



October 05, 2021

Christian Klein, Chairperson Arlington Zoning Board of Appeals

Arlington Town Counsel
50 Pleasant Street
Arlington, MA 02476

**Re: Thorndike Place - Arlington, MA
Requested Waivers – Updated Review**

Chairperson Klein and Board Members:

BETA Group, Inc. (BETA) continues to perform peer review of the environmental, traffic, civil and stormwater related elements of the site plans and supporting engineering documents for the above-referenced project. As part of this review, BETA updated their August 18, 2021 review of the Applicant's August 3, 2021 *Thorndike Place - List of Requested Waivers* to "Local Requirements and Regulations" including waivers from Bylaws of the Town of Arlington (the Bylaws), including the Town of Arlington Zoning Bylaw, as amended, and other Local Requirements and Regulations as defined under 760 CMR 56.02 of the Chapter 40B Regulations. Recommendations and further descriptions and discussion are provided in the summary tables.

Waiver request considerations were based on the following materials:

- **Thorndike Place List of Requested Waivers**, Arlington MA – revised through August 3, 2021, preparer not specified;
- **Thorndike Place Comprehensive Permit** stamped plans Dorothy Road, Arlington MA – Sheets C-103, and C-105 - dated March 13, 2020, revised August 2, 2021 prepared by BCS Group;
- Response to Comments letter from BSC Group dated August 3, 2021
- Town of Arlington Zoning Bylaw with Amendments through April 2016;
- Town of Arlington Wetland Protection Bylaw, Article 8 (Wetland Bylaw) and Regulations for Wetland Protection (Wetland Regulations), June 4, 2015;
- Town of Arlington Title III: Article I, Sections 1 and 2
- Town of Arlington Title III: Article I, Section 20

PROPOSED PROJECT – Current

The proposed project, as revised, includes the construction of a 124-unit 4-story senior living building with parking below, and six (6) duplex townhouse units located along Dorothy Road. Also included are associated access driveways, surface parking areas, utilities, infrastructure, stormwater management and mitigation measures. The current project design involves limited site improvement in the AURA outer 75' Restricted Zone including a small section of the multi-unit building, access circulation, and stormwater management discharge. Resource area mitigation and habitat restoration is also proposed in the AURA. The 25' No Disturb Zone will remain intact.

REQUESTED WAIVERS

The Applicant provided a *Thorndike Place List of Requested Waivers* to “Local Requirements and Regulations” including waivers from Bylaws of the Town of Arlington (the Bylaws), including the Town of Arlington Zoning Bylaw, as amended, and other Local Requirements and Regulations as defined under 760 CMR 56.02 of the Chapter 40B Regulations. According to the *List of Requested Waivers* revised through August 3, 2021, in addition to the waivers listed in the Table titled List of Waivers/Exceptions, the Applicant requests an exception from such provision or requirement of all Local Requirements and Regulations issued by a “Local Board” defined under the Chapter 40B Regulations. No hardships on the project resulting from compliance with the cited regulatory sections were provided.

Table 1 – An Updated Waiver Request Summary for Arlington’s Zoning Bylaw Provisions and Table 2 – Waiver Request Summary for Arlington’s Wetlands Protection Bylaw and Regulations below provides an updated summary of the Applicant’s requests for waivers from specific sections and paragraphs found in the cited regulations and standards. Waiver requests not included in BETA’s August 18, 2021 are prefaced by **BETA2**. BETA further described the sections and provided a recommendation for granting of the waivers.

Table 1 – Waiver Request Summary for Arlington’s Zoning Bylaw Provisions

Proposed Provisions to be Waived	Summary of Request by Applicant	Comments on Waiver Request
Title III: Article I, Sections 1 and 2 Use of Streets for Construction or Demolition Materials	Waiver from section, except Applicant to comply with all bonding requirements as required by applicable bylaw provisions	BETA: We defer to the Board but note that the Applicant should provide a Construction Management Plan indicating project phasing and staging areas and anticipated impact to the public right of way.
Title III: Article I, Section 20 Excavation in Streets and Sidewalks	Waiver of Permit and 25% of fees.	BETA2: We defer to the Board.
Town of Arlington Bylaw, Title V (Regulations Upon Use of Private Property); Article 9 Placement of Dumpsters	Waiver of permit requirement; location of construction dumpsters/portable storage containers to be detailed within Construction Management Plan, to be submitted to Building Inspector prior to issuance of building permit. No waiver sought of \$24 fee.	BETA2: We defer to the Board.
Town of Arlington Bylaw,	Full waiver of section.	BETA: We believe this waiver is appropriate as the

Title V (Regulations Upon Use of Private Property): Article 15, Section 1-5 Stormwater Mitigation	Stormwater will be managed in accordance with the MassDEP's Stormwater Policy and Technical Guidance, unless otherwise exempt. Stormwater to also be managed in accordance with a US EPA Stormwater Construction Permit for Massachusetts.	stormwater management system has been designed in accordance with MassDEP requirements and peer reviewed for compliance. Waiving this section means that the Applicant would not need separate approval for Stormwater from the Engineering Department prior to obtaining building permits. The ZBA decision would provide the approval.
Town of Arlington Bylaw Title V (Regulations Upon Use of Private Property); Article 16 (Art. 22, ATM 5/2/16). Tree Protection and Preservation	Full waiver of tree plan approval. Comprehensive Permit to include all local approvals; Applicant agrees to submit tree plan to Board prior to issuance of building permit, to designate such trees in setback area of 10" diameter or more, indicating whether replacement by 2.5' caliper tree on site or payment of \$500 to tree fund.	BETA2: We defer to the Board on the granting of this waiver; however, the Board may require submission of this tree plan to the Board prior to construction as a condition of approval.
Town of Arlington Bylaw, Title IX: Article 3, Sections 4A, 4B Town Fees and Charges, Department of Community Safety and Office of Building Inspector	Waiver allowing for 25% reduction of fees related to fire safety, plan reviews, and building occupancy, plumbing, gas fitting, and electrical permits (reflecting 25% of project as affordable).	BETA2: We defer to the Board.
Water Connection Fee Regulations Water Privilege Fee	Waiver requested of 25% of fee (reflecting 25% of project as affordable).	BETA2: We defer to the Board.
Sewer Privilege Fee	Waiver requested of 25% of fee (reflecting 25% of project as affordable).	BETA2: We defer to the Board.
Article 4.02 Application of Zoning Bylaw	Full waiver of section; erection and construction of 12 residential duplexes and 124-unit independent living structure dwelling together with accessory uses thereto, including without limitation accessory parking (surface and garage), garden area, walking path, landscaping and management/staff	BETA2: We defer to the Board.

	office, common areas and commercial kitchen, communal dining room to be governed by Comprehensive Permit Decision	
Article 5, Sections 5.03, 5.04 Use Regulations	<p>No Waiver required.</p> <p>Project, as modified, includes 6 duplex buildings (12 homeownership units) and a 124-unit Independent Living apartment building (defined as Apartment House under Bylaw) principal use, with residential accessory uses (Accessory uses of off-street parking and private garage, garden/lawn, accessory management/leasing office/staff office, community spaces (library/lounge/activity rooms) and fitness facility permitted accessory.</p> <p>Apartment house is allowed in PUD via special permit under Section 5.04- Table of Uses, §1.05.</p>	BETA2: Based on the information included in the list of waivers, it appears that no waiver is required from the use section. It is unclear why this section was included in the list of waiver requests.
Article 6, Section 6.00 – Table of Dimensional and Density Regulations	<p>Waiver requested to allow Project to be constructed in accordance with dimensional requirements of zoning ordinance in PUD district, except as waived herein and depicted on approved plans described within Comprehensive Permit decision.</p>	BETA2: We defer to the Board.
<p>Article 6- Table of Dimensional and Density (Section 6.00) (p.63 of Zoning Bylaw), and Sections 6.07, 6.12(d)(1) and 6.12(d)(2), 6.28</p> <p>General (Dimensional and Density) Regulations and Table; Buildings in Floodplain, Exceptions</p>	<p>Waiver sought from the 25-foot front and side yard setback, specifically for the front yard setback along Dorothy Road and rear yard:</p> <ul style="list-style-type: none"> • Front yard setback of 20 feet for duplexes along Dorothy Road. • Rear yard setback associated with SW corner of IL building is 18.7 feet 	BETA2: We defer to the Board.

(Bonus) to Gross Floor Area Planned Unit Development Yards and Setbacks	from rear yard, due to shape of lot. No adjacent buildable land is impacted.	
Article 6- Section 6.07 Buildings in Floodplains	Waiver of special permit procedure and standards under Section 11.04	BETA2:
Article 6, Section 6.30 Open Space Regulations for Planned Unit Developments	Waiver of percent of "usable open space" requirement under Section 6.30, as such term is defined under Article 2 definition. Usable open space (<10%), as shown on Project Plans. Future trails as may be developed on open space area will also be available to residents as is access path around southern side of building, both of which to be less than 25 feet in width	BETA2:
Article 7, Sections 7.06 and 7.073 Signs Permitted in any B, I or PUD District	Waiver requested to allow for an accessory entry sign at main access drive, with additional signage to: direct residents/guests to main entrance (freestanding); direct to parking garage (freestanding); canopy sign above entrance to Independent Living building, together with wayfinding signage	BETA2:
Article 8, Section 8.01 Off Street Parking Requirements	Waiver requested to allow for 96 total parking spaces for Independent Living as shown on Project Plans, which includes 12 exterior parking spaces and 84 garage parking spaces. [96 spaces of IL parking amounts to parking ratio of 0.77 space/unit. Parking supply satisfies standards of ITE Parking Manual, 5th edition for Use Code 252.	BETA2:
Article 8, Section 8.12.(11) Parking / Loading Space	Waiver requested to allow up to 24 compact spaces (designed as 8.5' x 18') in	BETA2:

Comment [LK1]: I don't even know what this is saying? Ton of typos

Standards	garage parking (approx. 25% of total parking. Note 1: The “compact” spaces per the project plans are compact only as to width (8’), but provide the length (18’) as if a standard space. Note 2: The project’s garage parking also provides surplus HC spaces (8 garage spaces) together with 2 exterior HC spaces, to accommodate elder drivers.	
Article 10, Section 10.02 Permit Required	Waiver requested for construction and use of buildings and land to be in accordance with the Comprehensive Permit decision.	BETA2: It is unclear what provisions of the Bylaw the Project is not in compliance with.
Article 11, Section 11.04(a)-(g) Floodplain District	Waiver requested from the special permit process/ environmental design review and waiver of application of local wetlands bylaw (Title 5 of Article 8), rules or regulations and Section 11.05 of Zoning Bylaw. Project to be governed by Comprehensive Permit.	BETA2: BETA does not recommend granting the waiver of Article 11, Section 11.04.
Article 11, Section 11.05(b), (d), (e), (f) Inland Wetland District	Waiver requested from special permit requirements for specific uses and structures, to the extent portions of property are within district.	BETA2: It is unclear how the Project is or is not in compliance with this provisions.
Article 11, Section 11.06(b), Section 11.06(c), Section 11.06(d), and 11.06(e) and 11.06(f) Environmental Design Review	Waiver requested from the Environmental Design Review (EDR) Process including special permit application submittal, standards, procedures and hearings before ARB. Including a waiver from adherence to EDR submittal requirements of Section 11.06(d) and review standards of Section	BETA2: We defer to the Board.

	11.06(e)/(f). Waiver of sign applications; signage to be depicted on final approved site plans, with exception of temporary construction signage as approved by Building Official from time of commencement of project to completion of construction.	
Article 11, Section 11.08 Affordable Housing Requirements	Waiver to the extent Section 11.08 varies or is not consistent with Chapter 40B, its regulations and the rules and policies of DHCD and MassHousing. Applicant's project is subject to affordable housing requirements as contained in M.G.L. c.40B and its regulations under the New England Fund Program of Home Loan Bank of Boston, in accordance with Site Approval given by MassHousing and Regulatory Agreement approved by the State. Project to provide 25% of units to be available to low and moderate income families (80% AMI)	BETA2:
Section 3.1, 3.2 Application and Documentation	Waiver of certain submission requirements beyond the scope and requirements of 760 CMR 56.00 at time of initial filing; additional documentation and information was submitted to Board within public hearing process.	BETA2:

Table 2 –Waiver Request Summary for Arlington’s Wetlands Protection Bylaw and Regulations

Proposed Provisions to be Waived	Summary of Request by Applicant	Comments on Waiver Request
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<p>Wetland Bylaw, Title V: Article 8, Section 2</p> <p>and</p> <p>Wetland Regulations, 2(A)(5), 4(3) and 4(7)</p>	<p>Waiver of Sections 2(A)(5), 4(3) and 4(7). Specifically:</p> <p>Section 2(A)(5) Waiver of Adjacent Upland Resource Area (AURA) as a Resource Area subject to Jurisdiction.</p> <p>Section 4(3) Definition. Waiver from defining AURA.</p> <p>Section 4(7) Definition. Waiver from defining Area Subject to Protection Under the Bylaw.</p>	<p>BETA:</p> <p><u>Section 2(A)(5).</u> BETA does not recommend waiving AURA as a Resource Area Subject to Protection. The current design meets the intent of the AURA's presumption of significance and performance standards. Compliance with the regulations can be met. Therefore, a waiver is not required.</p> <p>The project and mitigation proposed in the <i>Thorndike Place Comprehensive Permit</i> plan set last revised August 2, 2021 and statements provided in their 8/3/21 <i>List of Requested Waivers</i> document acknowledge the AURA's presumption of significant through providing the required 25-foot No Disturbance Zone and minimizing permanent site alterations in the 75-foot Restricted Zone. Mitigation provided by the proposed 2:1 floodplain compensation area located in the AURA that will include the restoration of native vegetation through elimination of invasive species and planting of native species, will provide a benefit to the AURA's ability to protect the presumed interests it provides.</p> <p><u>Section 4(3) Definition.</u> Waiver from defining AURA. BETA does not recommend granting the waiver of this section. See comments above.</p> <p><u>Section 4(7) Definition.</u> Waiver from defining Area Subject to Protection Under the Bylaw. BETA does not recommend granting the waiver of this section. See comments above.</p>
<p>Wetland Regulations, Section 23 – Land Subject to Flooding</p> <p>Definitions and Performance Standards</p>	<p>Section 23 – Land Subject to Flooding (Bordering and Isolated)</p> <p>Waiver from Section 23 Paragraph A. Findings – presumptions of significance; Paragraph B. Definitions; and Paragraphs C through E, the</p>	<p>BETA: BETA does not recommend granting the waiver of Section 23 – Land Subject to Flooding. The current design meets the intent of the resource areas' presumption of significance and is in compliance with the performance standard. Therefore, a waiver is not required. Compliance with the regulations can be met.</p>

	performance standards.	The project proposed in the 8/2/2021 Thorndike Place Comprehensive Permit plan set and statements provided in their 8/3/21 <i>List of Requested Waivers</i> document acknowledge the resource areas' presumption of significant by providing the 2:1 floodplain compensation for the proposed filling below the 100-year floodplain elevation.
Wetland Regulations, Section 24 – Vegetation Removal and Replacement Performance Standards	Section 24 – Vegetation Removal and Replacement. Waiver from entire Section including Paragraph A. Findings – presumption of significance; Paragraphs B through D. Performance Standards; and Paragraphs E through H. – Plan and Planting Requirements	BETA: BETA does not recommend granting the Waiver of Section 24 – Vegetation Removal and Replacement. The Project is providing habitat restoration in the location of the 2:1 floodplain compensation area and also will be providing habitat restoration of the rear acreage that will remain undeveloped. Such restoration efforts should follow the guidance provided by the Regulations in Section 24.
Wetland Regulations, Section 25 – Adjacent Upland Resource Area Performance Standards	Wetland Regulations, Section 25 – AURA Waiver from the entire Section including Paragraph A. Findings – presumption of significance; Paragraph B. Definition and Boundary including the 25' NDZ and 75' Restricted Zone; Paragraph C. No Disturb Zone performance standard; Paragraph D. Restricted Zone presumption of significance and performance standards; and Paragraph E. Use restrictions.	BETA: BETA does not recommend granting the Waiver of Wetland Regulations, Section 25 – AURA. See Waiver of Sections 2(A)(5), 4(3) and 4(7) above.

Jenny Raitt, Director, Department of Planning and Community Development
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Wetland Bylaw, Title V: Article 8, Section 11 Bond Requirements	Wetland Bylaw, Title V: Article 8, Section 11. The applicant is requesting a waiver of the bond requirements in the Bylaw.	BETA: Given the proximity of the protected Bylaw Resource Areas within and adjacent to the Project as proposed, BETA recommends retaining the right of the Conservation Commission to require a performance bond.
Wetland Bylaw, Title V: Article 8, Section 16.B.11. Wetland Consultant Fees	Wetland Bylaw, Title V: Article 8, Section 16.B.11. The applicant is requesting a full waiver of the consultant review fee.	BETA: These fees are used by Conservation Commissions to fund review of Projects. BETA defers to the Conservation Commission to comment on whether the request to waive the entire consultant fee would be sufficient for this Project.

If you have questions about any of these comments, please feel free to contact us. Otherwise, we will be present at the next scheduled public hearing to provide further discussion on the applicant's *Thorndike Place List of Requested Waivers*.

Very truly yours,
BETA Group, Inc.



William P. McGrath, P.E.
Senior Associate



Marta Nover
Vice President

cc: Douglas W. Heim, Arlington Town Counsel
Emily Sullivan, Environmental Planner & Conservation Commission Agent
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