

1165R Massachusetts Avenue
Ch. 40B ZBA Submission

Section 3.2.11 List of Requested Waivers

Please see the enclosed List of Requested Waivers for the 1165R Massachusetts Avenue Development.

**1165R MASSACHUSETTS AVENUE
List of Requested Waivers**

Pursuant to 760 CMR 56.05(2)(h), 1165R Mass MA Property, LLC (hereinafter referred to as the “Applicant”), submits the following list of waivers, so-called, to “local requirements and regulations,” including without limitation the Town of Arlington Zoning Bylaw, as amended, the Arlington Wetlands Protection Bylaw (Title V, Article 8 – “Wetlands Bylaw”), Article 16 – Tree Protection and Preservation Bylaw, Arlington Regulations for Wetlands Protection (“Wetlands Regulations”) and other local regulations and requirements as defined in M.G.L. c.40B, §56.02, including all local rules, ordinances, codes and regulations that are more restrictive than state requirements.

LIST OF WAIVERS

<i>By-law Regulation</i>	<i>Requirement</i>	<i>Proposed</i>	<i>Waiver</i>
Wetlands Regulations Section 4	Town definition of “Stream” is inconsistent with the Massachusetts Protection Act and 310 CMR 10.04.	Apply the Massachusetts Wetlands Protection Act definition of “Stream”.	Waiver requested – See Footnote “1”.
Wetlands Regulations, §20C	Restriction on work on banks of Ryder Brook.	Work proposed on Ryder Brook.	Waiver requested – See Footnote “2”.
Wetlands Regulations, §22	Performance regulations for land under water bodies and restrictions on work on land under water bodies and within 25’ of such land.	Work proposed within Ryder Brook.	Waiver requested – See Footnote “2”.
Wetlands Regulations, §24	Restrictions on vegetation removal.	Some vegetation will be removed along the bank of Ryder Brook.	Waiver requested – See Footnote “2”. The applicant proposes replacing vegetation as shown on the landscape plans.
Wetlands Regulations, §25	25’ no disturbance area – Adjacent Upland Resource Area.	Work is proposed within 25’ of both Ryder and Mill Brooks.	Waiver requested – See Footnote “3”.
Wetlands Regulations, §25	Alternative analysis required for work in 100’ Adjacent Upland Resource Area.	There are no alternatives.	Waiver requested – See Footnote “3”.

Wetlands Regulations, §25	No new buildings within the first 50' of the Adjacent Upland Resource Area unless approved in evaluating the existing total impervious surface on site.	New buildings are proposed within the first 50' of the Adjacent Upland Resource Area.	Waiver requested – See Footnote “3”.
Wetlands Bylaw Title V, Article 8, Section 4(b)	Conservation Commission could require a strip of undisturbed vegetative cover within the 200 foot riverfront area or “bordering” land – defined as 100 feet.	This is a previously disturbed area which is nearly entirely covered by impervious materials.	Waiver requested.
Wetlands Bylaw Title V, Article 8, §16 and Wetlands Regulations, §11	Permitting and consultant fees – Fees in Wetlands Bylaw and Regulations are not consistent.	Permitting and Consulting Fee.	Waiver requested of 50% of these fees.
Wetlands Bylaw Title V, Article 8, §§10 and 11	Bond requirements.	Applicant does not propose to post any security.	Waiver – This request is an added capital requirement that effects the economic viability of the project.
Title V, Article 16, Sections 2 and 4 – Tree Protection and Preservation	These sections prohibit removal of “Protected Trees” unless removal is authorized through the approval of a Tree Plan. Construction and demolition require the approval of a Tree Plan prior to or concurrent with application for a building permit. Protected Trees require a payment to a Tree Fund.	The Applicant seeks to remove thirteen trees all of which are non-native species that need to be removed to construct the project. Further, the trees growing out of the conduit walls of the Mill Brook need to be removed to prevent further damage to the conduit walls. The Applicant seeks a waiver of the payment to the Tree Fund.	Waiver requested. Absent the removal of the trees, the project cannot be constructed. The payment to the tree fund effects the financial viability of the project.
Zoning By-law (“By-law”) Article 5, Section 5.6.3	Multifamily/Apartment use is not allowed as of right or by special permit.	Multifamily use.	Waiver requested. The property is located in the industrial zone – absent a waiver, it cannot be constructed.
By-law Article 5, Section 5.6.2. Floor area ratio, front yard depth, right side yard and rear yard depth	The By-law provides for an FAR of 1.5, a front yard, a right side yard and rear yard depth of 10' each.	The Applicant proposes an FAR of 2.37 and the following: (a) front yard depth of 330'; (b) right side yard depth of 1.75'; and (c) rear yard depth of 9'. See plans.	Waiver requested – See Footnote “4”.

By-law Article 5, Section 5.3.15	Varying formulas for buildings with uneven height or façade.	See plans.	Waiver requested – See Footnote “4”.
By-law Article 5, Section 5.3.17	For buildings more than 3 stores in height, a 7.5 step back shall be provided at the fourth story or 30 feet above grade, whichever is less, along all building elevations with street frontage.	Building 4 does not comply.	Waiver requested – See Footnote “4”. Additionally, this requirement may not apply. Building 4 has no street frontage.
By-law Article 5, Section 5.6.2	Height Stories and Height Feet.	The Applicant proposes a 6 story building for Building 4, which consists of two floors of enclosed parking. the height proposed is 68’.	Waiver requested – See Footnote “4”.
By-law Article 6, Section 6.1.12 and the Bicycle Parking Design Guidelines	1.5 spaces per unit for a total of 195.	The Applicant proposes 44 spaces designed in accordance with the Bicycle Parking Design Guidelines or a waiver to construct 114 long-term spaces, which would include upper level/stacked-type parking. This will result in 114 total long-term spaces.	Waiver requested – See Footnote “5”.
By-law Article 6, Section 6.1.4	171 parking spaces required.	Applicant proposes 139.	Waiver requested – See Footnote “5”.
By-law Article 6, Section 6.1.11	24’ required for two-way drive aisle – varies by angle degree for one way.	23.6’ drive aisles proposed for two-way traffic.	Waiver requested – See Footnote “5”.
By-law Article 5, Section 5.7	No construction permitted in regulatory flooding, 15’ setback from waterway can be waived.	Work is proposed within 15’ of the waterway, a bridge and utility crossing within the waterway. Building 2 will be within 15’ of the Mill Brook due to the fact that the existing bridge needs to be rebuilt.	Waiver requested – See Footnote “5”.
By-law Article 3, Section 3.4	Environmental Review process before ARB.	Pursuant to M.G.L. c.40B, §§20-23, ZBA is vested with jurisdiction to issue the comprehensive permit.	Waiver requested.
Arlington Design Standards	Design standards for buildings along Mill Brook, Minuteman Bikeway and Massachusetts Avenue.	See plans.	Waiver requested – See Footnote “6”.

Title IX, Article 3, Sections 4A and 4B – Enforcement and Fees	Town Fees and Charges – Department of Community Safety and Office of Building Inspector.	Fees and charges related to fire safety, building permits, plan reviews, occupancy permits, plumbing permits, gas fitting and electrical permits.	Waiver requested allowing for 50% reduction of fees.
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FOOTNOTES

1. The Conservation Commission has voted three (3) RDAs on September 17 and October 1, 2020, respectively, concluding that: (a) the site qualifies as a “Historic Mill Complex”, pursuant to 310 CMR 10.00 and is exempt from the Wetlands Protection Act’s Riverfront Standards; (b) the extent of the Historic Mill Complex is as set out on a certain amended plan provided to the Commission; and (c) the drainage ditch known locally as “Ryder Brook” is not a “stream” as defined in 310 CMR 10.04 and, therefore, is not a jurisdictional resource area. The Applicant respectfully suggests that the purported stream at issue is what is referred to as Ryder Brook, essentially a draining ditch located in the middle of the site.

Absent the waiver, the project cannot be built as proposed.

The Applicant intends to create a drainage ditch around the perimeter of the site which is of greater length than Ryder Brook that will enable the sheet flow water from the site, which is now nearly all impervious, and the water from the surrounding properties to drain into an open ditch to a closed pipe underground. The water onsite, which is not presently treated, will be treated in a water quality unit for removal of sediment, floatable debris and hydrocarbons before discharging into Mill Brook. Presently, water from the Applicant’s site and the abutting properties flows into the Mill Brook untreated.

This waiver, in fact, represents an environmental improvement.

2. Section 20C provides that “no activity other than maintenance of an already existing structure or Resource Area Enhancement, shall be allowed which will result in the building within or upon, removing, filling, or altering a bank.”

Ryder Brook is located within the site and absent the waiver requested, the project cannot be constructed economically.

3. The Applicant would be unable to construct the proposed project if the Board did not grant a waiver from this requirement. The site would be unable to accommodate buildings 1 and 2 because they would be located in the first 50 feet of the Adjacent Upland Resource Area. Also, construction is required within 25 feet of both Ryder and Mill Brook. Given the lot size, there is no alternative to work in the Adjacent Upland Resource Area, as application of this regulation would prevent construction on the site. Thus, absent the waiver requested, the project cannot be constructed.

4. Absent waivers of these zoning requirements, the proposed project would be uneconomical, would not result in the limited profit provided for in the regulations and the Applicant would be unable to secure financing for the construction of the proposed project.

5. The Applicant seeks a waiver of the required number of parking spaces, the required long-term bicycle parking spaces and the long-term bicycle design guidelines since the required spaces would be uneconomical for the proposed project.

6. The Applicant seeks a waiver of the design standards for buildings along Mill Brook and the Minuteman Bikeway as detailed in the plans filed.

The Applicant asserts that significant effort has been made to integrate the Mill Brook and Bikeway into the overall project and that the project has been designed to encourage public interaction along Mill Brook. Further, the Applicant will be integrating certain of the historic buildings on the property into the proposed development. Parking is below the buildings, essentially eliminating surface parking, making a 2-acre site, which is presently impervious, substantially more pervious and landscaped. The landscaped area is increasing by 18,631 square feet or approximately by 72%.

The Applicant has utilized its best efforts to incorporate a substantial number of the Design Standards adapted by the Town in 2015 into the design of this proposed project. Its ability to implement certain design standards are limited by significant costs which would cause the project to be uneconomical.