



TOWN OF ARLINGTON

MASSACHUSETTS

CONSERVATION COMMISSION

June 8, 2021

Zoning Board of Appeals
Town of Arlington
730 Massachusetts Avenue
Arlington, MA 02476

**RE: 1165R Mass Ave – Application for Comprehensive Permit
Third Set of Comments from Conservation Commission – Waiver Requests**

Dear Chairman Klein and Members of the Board:

The Arlington Conservation Commission (ACC) provides this third set of comments to the ZBA to consider the wetlands and stormwater components of the 1165R Mass Ave Comprehensive Permit Application. The Conservation Commission is providing this comment letter to assist the ZBA as it moves forward with its review of the permit application, including under the Town of Arlington Wetlands Protection Bylaw (the Bylaw) and local Wetlands Regulations, specifically in consideration of the Applicant's Waiver Requests.

At its June 3, 2021 public meeting, the ACC discussed the list of Waiver Requests submitted by the Applicant. The ACC evaluated the Waiver Requests as presented in the May 28, 2021 BETA comment letter (*Table 1 – Waiver Request Summary for Arlington's Wetland Bylaw and Regulations*), the most recent proposed plans as available on the ZBA website, and subsequent communications from the Applicant (see attachments) as the basis for our decisions and recommendations.

For ease of reference, the ACC has employed the same template as the BETA Table 1 for our decisions and recommendations. These are shown in the **ACC Table 1 – Waiver Request Evaluation for Arlington's Wetland Bylaw and Regulations**, included in this letter.

ACC Table 1 – Waiver Request Evaluation for Arlington’s Wetland Bylaw and Regulations

| Proposed Waivers | Comments on Waiver Request |
|--|--|
| <p>Regulations, Section 20C – Bank Performance Standards</p> | <p>ACC agrees to approve this waiver. <u>Justification:</u> the proposed plan for relocating Ryder Brook provides enhanced resource area functions to the site, including habitat value, pollution prevention, storm damage prevention, and flood control.</p> <p>While ACC agrees with the waiver request, ACC has not reached consensus about the jurisdictional status of Ryder Brook after it is relocated. Therefore, any reference to the jurisdictional status of the relocated Brook should be removed from justifications and draft Conditions going forward.</p> <p>ACC Recommendation (consistent with BETA recommendation): Include a Condition stating the Bank of the relocated Brook shall be protected in perpetuity.</p> |
| <p>Regulations, Section 22 – Land Under Water Bodies Performance Standards</p> | <p>ACC agrees to approve this waiver. See above.</p> <p>ACC Recommendation (consistent with BETA recommendation): Include a Condition stating the Land Under the relocated Brook shall be protected in perpetuity.</p> |
| <p>Regulations, Section 25D – 25’ No Disturbance in Adjacent Upland Resource Area (AURA) Performance Standards This Waiver request was withdrawn via Applicant’s Legal Counsel letter dated June 7, 2021.</p> | <p>ACC disagreed with this waiver request and agrees it should be withdrawn. <u>Justification:</u> ACC maintains that the project as proposed is in compliance with Section 25D because the plan proposes mitigation to increase the pervious area in the 0-25’ AURA by 1,505 square feet, which is considered an enhancement of the resource area, as allowed with local approval. As shown in Attachment A of this letter, Mary Winstanley O’Connor, the Applicant’s Legal Counsel, provides a letter stating that the project as proposed complies with Section 25D and the Applicant withdraws this waiver request. Proof of compliance with Section 25D is detailed in Attachment B, Proposed AURA Exhibit, prepared by Bohler Engineering.</p> <p>ACC Recommendation: no further action required.</p> |
| <p>Regulations, Section 25C – Alternatives Analysis for Work in 100-foot AURA This Waiver request was withdrawn via Applicant’s Legal Counsel letter dated June 7, 2021.</p> | <p>ACC disagreed with this waiver request and agrees it should be withdrawn. <u>Justification:</u> ACC maintains that the project as proposed is in compliance with Section 25C because the Applicant submitted an Alternatives Analysis as shown in Attachment C of this letter, prepared by Bohler Engineering.</p> <p>ACC Recommendation: no further action required.</p> |

ACC Table 1 – Waiver Request Evaluation - *continued*

| Proposed Waivers | Comments on Waiver Request |
|--|--|
| <p>Bylaw, Section 4(b) paragraph 5 – 200-foot undisturbed vegetation in RA This Waiver request was withdrawn via Applicant’s Legal Counsel letter dated June 7, 2021.</p> | <p>ACC disagreed with this waiver request and agrees it should be withdrawn. <u>Justification:</u> ACC maintains that the project as proposed is in compliance with Section 4(b) because of the vegetative mitigation and resource area improvements, including improvements to habitat value, pollution prevention, storm damage prevention, and flood control. As shown in Attachment A, the Applicant withdraws this waiver request. Proof of compliance with Bylaw Section 4(b) is detailed in Attachment B, Proposed AURA Exhibit, prepared by Bohler Engineering, and proposed site plans as available on the ZBA website.</p> <p>ACC Recommendation: no further action required.</p> |
| <p>Bylaw, Section 16 and Regulations, Section 11 – Permitting and Consultant Fees</p> | <p>ACC disagrees with this waiver request. ACC proposes alternative % fee reduction. <u>Justification:</u> The Applicant is requesting to reduce the Bylaw permitting fee by 50%, from \$15,000 to \$7,500. The ACC considered other Affordable Housing projects it has recently permitted, in particular 19R Park Ave – Downing Square. The Applicant of Downing Square, the Housing Corporation of Arlington, requested all Bylaw fees be waived. The Downing Square project proposed to construct a 3-bedroom house and a 28 unit building on the property, all of which was proposed as Affordable Housing for residents within 60% of the AMI (Area Median income), with most units for residents within 30% of the AMI. The Commission approved a 42% reduction in the Bylaw fee for this project, from \$3,600 to \$1,500.</p> <p>The 1165R Mass Ave project proposes to construct a 130 unit multi-family residential rental building with 33 units (25% of units) available for residents within 80% of the AMI. As this proposed project is providing fewer affordable housing units as a percentage of the total and at a higher AMI than Downing Square, ACC recommends reducing the Bylaw fee by 20%, not the requested 50%. Reducing the Bylaw fee by 20% will reduce the filing fee from \$15,000 to \$12,000.</p> <p>ACC Recommendation: Grant a 20% reduction in the Bylaw filing fee.</p> |
| <p>Bylaw, Sections 10 & 11 – Bond Requirements</p> | <p>ACC disagrees with this waiver request. <u>Justification:</u> Given the proximity of the project to the onsite Resource Areas and the potential for the project to impact resource area values if proposed mitigation is not implemented as planned, the ACC agrees with BETA’s recommendation to retain the right to require a performance bond, primarily related to the stream relocation portion of the Project.</p> <p>ACC Recommendation: Do not grant waiver.</p> |

We hope the ZBA finds the above recommendations helpful in our common goal to protect the Wetland Resource Areas on this site while acknowledging the current site conditions. Please contact us should you have questions.

Enclosed:

- 1) Attachment A – *Letter to Susan Chapnick re 6.3.21 Hearing re 1165R Mass Ave – Spaulding_07June2021*: Letter from Mary Winstanley O’Connor dated June 7, 2021, clarifying waiver requests for Section 25D and 25C.
- 2) Attachment B – *1165R Mass Ave_Prop AURA Exhibit_submitted to ACC_07June2021*: Proposed AURA Exhibit Plan, prepared by Bohler Engineering, dated May 24, 2021.
- 3) Attachment C – *1165R Mass Ave_No Reasonable Alternatives Exhibit_submitted to ACC_07June2021*: Alternatives Analysis for work in the 100-ft AURA, prepared by Bohler Engineering, not dated.

Very truly yours,

Susan

Susan Chapnick, Chair
Arlington Conservation Commission

KRATTENMAKER O'CONNOR & INGBER P.C.

ATTORNEYS AT LAW

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CHARLES G. KRATTENMAKER, JR.
MARY WINSTANLEY O'CONNOR
KENNETH INGBER

June 7, 2021

OF COUNSEL: RAYMOND SAYEG

VIA EMAIL

Susan Chapnick, Chairperson
Conservation Commission for the
Town of Arlington
730 Massachusetts Avenue
Arlington, MA 02476

Re: 1165R Massachusetts Avenue, Arlington, MA

Dear Susan:

Pursuant to the Commission's request at the June 3, 2021 hearing, I have consulted with Daniel Wells of Goddard Consulting and Randy Miron of Bohler Engineering and report as follows:

- Daniel Wells confirms that in his opinion, waivers for: (a) Section 25D of the Town's Wetlands Protection Regulations – 25-foot no disturbance in AURA performance standards; and (b) Title V, Article 8, Section 4(b) of the Town Bylaws – 200-foot undisturbed vegetation in the riverfront area are not required given the extensive mitigation performed on the site and the enhancement of the resource area. The attached plan shows that the amount of pervious area will be increased in the 0-25' AURA by 1,505 square feet. In view of the Commission's concurrence, we can forego the request for these waivers.
- You were correct, Bohler Engineering did file with the Commission a table showing that reasonable alternatives are not available or practicable for work in the 100-foot AURA. I enclose the table that was prepared.

On behalf of the applicant, I thank the Commission for its work on this project. Please contact me if you require additional information.

Very truly yours,

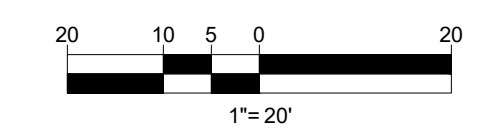
Mary Winstanley O'Connor

MWO/ccg
Enclosure
6926



PERVIOUS AREAS WITHIN MILL BROOK AURA

| | WITHIN 25' NO DISTURBANCE ZONE | WITHIN 25'-100' AURA | TOTAL |
|----------------------------|--------------------------------|----------------------|-----------|
| EXISTING CONDITIONS | 2,507 SF | 1,628 SF | 4,135 SF |
| PROPOSED CONDITIONS | 4,012 SF | 7,438 SF | 11,450 SF |
| DIFFERENCE | +1,505 SF | +5,810 SF | +7,315 SF |



PLAN REFERENCE:
 "ALTAINSPS LAND TITLE SURVEY, 1165R MASS MA PROPERTY, LLC" SURVEY BY CONTROL POINT ASSOCIATES, INC. DATED APRIL 6, 2020

BOHLER
 SITE CIVIL AND CONSULTING ENGINEERING
 PROGRAM MANAGEMENT
 LANDSCAPE ARCHITECTURE
 SUSTAINABLE DESIGN
 PERMITTING SERVICES
 TRANSPORTATION SERVICES

REVISIONS

| REV | DATE | COMMENT | DRAWN BY | CHECKED BY |
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811
 Know what's below.
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FOR EXHIBIT PURPOSES ONLY

THIS DRAWING IS INTENDED FOR MUNICIPAL AND/OR AGENCY REVIEW AND APPROVAL. IT IS NOT INTENDED AS A CONSTRUCTION DOCUMENT UNLESS INDICATED OTHERWISE.

PROJECT No.: W191330
 DRAWN BY: AWP
 CHECKED BY: LMD
 DATE: 05/24/2021
 CAD ID: W191330-CVL-9

PROJECT:

PROPOSED EXHIBIT PLAN

FOR
1165R MASS MA PROPERTY LLC

PROPOSED RESIDENTIAL DEVELOPMENT
 1165R MASSACHUSETTS AVE.
 MIDDLESEX COUNTY
 TOWN OF ARLINGTON, MA
 MAP #57, BLOCK #2, LOT #10B
 AND PART OF LOT #15

BOHLER
 352 TURNPIKE ROAD
 SOUTHBOROUGH, MA 01772
 Phone: (508) 480-9900
 Fax: (508) 480-9080
 www.BohlerEngineering.com

J.G. SWERLING
 PROFESSIONAL ENGINEER
 MASSACHUSETTS LICENSE No. 41687
 NEW HAMPSHIRE LICENSE No. 14502
 MAINE LICENSE No. 13816
 CONNECTICUT LICENSE No. 24185
 RHODE ISLAND LICENSE No. 11425

SHEET TITLE:
PROPOSED AURA EXHIBIT

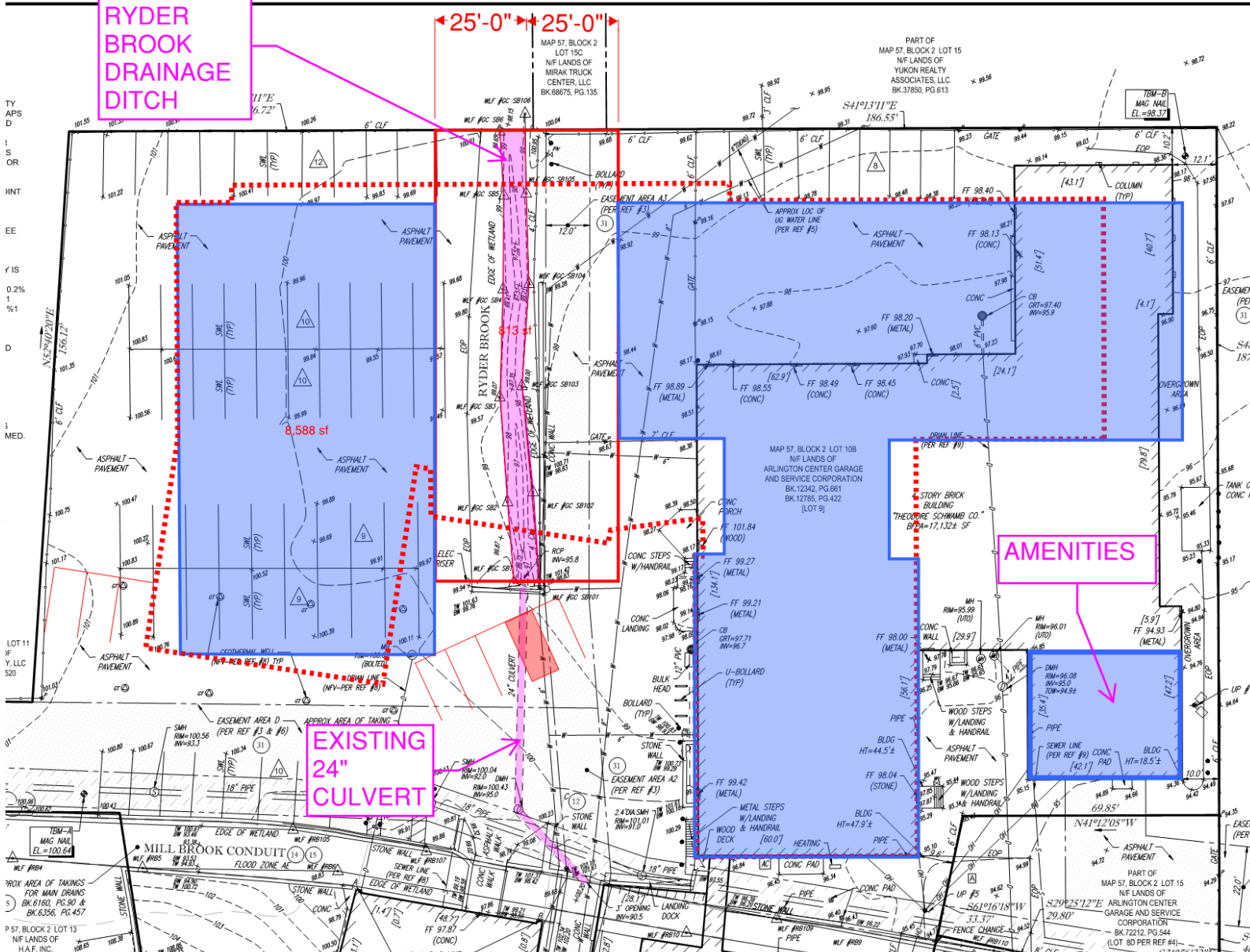
SHEET NUMBER:
1

ORG. DATE - 05/24/2021

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ALTERNATIVE SCHEME – MAINTAIN EXISTING RYDER BROOK LOCATION

EXISTING RYDER BROOK DRAINAGE DITCH



Parking is the limiting factor:

- Workbar requires 40 spaces during peak time; new residential requires 0.65 spaces per dwelling unit.
- Parking in larger building of alternative scheme is 2 stories (38 spaces).
- Parking in smaller building of alternative scheme is 1 story (20 spaces).
- Parking at Bldg 2 remains unchanged (14 spaces).
- Site Parking – maintain 3 spaces at west side of site and 4 spaces at Ryder Street connector. Eliminate courtyard parking (4 spaces).
- Total Parking in alternative scheme = 79 spaces as compared to 135 in proposed scheme.
- Proposed development provides 135 spaces.
- 40 spaces meet weekday demand from Workbar and 84 meet weekday demand of new 130 residential units.
- Alternative scheme provides 79 spaces of which 40 must meet Workbar demand and balance of 39 for new residential tenants. Using the same parking ratio for new residential of 0.65, this would only allow 60 new residential units.
- Conclusion: The alternative scheme with 60 new residential units ***is economically infeasible.***