

**From:** Don Seltzer

**Sent:** Monday, November 18, 2024 09:08

**To:** Michael Ciampa

**Cc:** Rachel Zsemler; Kin Lau; Eugene Benson; Stephen Revilak; Shaina Korman-Houston; Jim Feeney; Michael Muehe

**Subject:** 1500 Mass Ave - Continued failure to comply with state law

To: Michael Ciampa, Director of Inspectional Services

Cc: Arlington Redevelopment Board, Town Manager, Boston Council on Independent Living

Mike,

Thank you for the response to PRR-2024-4127. I appreciate your providing the building card listing inspections done to date for 1500 Mass Ave.

However, I find it disappointing and disturbing to note what is missing from this public record.

1. No Stormwater Management analysis, plan, or permit
2. No permits, building plans, or inspections for the new work approved by the ARB on Sept 9, 2024.
3. The lack of plans, permits, and inspections for some of the work previously done.

### **Stormwater Management**

Title V Article 15 of the town bylaws requires certain applications, permitting, and approvals related to Stormwater management. As best as I can determine, the applicant has failed to fulfill any of these obligations. The only action taken has been the applicant promising the ARB that permeable pavers would be used in the parking lot. This promise was made before the discovery that the ground below the parking lot is solid ledge.

### **Approvals for new work**

On September 9 of this year, the ARB approved major changes to the original Special Permit, adding an additional dwelling unit and a new retaining wall. Work on these changes has proceeded for more than a month. But according to the response to this PRR, no permit has been applied for nor granted for these changes. No review by IS has been done for the structural, electrical, plumbing additions, nor the structural changes to the exterior walls. No building permit fees have been paid. And a new tall retaining wall has been constructed on the side of the building without any permit, engineering review, or even inspection of the footings.

### **Plans, permits, inspections for earlier work**

A similar lack of regard for the proper permitting procedures is apparent in the sparse record provided in response to this PRR.

Major construction on this project began in the spring of 2022. Yet the building permit for this construction *was not issued until six months later*, December 16, 2022.

Google Earth photography establishes that the complete foundation wall was poured prior to June 13, 2022. Yet the first signed off inspection for approving the footings prior to pouring any concrete, is dated more than a month later, July 29, 2022. This was the same date for the inspection of the completed foundation.

And sometime after these dates, the applicant decided to add major retaining walls to stabilize the cliff in the rear. There are apparently no permits, plans, reviews, approvals, or fees associated with this work.

### **Compliance with State laws on Accessible Housing**

My motivation for pursuing this unfortunate history is to call attention to the continued flagrant disregard of State laws on accessibility. Serious mistakes were made in the architectural design of this building and were compounded by the early discovery of significant ledge on the lot that made it difficult to proceed with the original plan. Without notifying the ARB, the builder altered the street level parking lot to one that was inaccessible.

The Massachusetts Architectural Access Board was extremely critical of the initial error in design, and suggested professional malpractice on the part of the architects. But multiple Arlington town departments share some of the responsibility for providing inaccurate opinions and approvals that encouraged the applicant to proceed.

That was an unfortunate mistake, but it has at least raised awareness of state law 521 CMR and the legal requirement of compliance for all new construction of housing with three dwelling units or more.

And yet, it appears the same mistake is occurring again.

Throughout October we have corresponded on the matter of sections 10.2 and 10.3 of 521 CMR, the requirement to provide the capability of accessible parking. 'Accessible Parking' is much more than just painting some cross striping on the pavement. The most important requirement is providing an accessible route from the parking lot to the entrance of the building.

Architect Monty French told the ARB that *"because of the size of this project, accessible parking is not required"*. He is wrong, as badly wrong as he was four years ago when he designed an inaccessible apartment building in apparent ignorance of state laws that were enacted nearly three decades ago.

As you acknowledged earlier this month, this project *"will be required to provide an accessible parking space if necessary to accommodate a tenant's needs."*

Director William Joyce of the state Architectural Access Board has made clear that this project *"must be capable of providing accessible parking to meet the needs of the dwelling unit occupants without structural change...[including] an accessible route from the parking to the unit entrances."*

From what I saw at the September ARB hearing, the builder has no intention of changing the 17% slope of the driveway which provides the only access to the parking lot and is more than twice the allowable slope. Nor will he accept the need for an elevator or single floor lift in the rear of the building to provide the required access.

This latest delay by the builder in submitting the new building and parking lot plans seems to be intended to postpone any decision by Inspectional Services to rule on the compliance with state laws on accessibility until the alterations are nearly completed and literally set in stone and concrete.

I urge you to be more proactive and resolve this serious problem now. The alternative is to repeat the unfortunate events of the last year with yet another hearing before the MAAB. It will be

embarrassing to the developer's architects as they will have to explain how they misrepresented to the ARB the limited waiver that MAAB had granted (521 CMR 10.1, for an accessible route to the rear yard usable open space, but no waiver for 10.2 and 10.3 for provision of accessible parking). It will be more embarrassing for the Town, as the MAAB will again rehash how Planning, ARB, and IS provided incorrect information four years ago to approve this project, and a continued lack of vigilance in enforcing compliance.

It is in no one's interest for this project to land back before the MAAB. And it is an injustice to the one in six Arlington residents who are 65 years or older and others with mobility limitations to continue to allow new multifamily housing that does not comply with long standing laws on accessibility.

I am passionate about this issue and will continue to call attention to failures to comply with the law.

Don Seltzer

