Hill Road do not meet at the point of an angle, but rather along a rounded corner. According to the ANR Plan, the outermost edge of this curve at the southeast of 27 Oak Avenue, at the two streets' intersection, follows along a portion of a circle which has a radius of twenty feet for a length of 31.42 feet from the first point at which the road bends, to the end of the curve. Plaintiffs, as an alternative position, assert that some portion of this distance should be included in the measured frontage for 27 Oak Avenue. The defendants read the Bylaw to exclude any of the curving distance at the meeting of the two streets from the measure of frontage, asserting that the Bylaw requires a linear frontage measurement, which they say definitionally excludes curves.

The Bylaw does not define or otherwise helpfully address what is meant by "intersection." The court will look to the plain meaning of the word intersection as a place where two or more lines cross or come together. When two lines cross, there is one single point where the lines intersect. The Bylaw definition of frontage designates two points as the starting and ending point of the measured frontage. These points, included in the "extent of a line" measuring frontage, are described as "the intersection of one side lot line to the intersection of the other side of the same lot." Bylaw § 2.1.1.17. The Bylaw does not include provisions that explicitly exclude curves from inclusion in frontage. *Id.* The Bylaw does not provide alternate methods for designating the start- or end-points for measuring frontage if the intersection of a side lot line and the frontage occurs on a curved road. It defies

logic and ordinary experience to say that the measurement required to determine adequacy of frontage throughout the Town may only be made, under the words of this Bylaw, where the line along the street right-of-way runs entirely straight.

The Board relies on a narrow reading of the word "linear" in the Bylaw to have the court limit measured frontage to a single straight line. Aside from the presence of "linear" in the definition (a word which simply restates the noun "line") the Bylaw does not explicitly restrict the measurement to only straight lines, and the defendants did not advance any satisfying explanation, supported by the Bylaw, why such a narrow reading would be called for by the Bylaw's words. In ordinary usage, lines may curve or bend. In the real world, lot lines certainly do. Dictionary definitions show that a "line," in common usage, includes, rather than excludes, lines with curvature. See, e.g., The American Heritage College Dictionary, fourth ed., which defines a line as, among many other things: "[a] degree or circle of longitude or latitude drawn on a map or globe..., [t]he equator, [a] border or boundary...[a] demarcation... [a] contour or outline..., [a] mark used to define a shape or represent a contour...."

Nothing in the Bylaw shakes the conclusion that frontage, as defined, cannot be supplied by a line which is to some degree less than unbending. To read the Bylaw definition to apply only to entirely straight lines would leave many lots, with even the most imperceptible of gentle curves in the lines where the lots meet the street, with no guiding method for measuring and satisfying the frontage requirement of the law. That cannot be the reading intended legislatively. The defendants' insistence on counting as frontage nothing less than a straight line would, if accepted by the court, lead to a strained, if not absurd, result in many instances. A lot which had only a tiny straight stretch to its run along the street, and a gentle curve of great length along the rest, would fail to comply with the minimum frontage requirement. The Bylaw clearly states that frontage must start and end at the intersections of the side lot lines with the front line of a property. The Bylaw assumes, and apparently requires, that all lots have a front lot line and side lot lines. The definition emphasizes the importance of the two end-points that establish the limits of the line which supplies frontage, something which takes place whether the frontage is in whole or in part curved, on the one hand, or entirely straight, on the other.

When interpreting statutes, each word is to be given its ordinary meaning without overemphasizing its effect upon the other terms appearing in the statute, so that the enactment considered as a whole shall constitute a consistent and harmonious statutory provision. *Murphy v. Planning Bd. of Hopkinton*, 70 Mass. App. Ct. 385, 394 (2007) quoting *Commonwealth v. Woods Hole, Martha's Vineyard & Nantucket S.S. Auth.*, 352 Mass. 617, 618 (1967). Giving "linear" its plain meaning within the context of the entire statute requires that the frontage be measured in a way that includes both of the intersections of the front and side lot lines.

The Bylaw defines a "corner lot" as "any lot abutting on two (2) or more streets that are intersecting." Bylaw § 2.1.1.28(e). Lot 2 abuts on two streets, Oak Avenue and Turkey Hill Road. They intersect at, or along, the southeast corner of Lot 2. With Oak Avenue supplying the front lot line, Turkey Hill Road supplies Lot 2's side lot line, and the intersection of those two streets establishes a boundary point limiting the extent of 27 Oak Avenue's frontage. That point lies on the eastern end of the line of frontage, where it "intersects" the southern end of the side line along Turkey Hill Road. The Board's proffered interpretation would exclude this point, and would run counter to the Bylaw definition of "corner lot" as including the intersection of the Oak Avenue frontage line with the Turkey Hill side line. This approach also would exclude the entire thirty-one feet of curved lot line that borders, and forms the connection along and between the two (intersecting) streets. The Board's construction appears to ignore the reality that these two streets do, in a plain and obvious way, "intersect," both on the plan and on the ground.

The purpose of requiring "linear" measurements was not to exclude curved edges of a lot from qualifying as frontage, but to show how to measure to see if there exist dimensionally deficient lots. Lots must be measured using a consistent rubric. Measuring from one intersection of side lot line and front line to the other intersection of the same front line with the other side line, whether the frontage is curved or straight, provides an accurate way to calculate the front dimension. Linear measurement of this sort allows the Town to ensure that lots meet consistent dimensional requirements.

The Board asserts that the measured frontage of a lot can not include any distance measured which lies within the street. This is correct, given the words of §

2.1.1.28. Its subpart (d) says: "A building lot shall not include any part of the street." As a result, one cannot measure frontage along Oak Avenue all the way to the meeting point of the extensions of the straight lines of the side and front lines of Lot 2; to do so would position the point of their "intersection" in the middle of the traveled way. Said another way, the Bylaw does not countenance measurement of frontage which extends along the straight 98.00 foot long run of the frontage line, and then projects further in a straight line on the same course to the point of tangency with the rounded corner of Lot 2.

The Bylaw, in § 5.2.5, "Corner Clearance," dealing with the need to maintain sight lines where two streets come together, mandates that the area, within the streets and on the lot, formed by these extensions, for a distance of fifty feet in both directions, be kept open. This section requires that measurements for the clearing should be taken from a "point of intersection, or in the case of a rounded corner, the point of intersection of their tangents. . . ." This section projects the side and front lines to an intersection within the street(s). This point, where these two straight lines come together, cannot, as already said, be the measuring point for the eastern terminus of the frontage line along the Oak Avenue side of Lot 2, for it would encompass, as frontage, a line that in part ran into the traveled way.

Instead, the Bylaw calls for the intersection of side and front lot lines to be located on the curvature of the corner of Lot 2, along the line where the plaintiffs' privately owned land meets the layout of the streets used by the public for travel. In this way, the counting does not pick up any phantom length which lies in the street, something the Bylaw's definition forbids. What the Bylaw calls for, taking into account all of its relevant provisions and its purpose, in the case of a lot, like Lot 2, which lies where two streets come together along a small curve, is that the point which ends the frontage be located midway along that curve. The point which forms the eastern end of Lot 2's frontage lies on the curved line halfway along its 31.42 foot length. The half of the curve heading towards Oak Avenue is part of the frontage of the lot, and the other half, which heads up Turkey Hill Road, is the beginning segment of the sideline of Lot 2. This is the proper reading of the Bylaw's frontage requirement. This reading honors the Bylaw's insistence that frontage be measured along a single street right-of-way; the frontage line ends and the side street's line begins at this single point, so no more than one street

provides the frontage. This reading leaves Lot 2 with a frontage of 113.71 feet, well more than the 100 feet required.

At argument, the court considered with counsel the possibility of another approach, namely drawing a straight line to connect, across Lot 2, the two termini of the straight lines alongside Oak Avenue and Turkey Hill Road, and then dividing that connecting line at its midpoint, assigning half of the connecting line's length to the frontage and half to the side line along Turkey Hill Avenue. This alternative is not consistent with the definitions and purpose of the Bylaw, because it measures along an artificially created line that runs within the interior of the Lot, and so the court declines to read the Bylaw in this fashion. But even this method would appear plainly to supply more than enough frontage to make up the two feet by which the 98 foot straight line along Oak Avenue falls short of 100 feet.

On this summary judgment record, as a matter of law, the court rules that 27 Oak Avenue's total frontage measures 113.71 feet, and satisfies the Bylaw's dimensional requirement for frontage. The defendants should not have determined that Lot 2 lacks sufficient frontage.

Measuring the Width of Lots Bordered by Multiple Rights-of-Way

That is not the end of the court's inquiry, however. The defendants assigned a separate reason for the denial of the requested building permit for Lot 1B: that Lot 2, improved with the residential structure, lacks the lot width required by the Bylaw.

The Board upheld the inspector's denial of the Cronins' building permit application on the alternative grounds that 27 Oak Avenue did not comply with the minimum width requirements as stated in Bylaw §§ 2.1.1.28 and 5.1.2.1. These two sections require a minimum lot width of 175 feet measured between the side lot lines, and passing through the nearest point of the primary building. Id. "[N]o building shall be constructed on a lot having ... less width than the Required Width Through Building, specified in the following table [175 feet]." Bylaw § 5.2.1.1. "Lot width is the minimum distance between the side lot lines of the lot measured on any line parallel to a line joining the intersection of the side lot line with the right-of-way at any point between said intersection and the nearest point of the principal building and the right-of-way." Bylaw § 2.1.1.28(b).

This definition applies without much parsing or thought where there is a four-sided lot that has frontage on a single right-of-way, and only two points where the two side lot lines meet the only right-of-way. The Bylaw must have meaning, beyond this obvious example, in cases like that now before the court; the Bylaw must be interpreted as well in cases in which the building lot bounds on two rights-of-way, as where there is a corner lot, or even when the lot is bordered by two parallel streets.

The lot now in question, 27 Oak Avenue, is an irregularly shaped corner lot bordered by two rights-of-ways, and has multiple lot lines, several of which do not run alongside either of the streets, and which might thus qualify as side lot lines. Lot 2, we know, has its frontage along Oak Avenue. It cannot have more than one frontage, and plaintiffs do not contend, for purposes of understanding the lot width requirements, that it does. Lot 2 also has two lines which intersect with the frontage line, as determined by the court: the line running along Turkey Hill Road to the midpoint of the curve where Turkey Hill Road and Oak Avenue meet is the first. The second line is that which extends down to Oak Avenue and is the eastern sideline of the five-foot strip through which the sewer connection lines run. These two lines, at a minimum, are side lines of Lot 2.

Plaintiff come up short, however, when they try to show how the distances between these sidelines should be measured to prove Lot 2's compliance with the Bylaw's lot width regulation. Plaintiffs offer alternative interpretations of the Bylaw's lot width requirement, and their claimed interpretations are displayed on a marked plan in the record, prepared by surveyor Stanley R. Dillis, a copy of which accompanies this Decision as an exhibit. This plan illustrates plaintiffs' contention that Lot 2 meets the "minimum lot width through building requirement" because it is possible to draw straight lines, shown on the plan, through or touching the Lot 2 dwelling which exceed 175 feet in length.

Plaintiffs' argument in this respect fails as a matter of law, given the obvious layout of Lot 2, and the words of the relevant Bylaw provisions. The plan they offer proves the wrong point. First and foremost in the lot width definition is that it is the "minimum distance between the side lot lines of the lot" (emphasis supplied). It is on this threshold requirement that the plaintiffs' argument founders. The interpretation proffered by the plaintiffs, depicted in the Dillis exhibit, may well

show a straight line running from one side line to another side line, a straight line which is long enough to meet the 175 minimum applicable to Lot 2 under the Bylaw. The difficulty is that the distance of this line, just a fraction of an inch above the 175 foot required, is not the minimum distance connecting the side lot lines of Lot 2.

Lot 2, as already established, has as one of its side lines the line running along the side of Turkey Hill Road, from Lot 1B (where it meets Turkey Hill Road) southerly to the midpoint of the curve at the place where Turkey Hill Road and Oak Avenue come together. This boundary of Lot 2 is assuredly one of its side lines. There may be others, but this sideline has an intersection with a "right-of-way," Oak Avenue, at the midpoint of the curve. That intersection is ignored in the plaintiffs' rendition of how Lot 2 might comply with the lot width regulation. The plaintiffs' proffered lot width exhibit does not place the parallel lines at the correct alignment. The lines must be drawn to show not the maximum distance between the side lot lines, as the exhibit strains to do, but rather the minimum distance. The minimum distance between the side lot lines lies in the front yard of Lot 2, relative to the building on it, which faces and has its address on Oak Avenue. The minimum distance between the side lot lines of Lot 2 is the length along a line which is the full extension of the line on the exhibit, parallel to Oak Avenue, marked on the exhibit as "40' zoning setback." The length of this line is not given on the exhibit, but there can be no dispute that it is materially shorter than the line proposed by plaintiffs, which only barely measures 175 feet. There can be no doubt that the minimum distance measured between the side lot lines on a line parallel to Oak Avenue, fails to meet the 175 foot minimum the Bylaw mandates.

The correct lot width measurement is not the one which follows from the effort by plaintiffs to find any one possible line with a length of 175 feet which will somehow fit between two points along any two lines which might constitute side lines. This attempt by plaintiffs flies in the face of the Bylaw, which imposes a minimum lot width. Plaintiffs struggle to maximize the line they use to demonstrate compliance, but in doing so they ignore the fundamental purpose of this dimensional requirement, which is that the lot width not be any less than the minimum distance established in the Bylaw.

A line certainly exists which runs between the midpoint on the curve (where the Turkey Hill Road sideline intersects with Oak Avenue) and the westernmost point on the frontage line along Oak Avenue, at the five foot wide extension of Lot 1B (where the western sideline of Lot 2 intersects with Oak Avenue). Any and all lines drawn parallel to this one, and lying between it and the nearest point of the building on Lot 2, surely cannot measure anywhere close to the necessary 175 feet. (The minimum lot width measurement must be taken along a line—the shortest line—that lies —parallel to a line joining the intersection of the side lot lines with the right-of-way at any point between said intersection and the nearest point of the principal building and the right-of-way line.—) This is why Lot 2 as now configured fails to meet the minimum lot width requirement—because the width of the lot in what is, by any measure, the front yard of Lot 2 comes up very much short of 175 feet.

From this conclusion, it follows that the inspector and the Board correctly determined that the lot width of Lot 2 violates the Bylaw. The Town appropriately concedes that, prior to the reconfiguration of the property involved, to benefit and provide the sewer connection leg to the New Lot, 27 Oak Avenue's width, though less than required under the Bylaw, had been protected as a matter of prior nonconformity by G. L. c. 40A, § 6. See *Rourke v. Rothman*, 448 Mass. 190 , 197 (2007) quoting *Adamowicz v. Ipswich*, 395 Mass. 757 , 763 (1985). The defendants correctly assert, however, that the conveyance from the developed Lot 2 to the vacant Lot 1B of the five-foot sewer extension reduced the width of Lot 2, and increased 27 Oak Avenue's noncompliance with the Town's dimensional zoning regulations. And this leads to a situation where, in a manner prohibited by the Bylaw and by general principles of zoning, a previously nonconforming lot improved with a building has been changed in a way that would makes it not compliant with the Bylaw, and which, as a matter of objective measurement of the width of the lot, increases the lot's non-conformance. See Bylaw § 5.1.6.1: "No lot on which a building is located... shall be reduced or changed in size or shape so that the building or lot fails to comply with lot... width... provisions of this Bylaw, or, if such building or lot already fails to comply with said provisions, such reduction or change would bring about a greater degree of non-compliance with said provisions."

This means, further, that the defendants were within their rights to decide that Lot 1B, though not itself the locus of the lot width deficiency, was not eligible for a building permit for new construction, because Lot 1B was made up of land formerly part of Lot 2, and the land taken from Lot 2 caused it to become less compliant with the lot width requirement of the Bylaw. See *Alley v. Building Inspector of Danvers*, 354 Mass. 6, 7 (1968) (creating a conforming lot by depriving another lot of a characteristic required in a Bylaw was held improper).

Plaintiffs argued this appeal on the basis that Lot 2 as now constituted complies with the relevant dimensional requirements of the Bylaw. On the record submitted, without any dispute of material fact and as matter of law, the court rules that that is not the case. Plaintiffs did not present to the Board, nor to this court, any argument that, notwithstanding the reconfiguration of the lots involved, Lot 2, while deficient under current zoning dimensional regulation, may still be able to receive some protection based on its prior nonconformity, including by way of a special permit or finding under the provisions of Article 7 of the Bylaw or under Section 6 of G.L. c. 40A. That argument could not proceed on this case as pleaded, and certainly not on the record now before the court, which does not show plaintiffs made any request for a special permit of this sort. It is not at all clear that any such special permit could even be available under any circumstances, given the language of Article 7 and Section 6, but this Decision by the court neither addresses or forecloses any such possibility.

After argument, review of the record assembled and submitted pursuant to Mass. R. Civ. P. 56 and Land Court Rule 4, and consideration of the written submissions of the parties, the court determines that the plaintiffs have failed to show that 27 Oak Avenue complies with the Bylaw's dimensional requirements as to lot width. The court rules that the Board correctly denied the plaintiffs' administrative appeal from the denial of their building permit application for Lot 1B. Defendants' motion for summary judgment is GRANTED and plaintiffs' motion for summary judgment is DENIED. Judgment will enter upholding the Decision of the Board.

Judgment accordingly.

By the court. Piper, J.

Dated: October 7, 2009.



**Proposed Hotel Development
1207-1211 Massachusetts Avenue
Traffic Impact and Access Study**

Arlington, Massachusetts

June 2020

Prepared for:

1211 Massachusetts Avenue Realty Trust

1122 Massachusetts Avenue

Arlington, Massachusetts 02472

Prepared by:

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803 Summer Street

Boston, MA

Contents

Executive Summary	1
1 Introduction.....	2
2 Existing Conditions.....	3
2.1. Study Area	3
2.2. Existing Roadway Conditions.....	3
2.3. Existing Intersection Conditions	3
2.4. Existing Traffic Conditions.....	8
2.5. Motor Vehicle Crash Data	10
2.6. Sight Distance Evaluation.....	11
2.7. Public Transportation.....	12
3 Future Conditions.....	13
3.1. Background Traffic Growth.....	13
3.2. Site Access and Parking.....	15
3.3. Trip Generation.....	15
3.4. Mode Share	16
3.5. Trip Distribution	17
4 Traffic Operations Analysis	21
5 Summary and Conclusions.....	25

List of Figures

Figure 1	Project Location and Study Area	4
Figure 2	Existing Roadway and Intersection Configuration	7
Figure 3	2020 Existing Conditions Peak Hour Traffic Volumes	9
Figure 4	Location of Motor Vehicle Crashes in Study Area	10
Figure 5	2025 No-Build Conditions Peak Hour Traffic Volumes.....	14
Figure 6	Trip Distribution Map	18
Figure 7	Peak Hour Project Generated Traffic Volumes	19
Figure 8	2025 Build Conditions Peak Hour Traffic Volumes.....	20

List of Tables

Table 1	Automatic Traffic Recorder (ATR) Data Summary	8
Table 2	Motor Vehicle Crash Data Summary	11
Table 3	Trip Generation Summary	15
Table 4	Level of Service Designations	21
Table 5	Traffic Operations Analysis Summary – Weekday Morning Peak Hour.....	22
Table 6	Traffic Operations Analysis Summary – Weekday Evening Peak Hour	23

Executive Summary

BSC Group (BSC) has prepared this Traffic Impact and Access Study (TIAS) to evaluate the potential traffic impacts associated with the proposed construction of a 50-key hotel and ancillary restaurant space to be located at 1207 – 1211 Massachusetts Avenue in Arlington, Massachusetts. The existing site contains a 2,500 square foot (sf) Disabled American Veterans (DAV) building, a used car dealership, an automobile service station, and a three-bedroom apartment, which contains 3,031 sf of space. There are currently two curb cuts along Massachusetts Avenue and one curb cut along Clark Street that provide access to the existing uses on the site. The DAV building recently closed and operated similarly to a restaurant. All uses on the existing site will be demolished as part of the Project.

Vehicular access will be provided by a valet operated pick-up/drop-off area with two curb cuts along Massachusetts Avenue. Access to the parking area will be along the east side of Clark Street, on the north side of the site. A total of 24 parking spaces will be provided behind the hotel to serve the future guests and visitors.

The site is in proximity to numerous transit opportunities, including the Massachusetts Bay Transportation Authority (MBTA) #77 and #79 bus routes and is located within a few miles of the MBTA Red Line at Alewife Station.

This study includes a review of existing traffic and roadway conditions in the vicinity of the project site, as well as a review of the motor vehicle crash history at study area intersections. This report identifies background traffic growth for study area roadways, estimates additional traffic generated by the industrial park, and evaluates potential traffic impacts due to Project-generated traffic. The study shows the following:

- The proposed Project is expected to generate approximately 52 vehicle trips during the weekday morning peak hour and 57 vehicle trips during the weekday afternoon peak hour. When compared to the existing uses on the site, this results in a net increase of 18 trips during the weekday morning peak hour and 23 trips during the weekday evening peak hour.
- Compared to the No-Build condition, the study area intersections serving the Project are expected to operate at the same LOS with the addition of the expected Project-generated traffic. No additional mitigation or capacity enhancements are necessary at the study intersections or on the surrounding transportation infrastructure to accommodate the Project.
- Both required stopping sight distance and recommended intersection sight distances are met at both driveway locations.
- There are safety issues at the intersection of Massachusetts Avenue at Appleton Street and Appleton Place based on the MassDOT crash data. A fatal collision involving a bicyclist recently occurred at this location.

In conclusion, it is the opinion of BSC Group that the vehicle trips generated by the Project can be accommodated at the study area intersections and roadways without the need for additional mitigation. Further investigation into the safety issues throughout the study area should be considered by the Town of Arlington.

1 Introduction

BSC Group (BSC) has prepared this Traffic Impact and Access Study (TIAS) to evaluate the potential traffic impacts associated with the proposed construction of a 50-key hotel with ancillary restaurant uses on the first floor to be located at 1207-1211 Massachusetts Avenue in Arlington, Massachusetts.

This study includes a review of existing traffic and roadway conditions in the vicinity of the project site and the motor vehicle crash history at study area intersections. This report identifies background traffic growth for study area roadways, estimates additional traffic generated by the Project, and evaluates potential traffic impacts due to Project-generated traffic.

The Project will consist of the construction of a new 50-room hotel and restaurant at 1211 Massachusetts Avenue. The Project site is located along the north side of Massachusetts Avenue and is adjacent to Clark Street on the west. Vehicular access will be provided by a valet operated pick-up/drop-off area with two curb cuts along Massachusetts Avenue. Access to the parking area will be along the east side of Clark Street, on the north side of the site. A total of 24 parking spaces will be provided behind the hotel to serve the future guests and visitors.

The existing site consists of both 1207 and 1211 Massachusetts Avenue and contains a 2,500 square foot (sf) Disabled American Veterans (DAV) building, a used car dealership, an automobile service station, and a three-bedroom apartment, which contains 3,031 sf. There are currently two curb cuts along Massachusetts Avenue and one curb cut along Clark Street that provide access to the existing uses on the site. The DAV building recently closed and operated similarly to a restaurant. All uses on the existing site will be demolished as part of the Project.

2 Existing Conditions

The study area selected for the Project includes the nearby roadways and intersections expected to be impacted by the development. This section describes the study area roadway and intersections.

2.1. Study Area

The study area for the traffic impact analysis includes the following intersections:

- Massachusetts Avenue at Lowell Street
- Massachusetts Avenue at Clark Street
- Massachusetts Avenue at Appleton Street and Appleton Place
- Massachusetts Avenue at Forest Street and Burton Street

The location of the Project in relation to the surrounding roadway network is shown in Figure 1.

2.2. Existing Roadway Conditions

Massachusetts Avenue is a two-lane arterial roadway under the Town of Arlington jurisdiction that travels in an east-west direction between the Town of Lexington in the west and the City of Cambridge in the east. Throughout the study area, Massachusetts Avenue is designated as State Route 2A.

Massachusetts Avenue consists of a single travel lane and a parking lane in each direction through the study area. Bicycle sharrows are also provided in each direction through the study area. The directions of travel are separated by a double-yellow centerline. Land uses along Massachusetts Avenue primarily consist of commercial uses. Nearby side streets provide access to the adjacent residential neighborhoods on the north and south sides of the corridor. Sidewalks are provided along both sides of the roadway.

2.3. Existing Intersection Conditions

The following describes the geometric conditions and traffic control at the study area intersections. Figure 2 shows the lane geometry and traffic control at the study area intersections.

Massachusetts Avenue at Lowell Street

Lowell Street intersects Massachusetts Avenue from the north to form this three-legged, unsignalized intersection west of the Project site. The Massachusetts Avenue eastbound and westbound approaches consist of single travel lanes in each direction separated by a double-yellow centerline. On-street parking is allowed along both sides of Massachusetts Avenue. The Lowell Street southbound approach intersects Massachusetts Avenue at a severe skewed angle and consists of a single travel lane under STOP-sign control. A crosswalk is provided across the Lowell Street approach. Sidewalks are also provided along both sides of all approaches to the intersection. Land uses around the intersection consist of commercial and residential properties.



Figure 1
 Project Location & Study Area
 1207 - 1211 Massachusetts Avenue Traffic Impact and Access Study
 Arlington, MA

Massachusetts Avenue at Clark Street

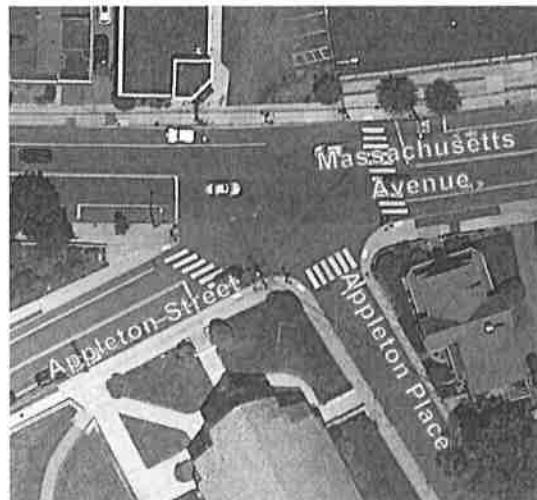
Clark Street intersects Massachusetts Avenue from the north to form this three-legged, unsignalized intersection adjacent to the west side of the Project site. The Massachusetts Avenue eastbound and westbound approaches consist of single travel lanes in each direction separated by a double-yellow centerline. On-street parking is allowed along both sides of Massachusetts Avenue. The Clark Street southbound approach consists of a single travel lane under STOP-sign control. A crosswalk is provided across the Clark Street approach. Sidewalks are also provided along both sides of all approaches to the intersection. Land uses around the intersection consist of the Project site, commercial and residential properties.



Massachusetts Avenue at Lowell Street and Clark Street

Massachusetts Avenue at Appleton Street, Appleton Place, and a Private Driveway

Appleton Street and Appleton Place intersect Massachusetts Avenue from the south and a private driveway intersects Massachusetts Avenue from the north to form this five-legged intersection under STOP control. The intersection is controlled by the flashing signal and a STOP-sign along the Appleton Place approach. The Massachusetts Avenue eastbound and westbound approaches consist of single travel lanes in each direction separated by a double-yellow centerline. On-street parking is allowed along both sides of Massachusetts Avenue. MBTA bus stops are also located along Massachusetts Avenue at the intersection. The Appleton Street northbound approach consists of a single travel lane and is controlled by a red signal indication. The Appleton Place northbound approach consists of a single travel lane and is under STOP-sign control. The driveway southbound approach also consists of a

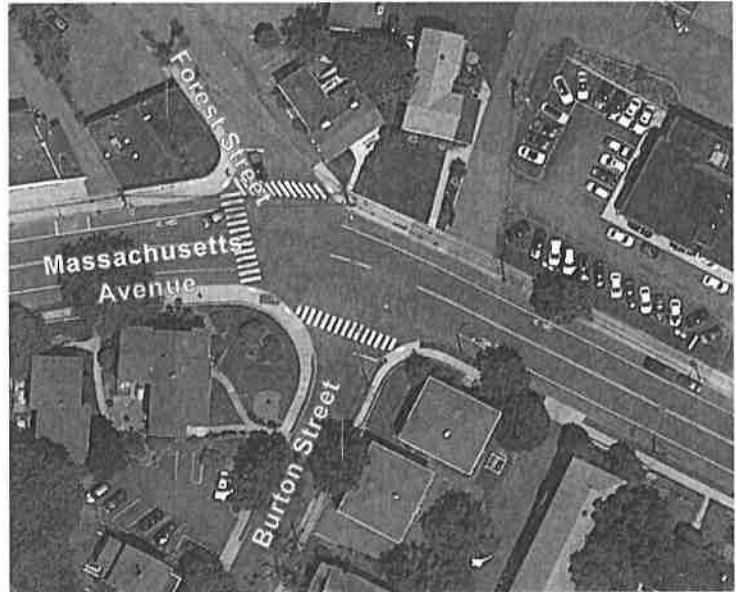


Massachusetts Avenue at Appleton Street, Appleton Place, and a Driveway

single travel lane under STOP control, although a STOP-sign is not provided. Sidewalks are also provided along both sides of all approaches to the intersection. Land uses around the intersection consist of commercial and residential properties.

Massachusetts Avenue at Forest Street, Burton Street, and a Private Driveway

Forest Street and a private driveway intersect Massachusetts Avenue from the north and Burton Street intersects Massachusetts Avenue from the south to form this five-legged intersection under STOP-sign control. The Massachusetts Avenue eastbound and westbound approaches consist of single travel lanes in each direction separated by a double-yellow centerline. On-street parking is allowed along both sides of Massachusetts Avenue. The Forest Street and driveway southbound approaches and the Burton Street northbound approach all consist of single travel lanes and are under STOP-sign control. Sidewalks are also provided along both sides of all approaches to the intersection. Land uses around the intersection consist of commercial and residential properties.



Massachusetts Avenue at Forest Street, Burton Street, and a Driveway

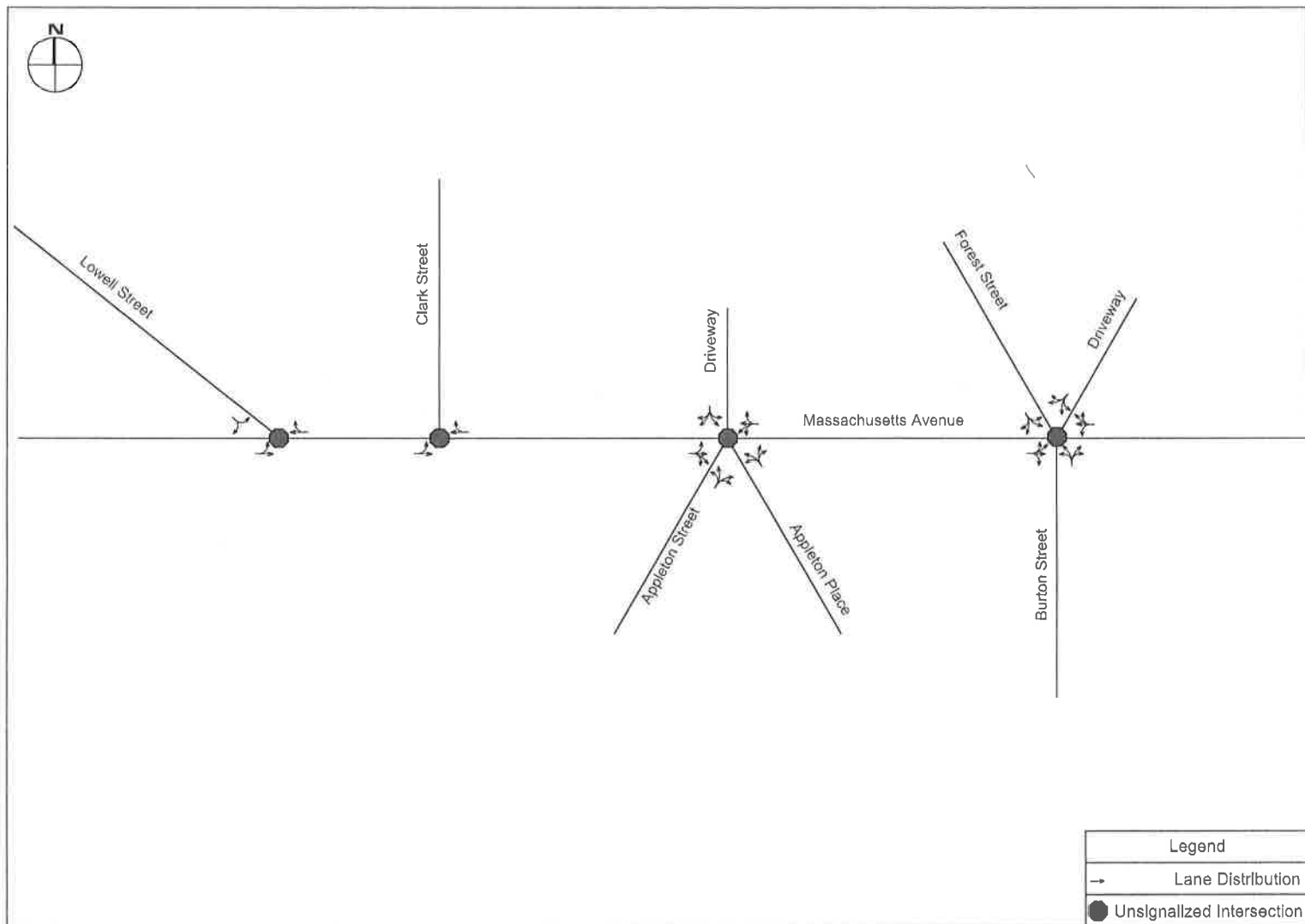


Figure 2
Existing Conditions Geometry and Traffic Control
1207 - 1211 Massachusetts Avenue Traffic Impact and Access Study
Arlington, MA

2.4. Existing Traffic Conditions

Existing traffic data was collected to establish a baseline condition for the analysis of the Project's traffic impacts. Manual turning movement counts (TMCs) were obtained from a traffic study for the nearby proposed Mirak Mill Apartments project for two study area intersections (Massachusetts at Appleton Street/Appleton Place and Massachusetts Avenue at Forest Street/Burton Street) for the weekday morning (7:00 to 9:00 AM) and weekday evening (4:00 to 6:00 PM) peak periods. Due to issues with COVID-19 related traffic fluctuations, new counts could not be conducted at the two remaining intersections. Data was obtained from a traffic study conducted for a residential development located at 19R Park Avenue to estimate the traffic volumes along Lowell Street. Traffic volumes along Clark Street were also estimated based on data provided in the Mirak Mill Apartments traffic study. Automatic traffic recorder (ATRs) data was also obtained from the Mirak Mill Apartments traffic study to estimate daily traffic volumes along Massachusetts Avenue in the vicinity of the Project site.

A factor was applied to the February 2020 TMCs to account for seasonal fluctuations in traffic flow. Based on MassDOT data, traffic volumes along urban principal arterial roadways similar to Massachusetts Avenue are three percent lower in February than during an average month. Traffic volumes on local roadways and collector streets, traffic volumes in February represent average month conditions. To account for seasonal fluctuation and to represent average month conditions, the February TMCs were adjusted upward by 3 percent. The through volumes along Massachusetts Avenue were balanced between the intersections with Appleton Street and Appleton Place, Clark Street, and Lowell Street.

Peak hour traffic volumes are heaviest along Massachusetts Avenue during the peak hours, as this is a major commercial and commuter corridor that provides access between Lexington in the west and Cambridge, Somerville, and Boston in the east. The TMCs are shown in Figure 3 and the ATR data is presented in Table 1. The detailed traffic data is provided in the Appendix.

Table 1 Automatic Traffic Recorder (ATR) Data Summary

	Massachusetts Avenue, east of Burton Street
Weekday Daily Volume¹	13,127
Weekday Morning Peak Hour	
Volume ²	1,052
K Factor ³	8%
Directional Flow ⁴	53% WB
Weekday Evening Peak Hour	
Volume	1,051
K Factor	8%
Directional Flow	57% EB

- 1 vehicles per day
- 2 vehicles per hour
- 3 percentage of daily trips that occur during the peak hour
- 4 percentage of peak hour traffic by direction

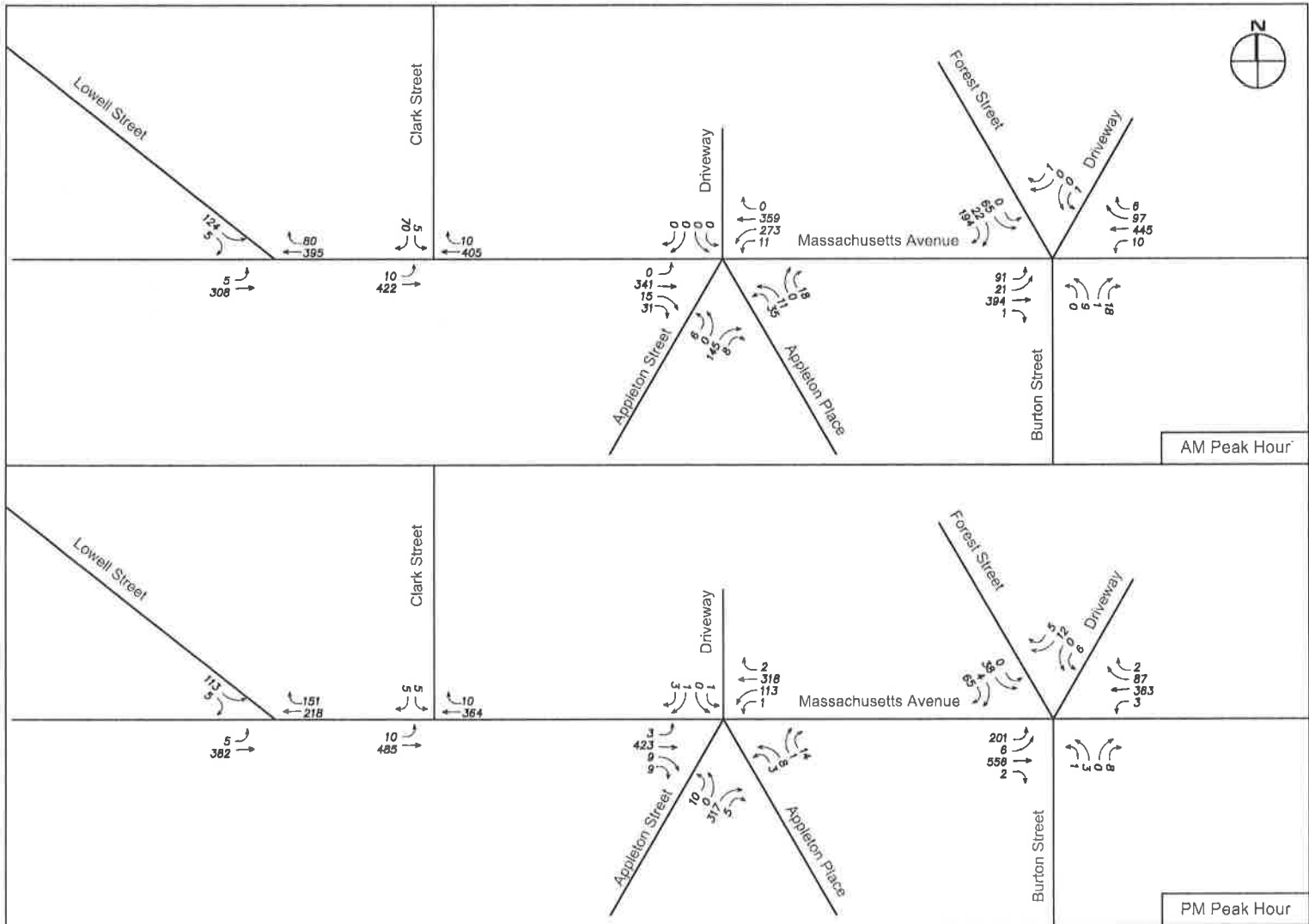
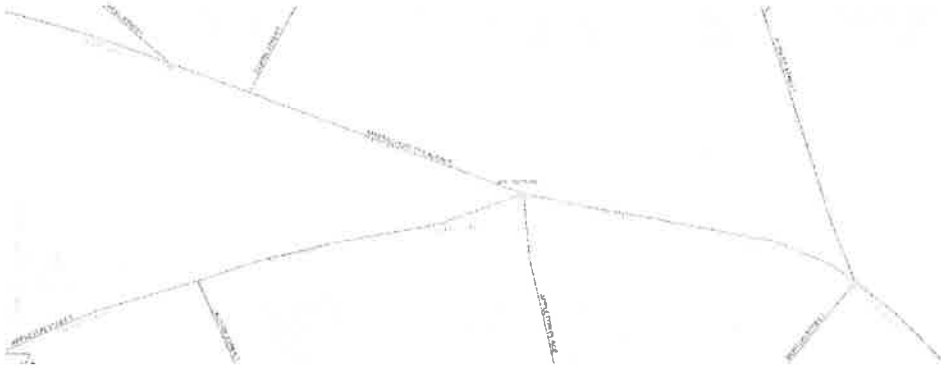


Figure 3
 2020 Existing Conditions Peak Hour Traffic Volumes
 1207 - 1211 Massachusetts Avenue Traffic Impact and Access Study
 Arlington, MA

2.5. Motor Vehicle Crash Data

Motor vehicle crash data were obtained for the Project's study area from the MassDOT crash database for the most recent three-year period for which data is available (2017-2019). The data is used to identify correctable safety issues and crash trends. The current MassDOT average crash rate for unsignalized intersections in District 4 (the MassDOT district in which the Project is located) is 0.57 crashes per million entering vehicles (mev). The average crash rate for signalized intersections in District 4 is 0.73 crashes per mev. Figure 4 displays the location of the motor vehicle crashes (shown as orange circles) and Table 2 presents the motor vehicle crash data for the years 2017-2019.

Figure 4 Location of Motor Vehicle Crashes in Study Area



Based on a review of the motor vehicle crash history at the study area intersections, the crash rates at the intersections of Massachusetts Avenue at Lowell Street and Massachusetts Avenue at Appleton Street and Appleton Place exceed the MassDOT District 4 averages for unsignalized intersections.

Recently, the intersection of Massachusetts Avenue at Appleton Street and Appleton Place experienced a fatal collision involving a bicyclist. While the details of this crash were not available at the time of this study, it is evident that this location has significant safety issues related to bicyclist and motorist conflicts. The awkward geometry, on-street bicycle facilities, flashing signal equipment, and solar glare during the morning and evening may be major factors in the existing safety issues at this location.

Table 2 Motor Vehicle Crash Data Summary

	Mass. Avenue/ Lowell Street	Mass. Avenue/ Clark Street	Mass. Avenue/ Appleton Street/ Appleton Place	Mass. Avenue/ Forest Street/ Burton Street
Total Crashes	7	1	10	10
<i>Year</i>				
2017	2	1	4	2
2018	3	0	0	0
2019	2	0	6	8
<i>Severity</i>				
Property Damage	5	0	9	7
Injury	1	1	0	1
Fatality	0	0	0	0
Unknown	1	0	1	2
<i>Collision Type</i>				
Angle	1	0	5	4
Rear End	2	0	5	5
Sideswipe	3	0	0	0
Single Vehicle Crash	1	0	0	0
Head-on	0	1	0	0
Other	0	0	0	1
<i>Time</i>				
Peak Hours	0	0	2	3
Off-Peak Hours	7	1	8	7
<i>Road Conditions</i>				
Dry	7	1	5	7
Wet/Ice/Snow	0	0	5	3
Other	0	0	0	0
Average Per Year	2.3	0.3	3.3	3.3
Intersection Type	Unsignalized	Unsignalized	Unsignalized	Unsignalized
Calculated Crash Rate ¹	0.59	0.09	0.60	0.54

¹ Crashes per million entering vehicles, as defined by the MassDOT Highway Division

2.6. Sight Distance Evaluation

Sight distance measurements and calculations were conducted at the location of the proposed site driveways along Massachusetts Avenue. An analysis of stopping sight distance (SSD) and intersection sight distance (ISD) confirms that adequate sight distance is provided along Massachusetts Avenue to allow safe maneuvers to and from the site driveways.

Stopping sight distance is the distance required for a vehicle to perceive an object in the roadway, decelerate, and come to a stop before reaching the object. Intersection sight distance is the distance between an approaching vehicle and a side street or driveway to allow a vehicle to safely maneuver through the intersection from the side street or driveway. SSD is a requirement along all roadways to ensure safety is maintained along the length of a given roadway. ISD is a recommended guideline to ensure vehicles traveling through an intersection from a stop condition can easily and comfortably make a turning or through maneuver.

The available sight distance at the driveways exceeds 600 feet in both directions. On-street parking is allowed along this segment of Massachusetts Avenue and parked vehicles may occasionally limit lines of sight from back of the sidewalk at the driveway locations. Vehicular speed data was not collected along Massachusetts Avenue. A design speed of 40 mph was used to calculate sight distance requirements. The required SSD based on a 40 mph approach speed is 305 feet and the recommended ISD based on a 40 mph approach speed is 445 feet.

Based on this evaluation, there is sufficient sight distance to accommodate both SSD and ISD at the proposed site driveways. The driveway has clear lines of sight to the signalized intersection to the east and will operate with acceptable operations based on these lines of sight.

2.7. Public Transportation

Public transportation services are located in proximity to the Project site, offering guests and employees of the future site non-vehicular options for transportation. The Massachusetts Bay Transportation Authority (MBTA) operates several bus lines that travel near the Project site. MBTA bus routes 77 and 79 travel along Massachusetts Avenue between Arlington Heights and Alewife and Harvard Stations, providing connections to the Red Line branch of the MBTA's subway system. MBTA bus route 62 also travels near the Project site along Park Avenue and providing service between Bedford and Alewife Station. The closest bus stops are located along Massachusetts Avenue at the intersection of Appleton Street, east of the site.

3 Future Conditions

Traffic volumes in the study area were projected to the year 2025, which reflects a five-year traffic planning horizon from the year of this study. The future traffic volumes consider both general traffic growth trends in the area and new traffic expected to be generated by major planned and proposed projects in the vicinity of the Project. The 2025 No-Build conditions represent a future scenario that incorporates traffic growth and any planned roadway infrastructure projects that will impact traffic volumes in the study area. The Project impacts are analyzed by estimating the number of vehicular trips expected to be generated, distributing through the study area network, and then adding them to the 2025 No-Build conditions. The 2025 Build conditions represent a future scenario that incorporates the expected Project-generated trips. The following sections describe the development of the future conditions scenarios.

3.1. Background Traffic Growth

A two percent annual growth rate was applied to the existing conditions traffic volumes to develop the future 2025 traffic volumes. The growth rate is consistent with other recent studies conducted for nearby projects. This growth rate reflects a conservative estimate. The Town of Arlington's 2015 Master Plan anticipates a much lower traffic volume growth rate over the next ten years (3.3 percent over a ten year period).

Traffic volumes expected from planned and proposed projects are also incorporated into the future 2025 traffic conditions. As previously mentioned, the Mirak Mill Apartments residential project is proposed to be constructed to the east of the Project site. This project will consist of the demolition of some uses on that site and the construction of 130 residential units. Traffic volumes expected to be generated from this project were obtained from the traffic study and were added to the future 2025 traffic conditions.

The two percent annual growth rate and the expected traffic related to the Mirak Mill Apartments were added to the 2020 Existing conditions peak hour traffic volumes to develop the 2025 No-Build conditions weekday morning and evening peak hour traffic volumes. The 2025 No-Build traffic volumes are shown in Figure 5.

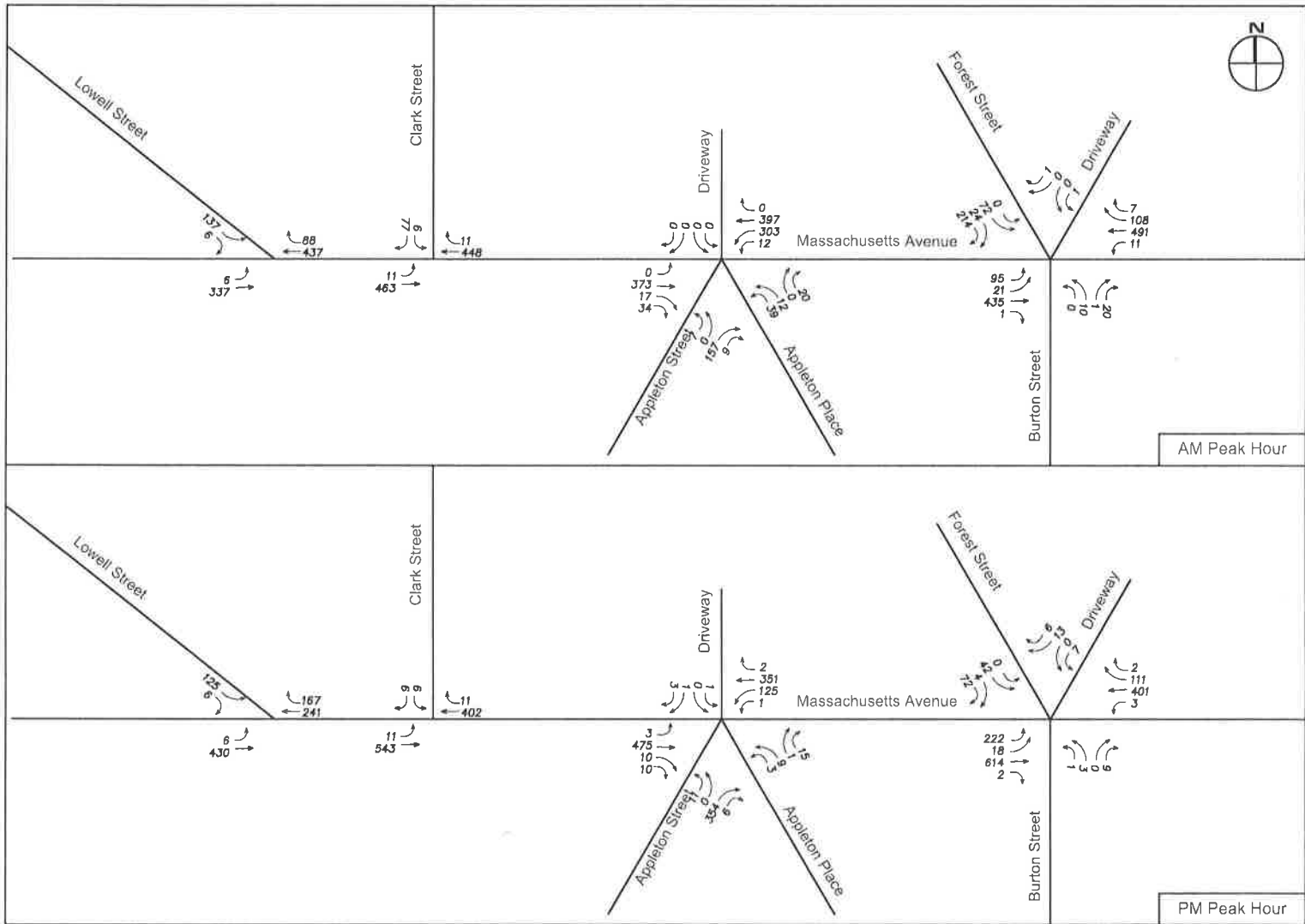


Figure 4
 2025 No-Build Conditions Peak Hour Traffic Volumes
 1207 - 1211 Massachusetts Avenue Traffic Impact and Access Study
 Arlington, MA

3.2. Site Access and Parking

The Project site abuts the north side of Massachusetts Avenue and the east side of Clark Street east of the Arlington Heights neighborhood. The site will be served by a one-way circulating driveway that will serve as a valet pick-up/drop-off for visitors to the hotel. A parking lot will be located behind the hotel and will have access off the east side of Clark Street.

The Project will provide a total of 24 parking spaces for the hotel uses. A tandem-style garage will be located in the rear of the building on the north side of the site and will contain all 24 parking spaces. All parking on the site will be valet and will serve both the hotel and restaurant uses. The Project will not have any spaces for self-parking. On-street parking is allowed along both sides of Massachusetts Avenue. The Project will not change the overall number of available on-street parking spaces.

All loading and trash operations will occur in the rear of the building via the Clark Street curb cut. Deliveries will occur either in the pick-up/drop-off area or in the rear of the building, depending on the anticipated duration. Deliveries and loading operations will be limited to single-unit box trucks and smaller vehicles.

The Project will also provide outdoor bicycle racks for public use along Massachusetts Avenue. The racks will serve guests of the hotel and restaurant. A second bicycle storage facility will be provided on the site for employees that will work on site. The Project will also upgrade all adjacent sidewalks and pedestrian facilities as needed.

3.3. Trip Generation

Trip generation estimates for the Project are based on the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition. Trip generation estimates were developed for the proposed 50-room hotel. Estimates are also presented for the existing uses on the site for comparison purposes. Table 3 presents the trip generation for the Project.

Table 3 Trip Generation Summary

	Project Trips			Existing Uses					
					Automobile				
Time Period	Hotel ¹	Restaurant ²	Total	DAV Club ²	Auto Dealership ³	Service Station ⁴	Apartment ⁵	Total	Net Change
<i>AM Peak Hour</i>									
Entering	14	15	29	15	1	3	0	19	+10
Exiting	<u>10</u>	<u>13</u>	<u>23</u>	<u>13</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>15</u>	<u>+8</u>
Total	24	28	52	28	1	4	1	34	+18
<i>PM Peak Hour</i>									
Entering	15	17	32	17	0	3	1	21	+11
Exiting	<u>15</u>	<u>10</u>	<u>25</u>	<u>10</u>	<u>1</u>	<u>2</u>	<u>0</u>	<u>13</u>	<u>+12</u>
Total	30	27	57	27	1	5	1	34	+23

1 Based on ITE Land Use Code (LUC) 310 – Hotel (50 Rooms)

2 Based on ITE LUC 932 – High Turnover Sit Down Restaurant (2,800 sf)

3 Based on ITE LUC 841 – Automobile Sales, Used (264 sf)

4 Based on ITE LUC 942 – Automobile Care Center (1,650 sf)

5 Based on ITE LUC 220 – Multi-Family Housing, Low-Rise (1 unit)

Based on the trip generation estimates, the Project is expected to generate 52 vehicle trips during the weekday morning peak hour and 57 vehicle trips during the weekday evening peak hour. When compared to the existing uses on the site, this results in a net increase of 18 trips during the weekday morning peak hour and 23 trips during the weekday evening peak hour.

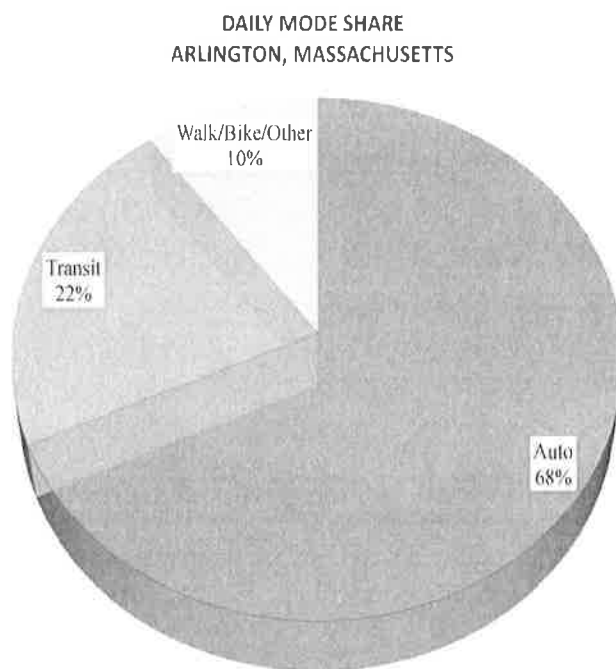
The peak hour trips are typically the most critical because those time periods are when the adjacent roadways experience the highest traffic demands throughout the course of the day. The peak hour increases represent approximately one additional trip every 2-4 minutes.

3.4. Mode Share

The trip generation estimates provided in Table 3 do not consider alternative modes of transportation such as walking, bicycling, and transit usage. Based on the location of the site and the proximity to two highly used MBTA bus routes (Routes #77 and #79), it is expected that a portion of the trips will be made by public transportation. It is also expected that a portion of the hotel-related trips will be made by taxi or ride-hailing service and will not use Clark Street for parking purposes. The following section discusses the mode shares for travel in the vicinity of the Project.

Mode-split data for the census tract in Arlington in which the Project site is located were obtained from the United States Census. The primary modes of travel for the Project are expected to be transit, walk/bicycling, and vehicular usage. The US Census provides travel mode shares over the course of an average weekday for commuting purposes only. However, the mode shares to provide an insight into the availability and convenience of non-vehicular modes of travel. The mode shares for the census tract in which the Project site is located are presented below.

The predominant mode of commuting travel in this area of Arlington is by vehicle (68 percent). Transit



trips account for approximately 22 percent of travel and the remaining 10 percent of trips are made by walking, biking, or other travel modes. As previously stated, the mode shares represent daily commuting trips. It is expected that the hotel and restaurant usage of the Project will include taxi trips and may not exactly reflect commuting patterns. Additionally, the restaurant will serve the hotel guests and residents of the surrounding neighborhoods, allowing for a further reduction in vehicle-based trips. Further, the commuter mode share

percentages do indicate that there are opportunities other than driving for guests of the hotel once they are on-site.

3.5. Trip Distribution

Vehicular trip distribution patterns identify the origins and destinations for trips related to the Project site. Trip distribution patterns for the proposed uses were identified using existing traffic volumes along Massachusetts Avenue. It is assumed that traffic volumes along Massachusetts Avenue will accurately reflect the origins and destinations for trips related to the Project site. Based on the volumes, approximately 60 percent of the trips will be oriented to/from the east and 40 percent will be oriented to/from the west. Approximately 5 percent of the trips oriented to/from the west were assigned to Appleton Street, as it provides convenient access to Park Avenue and Route 2, south of the site. The trip distribution patterns are shown in Figure 6.

The Project-generated trips were assigned to the study area roadways and intersections based on the trip distribution patterns and are presented in Figure 7 for the weekday morning and evening peak hours. The Project-generated trips were then added to the 2025 No-Build conditions traffic volumes to develop the 2025 Build conditions traffic volumes and are shown in Figure 8.

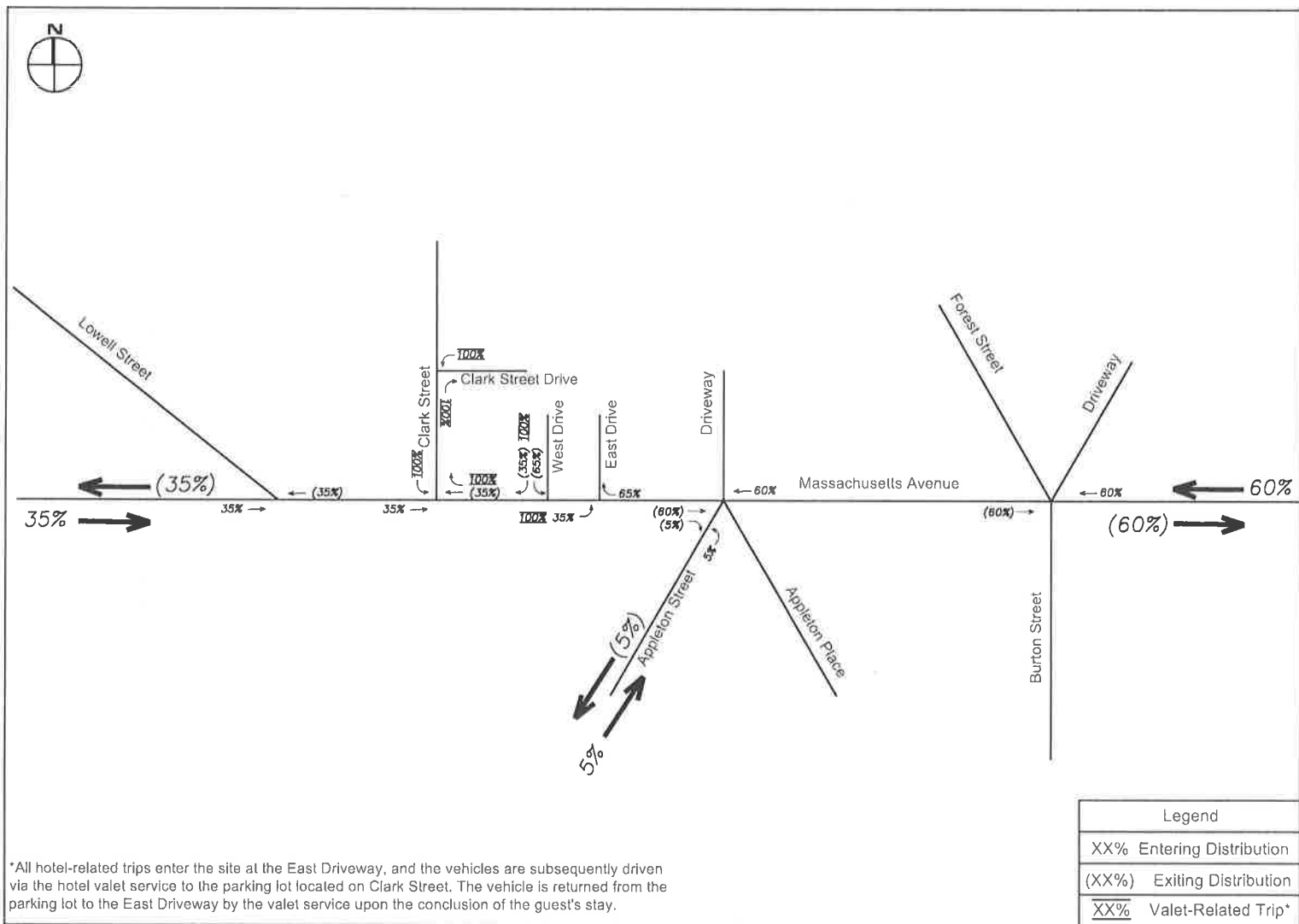
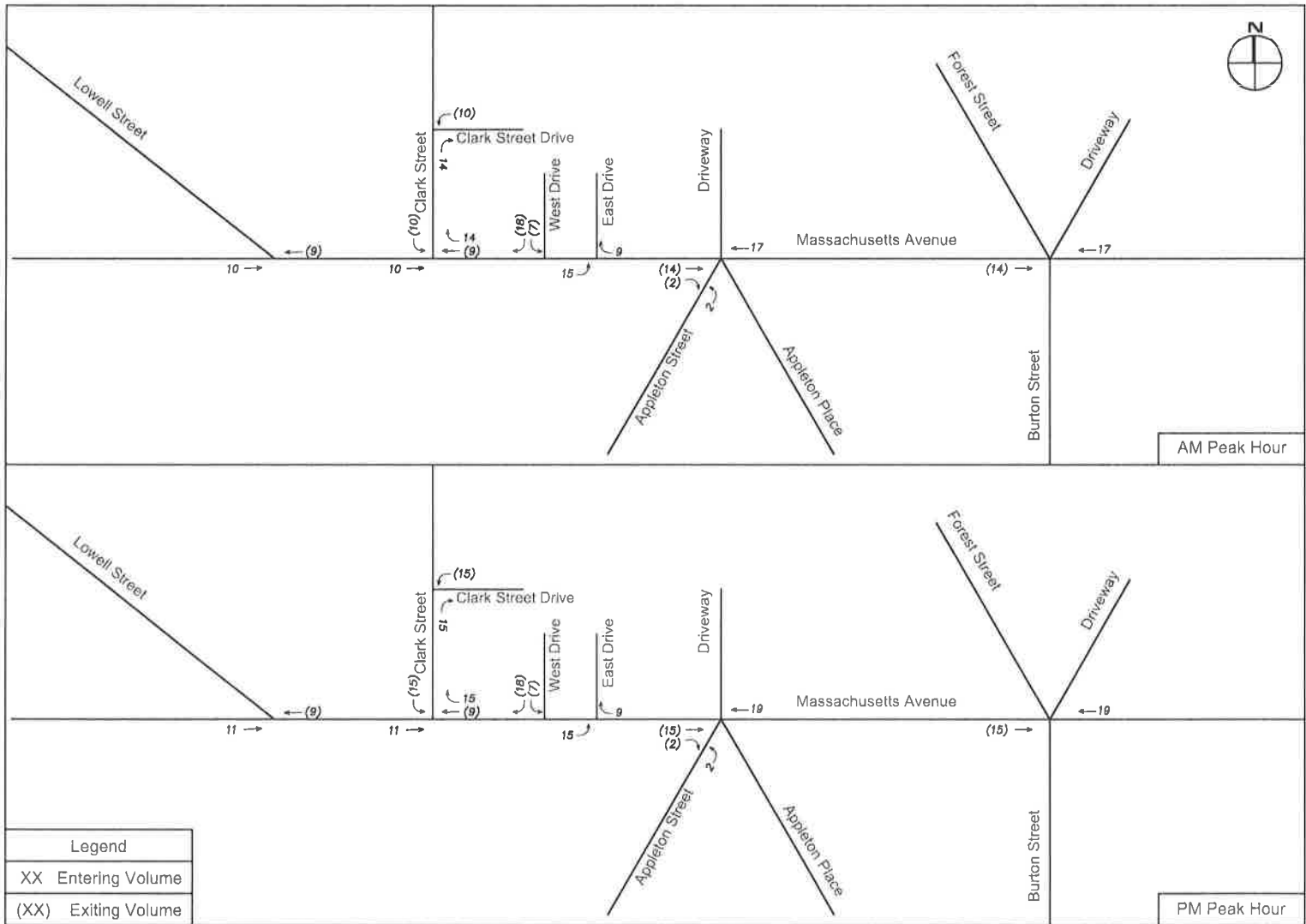


Figure 6
Project Trip Distribution Map
1207 - 1211 Massachusetts Avenue Traffic Impact and Access Study
Arlington, MA



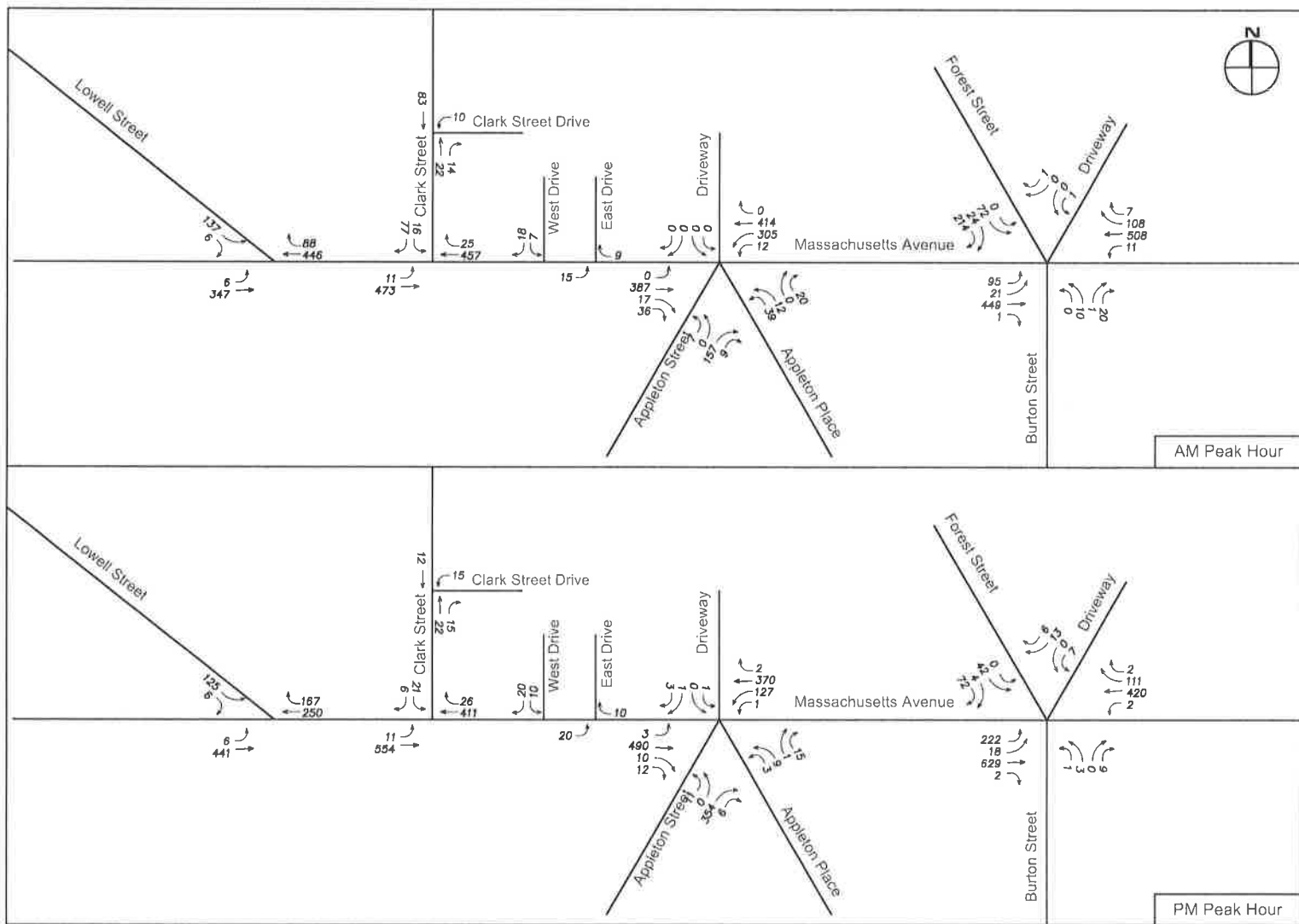


Figure 8
 2025 Build Conditions Peak Hour Traffic Volumes
 1207 - 1211 Massachusetts Avenue Traffic Impact and Access Study
 Arlington, MA

4 Traffic Operations Analysis

To assess the quality of traffic flow, capacity analyses were conducted at the study area intersections for the weekday morning and weekday evening peak hours. Analyses were conducted using the Synchro 10 traffic analysis software, which is based on methods defined in the Highway Capacity Manual (HCM) 2010¹. Operations analyses were conducted for the 2020 Existing, 2025 No-Build, and 2025 Build conditions.

A primary result of capacity analyses is the assignment of a Level of Service (LOS) to traffic facilities under various traffic flow conditions. Six Levels of Services are defined for each type of facility. They are given letter designations from A to F, with LOS A representing the best operating conditions with little delay and LOS F representing the worst, with the most delay.

The existing conditions operations analysis was calibrated to reflect traffic conditions observed in the field. Typically, the Synchro 10 and HCM methodologies use default values for various inputs, such as critical gaps. The critical gap is the minimum amount of time between consecutive vehicles traveling along a main line, such as Massachusetts Avenue, for a motorist along the side street to comfortably make a turning or crossing maneuver. The default values are typically higher than actual field observations. Some of these factors were reduced to better reflect actual operations and observed delays and queues.

The average delay per vehicle approaching an intersection is used to quantify the LOS at a particular intersection. The LOS designations are defined below in Table 4. Average delay measures the mean stopped delay experienced by vehicles entering an intersection during the analysis period. Average delay is measured for each individual turning movement that must yield the right of way. The vehicular queues and volume-to-capacity ratios (v/c) are also presented as part of the traffic operations analysis. The 95th percentile queues represent the maximum back of queue during the peak hour. The v/c ratios reflect the percentage of the overall operating capacity of a movement that the traffic volumes consume. A v/c ratio below 1.0 indicates that there is additional capacity that could be used if traffic volumes increase.

Table 4 Level of Service Designations

Level of Service	Average Delay (seconds/vehicle)	
	Unsignalized	Signalized
A	0.0 - 10.0	0.0 - 10.0
B	>10.0 - 15.0	>10.0 - 20.0
C	>15.0 - 25.0	>20.0 - 35.0
D	>25.0 - 35.0	>35.0 - 55.0
E	>35.0 - 50.0	>55.0 - 80.0
F	>50.0	>80.0

Source: Transportation Research Board, *Highway Capacity Manual*, National Research Council, 2010.

Tables 5 and 6 show the operating conditions of the study intersections during the weekday morning and weekday evening peak hours for the three scenarios analyzed.

¹ *Highway Capacity Manual* 2010; Transportation Research Board; Washington, DC; 2010.

Table 5 Traffic Operations Analysis Summary – Weekday Morning Peak Hour

	2020 Existing Conditions				2025 No-Build Conditions				2025 Build Conditions			
	Delay	LOS	v/c	95th queue	Delay	LOS	v/c	95th queue	Delay	LOS	v/c	95th queue
UNSIGNALIZED INTERSECTIONS												
Massachusetts Avenue/Lowell Street												
Massachusetts Avenue EB L/T	0.2	A	0.01	1	0.3	A	0.01	1	0.3	A	0.01	1
Massachusetts Avenue WB T/R	0.0	A	0.33	0	0.0	A	0.37	0	0.0	A	0.37	0
Lowell Street SB L/R	17.9	C	0.34	36	20.9	C	0.41	49	21.6	C	0.42	51
Massachusetts Avenue/Clark Street												
Massachusetts Avenue EB L/T	0.4	A	0.01	1	0.4	A	0.02	1	0.4	A	0.02	1
Massachusetts Avenue WB T/R	0.00	A	0.29	0	0.0	A	0.32	0	0.0	A	0.34	0
Clark Street SB L/R	11.6	B	0.13	11	12.3	B	0.16	14	13.5	B	0.19	18
Massachusetts Avenue/Appleton Street/ Appleton Place/Commercial Driveway												
Massachusetts Avenue EB L/T/R	0.0	A	0.00	0	0.0	A	0.00	0	0.0	A	0.00	0
Massachusetts Avenue WB L/T/R	9.0	A	0.40	49	10.6	B	0.46	62	11.0	B	0.47	64
Appleton Street NB L/T/R	21.2	C	0.49	66	26.2	D	0.58	89	29.5	D	0.63	102
Appleton Place NB L/T/R	17.4	C	0.37	42	19.5	C	0.43	53	19.6	C	0.43	54
Driveway SB L/T/R	47.5	E	0.01	1	>50.0	F	0.01	1	>50.0	F	0.02	1
Massachusetts Avenue/Forest Street/ Burton Street/Commercial Driveway												
Massachusetts Avenue EB L/T/R	3.1	A	0.12	10	3.4	A	0.13	12	3.4	A	0.14	12
Massachusetts Avenue WB L/T/R	0.3	A	0.01	1	0.3	A	0.01	1	0.3	A	0.01	1
Burton Street NB L/T/R	15.7	C	0.16	14	17.6	C	0.20	18	18.1	C	0.21	19
Forest Street SB L/T/R	>50.0	F	0.88	214	>50.0	F	>1.00	354	>50.0	F	>1.00	374
Driveway SB L/T/R	13.6	B	0.02	1	14.6	B	0.02	2	14.9	B	0.02	2
Massachusetts Avenue/West Driveway												
Massachusetts Avenue EB T									0.0	A	0.38	0
Massachusetts Avenue WB T									0.0	A	0.32	0
West Driveway SB L/R									13.2	B	0.07	6
Massachusetts Avenue/East Driveway												
Massachusetts Avenue EB L/T									0.7	A	0.03	2
Massachusetts Avenue WB T/R									0.0	A	0.33	0
Clark Street/Driveway												
Clark Street NB T/R									0.0	A	0.02	0
Clark Street SB L/T									0.0	A	0.00	0
Driveway WB L/R									9.2	A	0.02	1

Table 6 Traffic Operations Analysis Summary – Weekday Evening Peak Hour

	2020 Existing Conditions				2025 No-Build Conditions				2025 Build Conditions			
	Delay	LOS	v/c	95th queue	Delay	LOS	v/c	95th queue	Delay	LOS	v/c	95th queue
UNSIGNALIZED INTERSECTIONS												
Massachusetts Avenue/Lowell Street												
Massachusetts Avenue EB L/T	0.2	A	0.01	0	0.2	A	0.01	1	0.2	A	0.01	1
Massachusetts Avenue WB T/R	0.0	A	0.26	0	0.0	A	0.29	0	0.0	A	0.29	0
Lowell Street SB L/R	16.1	C	0.28	29	18.6	C	0.35	39	19.1	C	0.36	40
Massachusetts Avenue/Clark Street												
Massachusetts Avenue EB L/T	0.3	A	0.01	1	0.4	A	0.01	1	0.4	A	0.01	1
Massachusetts Avenue WB T/R	0.0	A	0.26	0	0.0	A	0.29	0	0.0	A	0.31	0
Clark Street SB L/R	13.0	B	0.02	2	14.0	B	0.03	3	16.9	C	0.09	7
Massachusetts Avenue/Appleton Street/ Appleton Place/Commercial Driveway												
Massachusetts Avenue EB L/T/R	0.1	A	0.00	0	0.1	A	0.00	0	0.1	A	0.00	0
Massachusetts Avenue WB L/T/R	3.3	A	0.12	10	3.6	A	0.14	12	3.6	A	0.14	12
Appleton Street NB L/T/R	17.7	C	0.58	95	22.8	C	0.69	138	24.0	C	0.71	145
Appleton Place NB L/T/R	10.0	B	0.05	4	10.3	B	0.06	5	10.3	B	0.06	5
Driveway SB L/T/R	18.3	C	0.03	2	23.0	C	0.04	3	24.3	C	0.05	4
Massachusetts Avenue/Forest Street/ Burton Street/Commercial Driveway												
Massachusetts Avenue EB L/T/R	4.9	A	0.22	21	5.7	A	0.25	25	5.9	A	0.25	25
Massachusetts Avenue WB L/T/R	0.1	A	0.00	0	0.1	A	0.00	0	0.1	A	0.00	0
Burton Street NB L/T/R	17.1	C	0.06	5	19.1	C	0.08	6	19.7	C	0.08	7
Forest Street SB L/T/R	23.1	C	0.40	47	31.4	D	0.53	72	33.7	D	0.55	76
Driveway SB L/T/R	11.9	B	0.06	5	12.9	B	0.08	7	12.9	B	0.08	7
Massachusetts Avenue/West Driveway												
Massachusetts Avenue EB T									0.0	A	0.45	0
Massachusetts Avenue WB T									0.0	A	0.29	0
West Driveway SB L/R									13.3	B	0.07	6
Massachusetts Avenue/East Driveway												
Massachusetts Avenue EB L/T									0.7	A	0.03	2
Massachusetts Avenue WB T/R									0.0	A	0.30	0
Clark Street/Driveway												
Clark Street NB T/R									0.0	A	0.02	0
Clark Street SB L/T									0.0	A	0.00	0
Driveway WB L/R									8.8	A	0.02	1

As shown in Tables 5 and 6, most movements within the study area operate at LOS D or better during the weekday morning peak hour and LOS C or better during the weekday evening peak hour. The Forest Street southbound approach to Massachusetts Avenue operates at LOS F during the weekday morning peak hour and is expected to operate at LOS D during the weekday evening peak hour under the future conditions.

Movements at Clark Street and Lowell Street are expected to operate at LOS C or better during the peak periods, with minimal queuing. These movements also operate within the available capacity of the intersection.

The Project is not expected to have any significant impact on delays of queuing throughout the study area. The Project will increase activity along the site frontage with Massachusetts Avenue and at the Clark Street intersection but will not require additional capacity for safe and efficient operations.

Based on the operations analysis, the existing transportation infrastructure has sufficient capacity to accommodate the Project and no mitigation is necessary.

5 Summary and Conclusions

This Traffic Impact and Access Study has been prepared for the proposed hotel to be located at 1207-1211 Massachusetts Avenue in Arlington, Massachusetts. The Project will consist of the demolition of the existing uses on the site and the construction of a 50-key hotel with ancillary restaurant uses. Access to the site will be provided by a valet-operated pick-up/drop-off area along Massachusetts Avenue and by a driveway that will serve a 24-space tandem-style parking lot off of Clark Street.

Using standard industry practices, this Traffic Impact and Access Study has reviewed existing traffic and roadway conditions in the vicinity of the site; identified specific developments and determined background traffic growth for the study area; and estimated and distributed the additional vehicular traffic that will be generated by the Project.

This study has shown that:

- The proposed Project is expected to generate approximately 52 vehicle trips during the weekday morning peak hour and 57 vehicle trips during the weekday afternoon peak hour. When compared to the existing uses on the site, this results in a net increase of 18 trips during the weekday morning peak hour and 23 trips during the weekday evening peak hour.
- Compared to the No-Build condition, the study area intersections serving the Project are expected to operate at the same LOS with the addition of the expected Project-generated traffic. No additional mitigation or capacity enhancements are necessary at the study intersections or on the surrounding transportation infrastructure to accommodate the Project.
- Both required stopping sight distance and recommended intersection sight distances are met at both driveway locations.
- There are safety issues at the intersection of Massachusetts Avenue at Appleton Street and Appleton Place based on the MassDOT crash data and a recent fatal collision involving a bicyclist.

In conclusion, it is the opinion of BSC Group that the vehicle trips generated by the Project can be accommodated at the study area intersections and roadways without the need for additional mitigation. Further investigation into the safety issues throughout the study area should be considered by the Town of Arlington.