



May 28, 2021

Christian Klein, Chairman
Zoning Board of Appeals

Town of Arlington
50 Pleasant Street
Arlington, MA 02476

**Re: 1165R Massachusetts Avenue - Arlington, MA
Wetlands / Resource Area Regulatory Peer Review Update**

Dear Chairman Klein:

BETA Group, Inc. (BETA) has completed its third Wetlands / Resource Area Regulatory peer review of the proposed Chapter 40B residential development located at 1165R Massachusetts Avenue in Arlington, Massachusetts. Our analysis of the environmental related elements of the site plans and supporting documents for the above-referenced project are based on selected materials from the following available documents:

- **1165R Massachusetts Avenue Wetlands/ Resource Area Regulatory Peer Review Updated Letter** – May 27, 2021, prepared by Krattenmaker O’Connor & Inger P.C.
- **Proposed Site Plan Documents – Proposed Residential Development** (select sheets), including:
 - Site Layout Plan (C-301), dated March 10, 2020, revised through May 26, 2021, prepared by Bohler Engineering; and,
 - Demolition Plan (C-201), dated March 10, 2020, revised through April 2, 2021, prepared by Bohler Engineering; and,
- **Landscape Drawings** (Select Sheets), including:
 - Layout and Materials Plan (Sheet L101) dated May 27, 2021, prepared by Kyle Zick Landscape Architecture of Boston, MA;
 - Planting Plan (Sheet L102) dated May 27, 2021, prepared by Kyle Zick Landscape Architecture of Boston, MA; and,
 - Stone Swale Section D-D’, not dated.
- **Bridge Plan & Elevation** (1 Sheet) dated April 16, 2021, prepared by Nitsch Engineering;
- **Existing AURA Exhibit**, dated May 24, 2021, prepared by Bohler Engineering;
- **Proposed AURA Exhibit**, dated May 24, 2021, prepared by Bohler Engineering;
- **Second Set of Comments from Conservation Commission** – May 10, 2021, prepared by the Arlington Conservation Commission.
- **Relocated Ryder Brook Calculations of Shear Stresses on Channel Bottom**, preparer not specified and calculations not dated or stamped.
- FEMA Flood Insurance Study, Middlesex County, Revised June 6, 2016;
- Town of Arlington Zoning Bylaw with amendments through April 2019; and
- Town of Arlington Wetland Protection Bylaw, Article 8 and Regulations for Wetland Protection, March 1, 2018.

General

BETA's comments presented here relate to the current project plans and figures available with respect to how the project complies with the Massachusetts Wetlands Protection Act Regulations, 310 CMR 10.00, and the Town of Arlington Wetland Protection Bylaw Article 8 and Regulations for Wetland Protection (the Bylaw).

BETA provided initial comments to the Zoning Board in a letter dated March 11, 2021 and supplemental information was submitted by the Applicant on April 5, 2021. BETA provided updated comments addressing the April 5, 2021 Applicant Submission to the Zoning Board in a letter dated April 13, 2021.

This May 28, 2021 letter provides follow-up review of supplemental information submitted by the Applicant on May 27, 2021. For brevity, only comments that require follow-up responses have been included in this letter and previously resolved comments have been omitted. In addition, the Applicant's responses to our April 13, 2021 comments have been summarized in our updated comments, rather than quoted, for expediency.

Our follow-up comments are denoted as "***BETA2***" in bold italics.

Proposed Project

A Comprehensive Permit Application was filed with the Arlington ZBA under the M.G.L Chapter 40B provisions in June 2020 for the proposed construction of 130 residential units in four (4) apartment buildings, along with associated access driveways, parking areas (total of 11 surface spaces) and garages, utilities, infrastructure, a Riverwalk, and stormwater management system improvements (the Project). The Project also proposes a new vehicular bridge over Mill Brook and proposes to re-route Ryder Brook.

Vehicular traffic into the Project Site will be from Massachusetts Avenue only, while vehicles exiting the Project Site can leave via Massachusetts Avenue or Ryder Street. The driveway connecting the Project Site to Ryder Street will only allow for one-way traffic.

BETA1: The re-routing of Ryder Brook has been revised to propose a longer stream channel and planting plans have been provided. In addition, the revised plans have located the Riverwalk further away from Mill Brook where possible.

BETA2: *The Project has been revised and now proposes only 124 residential units, a 6 unit reduction. In addition, the updated layout has increased the number of surface parking spaces from 11 to 18 and reconfigured patio areas. Individual plan sheets have been submitted for Review, however, no final plan set has been completed.*

Recommendation: *Prior to the issuance of a Decision, the Applicant should provide complete Site Development Plan and Landscaping Plan Sets that include the plans and sheets issued as part of the Applicant's responses to BETA comments and ZBA and/or Arlington Conservation Commission comments.*

Existing Conditions

The proposed Chapter 40B Residential Development is located at 1165R Massachusetts Avenue and includes two parcels that total approximately 2.3-acres of land, located between Ryder Street, Massachusetts Avenue, Quinn Road, and the historic Boston and Main Railroad (now the Minuteman Commuter Bikeway)

in Arlington, Massachusetts (the Project Site). The Project Site is generally within an industrial/commercial area in Arlington and is bounded to the north, east, and south by Automotive business; and to the east by Construction/Contractor facilities and a condominium. Both Ryder Street and Forest Street (located to the west of the Project) are primarily residential neighborhoods.

The Project Site was originally developed in the 1800s as a mill and is almost entirely degraded. It is improved by former mill buildings, parking areas, and a single-lane vehicular bridge over Mill Brook. The onsite buildings are interconnected via breezeways and have undergone additions since the original development of the property.

A recreational field, rail trail, and small area of open green space exist to the east of the Project Site. These areas are the primary open space within approximately a quarter of a mile. An intermittent stream (Ryder Brook) flows southwest through the center of the Project Site to a 24" culvert that discharges to Mill Brook. Mill Brook is a perennial stream (river), which flows southerly through the Project Site and is bordered on both sides by a vertical retaining wall. Ryder Brook is a regulated resource area under the local Bylaw only. Surface topography west of Mill Brook generally slopes steeply southeasterly toward the river. East of Mill Brook, the topography is relatively flat, but slopes south/southwest to Ryder Brook and Mill Brook. Although the Project Site is situated within a heavily developed area, Mill Brook, Ryder Brook, and the off-site Minuteman Rail Trail have been noted as locally important corridors for wildlife movement through the Town of Arlington.

The Project Site contains several resource areas Subject to Protection under the Act, its Regulations, and the Bylaw:

- Bank to Mill Brook (Perennial Stream),
- Bank to Ryder Brook (Intermittent Stream – Jurisdictional under the Bylaw only),
- Land Under Mill Brook,
- Land Under Ryder Brook (Bylaw only),
- Bordering Land Subject to Flooding associated with Mill Brook,
- 200-foot Riverfront Area to Mill Brook,
- 100-foot Adjacent Upland Resource Areas (AURA) associated with Mill Brook and Ryder Brook (Bylaw only) and,
- 100-foot Buffer Zone to on-site Areas Subject to Protection under the Act and Bylaw.

A review of the current FEMA Flood Insurance Study for Middlesex County and the existing conditions topography presented on current Project plans indicate that the 100-year floodplain Base Flood Elevation associated with Mill Brook changes significantly, dropping from Elevation 103 feet north of Ryder Street to Elevation 90 feet at the southern limit of the Project. Based on the elevations of the top of the retaining walls that contain Mill Brook, the 100-year FEMA flood is contained within those walls. The existing northern driveway, however, is located within the 500-year flood plain Zone X. FEMA Floodway is also mapped along Mill Brook.

Regulatory Compliance – Project Review

The Project will require an Order of Conditions from the Arlington Conservation Commission for work in areas Subject to Protection and Jurisdiction pursuant to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40 (the Act) and its Regulations (310 CMR 10.00). Based on the Comprehensive Permit Application, the Project is in the preliminary development stage and details describing the impacts on the interests identified in the Bylaw and its Regulations are not defined at this time. Specific details, such as

quantification of impacts to Areas Subject to Protection and Jurisdiction as well as, locations of temporary construction impact, including staging areas, erosion controls, restoration efforts, and dewatering (if required), will need to be provided to adequately evaluate how the Project activities will affect areas protected under the Act and the Bylaw.

Based on BETA's review of the available Project plans, documents, and publicly available information, we respectfully provide the following comments and recommendations.

3. Plan Sheet EC-2, "Pre-1946 Mill Complex Footprint Exhibit," dated September 21, 2020 depicts two distinct areas within the Project Site that do not qualify for the Historic Mill Exemption under the Rivers Protection Act and are within the 200-foot Riverfront Area (RA) associated with Mill Brook. These areas are:
 - a. The portion of the Project within the Ryder Street right-of-way (ROW) from the Forest Street intersection to the Site driveway and,
 - b. A 24,355± SF portion land in the northeast corner of Site, extending southeast from the property boundary to the southern Bank of Ryder Brook and approximately 150 feet southwest from the property boundary.

Impacts to the portions of the Site that are not within the Historic Mill Complex footprint must comply with the Performance Standards at 310 CMR 10.58(4) and (5), as applicable. Specifically,

- a. The proposed activities within the Ryder Street right-of-way are entirely within previously developed/degraded Riverfront Area, as defined under 310 CMR 10.58(5). To meet the RA performance standards at 310 CMR 10.58(5), work in this area must improve existing conditions, must not be closer to the river than existing conditions and cannot result in an increase in degraded RA.
- b. Although the majority of the property in the northeast corner of the Site is a parking lot and qualifies as degraded under 310 CMR 10.58(5), Ryder Brook and its immediate vicinity is vegetated. Work within this 24,355± SF area cannot increase the amount of degraded area; however, this work can be permitted if RA restoration is provided in accordance with 310 CMR 10.58(5)(f).

Recommendation: The Applicant should provide the ZBA with an evaluation of the Project's compliance with the Riverfront Area performance standards for the portions of the Site that do not qualify as Degraded RA that addresses the restoration requirements for impacts to non-degraded Riverfront Area under 310 CMR 10.58(5)(f & g). BETA suggests increasing native vegetation density near Mill Brook to provide shading and wildlife habitat. The planting locations and species selected for this area should consider the light available for growth of the species and the proximity of the root zone to the Mill Brook retaining walls, to protect the stability of the retaining walls.

Applicant's Response 4/1/2021: BETA1: [See pages 1-5 of the Applicant's Response letter. Response was not transcribed to save space.

BETA1: The Applicant provided an evaluation of the Project's compliance with the Riverfront Area Performance Standards. This evaluation was conducted on a Site-wide basis, meaning the evaluation

reviewed the impacts and improvements within Areas #1 and #2 (as described on Page 1 of the Applicant's Response Letter), collectively. Overall, the revised Project will increase pervious surfaces and native vegetation within the onsite Riverfront Area by 5,261 square feet, solely within Area #2. Additional improvements may be possible within Area #1 (Ryder Street).

The Conservation Commission will ultimately determine whether the Project meets the Riverfront Area Redevelopment Standards under 310 CMR 10.58(5), however, the evaluation submitted to the ZBA seems reasonable.

Recommendations:

- (a) Planting plans should be updated to include species suitable for upland Riverfront Area. Ryder Brook is an intermittent stream, and therefore will not receive flow year-round. Plant section should consider the soil moisture needs of the species and should consider resiliency. The plant species selected are those that need the groundwater to be at or near the ground surface during the growing season.
- (b) Provide a proposed monitoring protocol to document establishment of the restoration area, including invasive species control.
- (c) Evaluate opportunities to improve the Riverfront Area within Area #1 (Ryder Street). Potential improvements could include stormwater management improvements such as installation of deep sump catch basins or water quality units.

BETA2: BETA's Recommendations have been addressed as follows:

- (a) Reasoning behind the selected plans has been presented and four species have been substituted with more appropriate species for upland Riverfront Area. BETA recommends a Condition requiring monitoring of the species following the establishment period and replacement of any species that do not succeed. Any plant substitutions should be reviewed and approved by the Arlington Conservation Commission.
- (b) A monitoring protocol is presented. BETA recommends a Condition requiring the Applicant to give the ZBA and Conservation Commission the contact information for the Company responsible for monitoring and maintaining the species within stream relocation areas.
- (c) The Applicant has stated that no work beyond repaving the road and reconstructing the sidewalk will be conducted. The Conservation Commission will ultimately determine if this work meets the RA redevelopment standards.

- 4. Work associated with construction of the bridge over Mill Brook may require fill below the 100-year / Base Flood Elevation. Section 23 of the Bylaw requires flood storage compensation ratio of 2:1^{1,2}.

Recommendation: The Applicant should provide preliminary bridge elevation plans that depict the proposed bridge structure in relation to the floodplain elevation to confirm the Project will not result in fill of the 100-year floodplain.

¹ In accordance with Section 23, C of the Town Bylaw, "No activity, other than the maintenance of an already existing structure, which will result in the building within or upon, or removing, filling, dredging or altering of, land subject to flooding shall be conducted without written permission of the Conservation Commission." And

² Section 23, D states the Commission may permit activity on land subject to flooding shall provide compensatory flood storage for all flood storage volume that will be lost at each elevation...at a 2:1 ratio minimum, for each unit volume of flood storage lost at each elevation.

Applicant's Response 4/1/2021: The proposed bridge will be built on the existing channel walls and will be above the 100-year floodplain elevation. Accordingly, there will be no impact nor filling of the 100-year floodplain. See the preliminary bridge elevation plan, Exhibit 4 in the Appendix.

BETA1: Preliminary bridge plans have been submitted, however, the bridge plans do not depict topography and the bridge elevation/cross-section drawing does not show the Mean High Water Elevation or the 100-year FEMA Floodplain boundary/elevation. Although it appears the Project will not place bridge structures below the 100-year Floodplain/BLSF, the 100-year floodplain elevation should be depicted on the elevation drawing to confirm.

Recommendation: Depict the 100-year floodplain elevation on bridge elevation drawings.

BETA2: Nitsch's updated Bridge plans depict the 100-year Floodplain Elevation. Addressed.

5. The Mill Brook channel has a mapped FEMA Floodway. The Project proposes construction of a bridge over the designated Floodway. If work associated with the bridge construction requires placement of any structures or hanging utilities below the Floodway elevation, consultation with FEMA will be required to confirm a No-Rise Condition.

Applicant's Response 4/1/2021: The proposed bridge design does not include any permanent construction below the FEMA floodway elevation.

BETA1: The response provided does not indicate whether there will be any temporary work within the FEMA Floodway and the plans do not depict the extent or elevation of the Floodway.

Recommendations:

- (a) Determine whether the Project will temporarily impact the FEMA Floodway and provide temporary flood control measures, if needed.
- (b) Revise plans to depict the extent and elevation of the FEMA Floodway.

BETA2: BETA's Recommendations have been addressed as follows:

- (a) The Applicant has stated that no work will occur within FEMA Floodway. Addressed.
- (b) Nitsch's updated plans indicate the location and elevation of the 100-year floodplain and associated floodway. Addressed.

6. The Site Layout, Grading and Drainage, and Landscape Plans show impacts to the Banks and Land Under Water associated with Ryder Brook, and the AURA associated with both Ryder Brook and Mill Brook. The current Plans do not provide the extent of impacts to the Banks or Land Under Water. Intermittent and perennial streams are significant to the interests of the Bylaw.

Section 20(C) of the Bylaw prohibits activities that will alter, fill or remove Bank, other than maintenance of an existing structure or Resource Enhancement activities. The Bylaw provides additional protection within the AURA zones associated with all streams (Section 25). Ryder Brook's Banks are currently vegetated with Japanese knotweed (*Fallopia japonica*); however, the Banks provide cover for wildlife movement between the rail trail, adjacent open space, and Mill Brook.

Recommendation: Quantify impacts to Bank and Land Under Water and consider providing a naturalized open stream channel for Ryder Brook in its proposed location through the Project Site. Per the Bylaw, this work could be considered “Resource Enhancement”, as long as the constructed Banks and adjacent upland (as available) are densely vegetated with native vegetation that provides escape cover, nesting opportunities, food sources to native wildlife, and possibly pollinator habitat. The streambed material should be specified for the purposes of potential habitat for local wildlife, as well as flow velocity. This Resource Enhancement feature may eliminate the need for a Waiver from the Bylaw for this Project design element.

Applicant’s Response 4/1/2021: *The daylighted portion of the Brook will be increased from 120 feet to 200 feet, with the amount of Bank resource area increased from 249 linear feet to 363 linear feet. The amount of stream bed (equivalent to Land Under Waterway resource area, “LUW”) will be increased from 816 square feet to 1,880 square feet. The vegetated buffer adjacent to the Brook will be increased from 1,38 square feet to 2,975 square feet, and importantly, the vegetation will be changed from nearly all non-native invasive species to 100% native species. The vegetation will provide a variety of wildlife habitat functions, including cover, seed and berry sources, and nectar for pollinators. The riprap substrate and coir fascine logs will provide a variety of cover microhabitats for aquatic insects, small mammals, snakes and amphibians. These improvements clearly constitute a “Resource Enhancement” in accordance with the Wetlands Bylaw.*

BETA1: As stated in the Applicant’s response, the linear footage of Bank and square footages of streambed and vegetated AURA will be increased by the Project. BETA agrees with the use of coir fascine logs to restore the Banks of Ryder Brook, however, the use of riprap as a streambed substrate is not recommended unless substantiated by the design engineer and environmental consultant. No stream cross sections or details of the stream restoration are provided.

The proposed plant species selected for the streambank and AURA planting consist primarily of wetland indicator species. Ryder Brook is an intermittent stream, therefore, the soil conditions and groundwater elevation during the growing season may not be suitable to support the proposed species without significant irrigation during and following the establishment period. Irrigation is not a resilient or sustainable practice and should not be required after the initial establishment period in “Restoration Areas” if appropriate vegetation is selected. In addition, several proposed species are particular about growing conditions and water quality, which may impact successful establishment (ex. *Chamaecyparis thyoides* – Atlantic white cedar).

Recommendations:

- (a) Provide streambed cross sections that depict coir fascine log installation.
- (b) Provide a streambed substrate that is more natural than riprap. The proposed streambed material should be selected based on anticipated stream velocity and could include sand and/or river stone.
- (c) Review the selected plant list to determine the appropriateness of the selected species for the Proposed soil conditions to avoid the need for irrigation beyond the initial plant establishment period.

BETA2: *BETA’s Recommendations have been addressed as follows:*

- (a) *A cross section including elevations has been provided. BETA recommends this cross section be incorporated into the final Landscaping Plan Set prior to issuance of a Decision.*

(b) The Site Layout Plan now indicates 3-inch minimum river stone for the majority of the streambed. This plan specifies 12" to 18" "broken stone" as the streambed substrate where the stream turns to the north near the building for erosion protection, as determined by sizing calculations. Addressed.

(c) See Comment 3, BETA2 (a).

7. Work proposed within vegetated areas of the 25-foot No Disturbance Zone includes relocation and potential restoration / enhancement of Ryder Brook, construction of Building 4, a new vehicular bridge over Mill Brook, a Riverwalk, planting beds, and lawn areas. Construction details and information describing impacts to the AURA zones have not been provided.

Recommendation: The Bylaw provides additional levels of protection to areas adjacent to resources that are not provided in the Act. The Applicant has not yet provided sufficient information for the ZBA to make an informed decision to grant Bylaw Waivers.

Applicant's Response 4/1/2021: See Exhibit 5 in the Appendix, which shows a comparison of existing conditions within the AURA of Ryder Brook and a comparable AURA from the proposed relocated, improved brook. The amount of pervious surface within the 0-25' portion of the AURA will be increased from 2,482 square feet to 4,404 square feet, an increase of 2,124 square feet. In the 0-100' AURA, the amount of pervious surface will be increased from 2,650 square feet to 7,660 square feet, an increase of 5,010 square feet. The vegetated buffer adjacent to the brook will go from almost entirely non-native species to 100% native, wildlife-friendly species.

BETA1: The Applicant has provided an evaluation of the impacts to the AURA associated with Ryder Brook, which appear to demonstrate a net improvement within the AURA to this stream (if species selected for the stream are appropriate (see Comment 7, BETA1).

No evaluation was provided, however, on the impacts to the AURA associated with Mill Brook. Additional improvements to the AURA of Mill Brook appear feasible. No reasoning has been provided on the need for the four parallel parking spaces along the driveway to Ryder Street. There appears to be an opportunity for planting trees and other vegetation within this area to mitigate for the impacts to the Mill Brook AURA.

The planting plan specifies planting bulbs and perennials beds along the Riverwalk. Given the three to five-foot wide planting area, this area may be suitable for planting shrubs, which would provide some limited shading along Mill Brook.

Recommendations:

- (a) Provide an evaluation on the impacts to the AURA associated with Mill Brook.**
- (b) Evaluate the potential for planting shrubs within the planting beds along the Riverwalk.**

BETA2: BETA's Recommendations have been responded to as follows:

- (a) An evaluation has been provided demonstrating that the Project will result in increased vegetated area both within the 25-foot No Disturbance Zone and within the 0 – 100' AURA. The Applicant also stated at the May 18, 2021 ZBA hearing that the four parking spaces along the driveway to Ryder Street are required to meet the Parking Space demand for the Property.**

(b) The plans have been updated to specify shrub species within the planting beds along the Riverwalk. The reference to perennials and bulbs has been removed. Addressed.

8. The AURA, a protected Bylaw resource area, is measured 100 feet horizontally lateral from the boundary of areas Subject to Protection under the Act and Bylaw. AURA is significant to the interest of the Bylaw,³ and is found to provide several functions and values significant to Bylaw including wildlife habitat. Section 25 of the Bylaw defines two levels of protection within the AURA, a No Disturbance Zone measured 25-feet horizontally from the resource area and a Restricted Zone measured 75-feet horizontally from the No Disturbed Zone.

Recommendation: The Bylaw applies the AURA to certain resource areas, including the Bank to intermittent and perennial streams, to ensure protection of the interests identified in Section 1 of the Bylaw⁴. Based on BETA's Site inspection, the AURA on this Site is generally degraded and has limited function. Impacts to AURA that is vegetated should be quantified and any change in impervious area within the AURA should be quantified in accordance with Section 25(F) of the Bylaw Regulations.

Applicant's Response 4/1/2021: See the Applicant's respond to BETA's recommendation immediately above.

BETA1: As stated in Comment 7, BETA1, the Applicant has not provided an evaluation of the Project's impacts on the AURA associated with Mill Brook. In addition, the change in impervious area within the AURA is not quantified in accordance with Section 25(F) of the Bylaw.

Recommendations: Provide impact quantification as described in original comment.

BETA2: An evaluation has been provided demonstrating that the Project will result in increased vegetated area both within the 25-foot No Disturbance Zone and within the 0 – 100' AURA.

9. Vegetation removal within Areas Subject to Protection and Jurisdiction under the Act and Bylaw, including Bank, AURA, RA, and Buffer Zone, will be occur because of the Project. These resource areas are presumed to be significant to the interests of the Bylaw⁵. The Plan provides general site landscaping but does not include information on vegetation removal or replacement within protected areas.

Recommendation: The Applicant should provide the specific criteria for removing vegetation and replacement strategies outlined in Section 24 - Vegetation, B through H of the Bylaw. The proposed

³ The Arlington Bylaw defines AURA as the area 100 feet horizontally lateral from the boundary of any of the following Resource Areas: marsh, freshwater wetland, vernal pool, wet meadow, bog, swamp, bank, stream, creek, pond, reservoir, or lake, or resource area defined in Section 2.A(1) through (4) of the Bylaw.

⁴ Section 1, B of the Bylaw states "areas subject to protection under the Bylaw are to be regulated in order to ensure the protection of the following interests: public or private water supply, ground water supply, flood control, erosion control and sedimentation control, storm damage prevention, other water damage prevention, prevention of pollution, protection of surrounding land and other homes or buildings, wildlife protection, plant or wildlife habitat, aquatic species and their habitats, and the natural character or recreational values of the wetland resources (collectively, "Resource Area Values" or "Interests of the Bylaw")."

⁵In accordance with Section 24 A vegetation within resource areas is significant to the protection of wildlife, wildlife habitat, and water quality.

plans appear to provide greater area for planting than existing conditions, so the Project may be able to meet, or come close to meeting, the specific Bylaw performance standards.

Applicant's Response 4/1/2021: The project environmental consultant, Dan Wells of Goddard Consulting, has reported that 90% of the existing vegetation is non-native. The proposed swale design increases the watercourse length and is planted with 100% native species. See the attached layout and materials plans and site swale plan, Exhibits 3 and 6 in the Appendix.

The planting plan for the replacement vegetation provides for a greater area for plantings than the existing conditions and satisfies the standards set out in Section 24 – Vegetation, Sections B-H of the Bylaw.

BETA1: The Applicant has not provided sufficient detail to document compliance with the standards in Section 24 – Vegetation, B through H of the Bylaw Regulations. In addition, the planting plan for the Site (Sheet L102) specifies the use of several wetland species near the retaining walls along Mill Brook, however, soil and groundwater conditions may not be appropriate for establishing wetland vegetation (see Comment 3, BETA1).

Recommendations: Provide an evaluation that documents compliance with Section 24 – Vegetation, B through H of the Bylaw Regulations.

BETA2: An evaluation has been provided demonstrating that the Project meets most of the Performance Standards under Section 24 (B- H) of the local Regulations. BETA recommends including a Condition requiring the Notice of Intent to address all requirements under the Application for Vegetation Removal in accordance with Section 24 – Vegetation, E (1) through E (7).

10. BETA notes that the existing trees on the site growing out of the Mill Brook retaining wall may need to be removed to prevent future damage to the wall. To mitigate this removal, smaller shrubs can be planted near the top of the wall and trees can be planted with adequate setbacks to the wall. Additional vegetation will provide shelter, shade, and perch habitat over the brook to replace what is lost from tree removal. Vegetative shading along the river's retaining walls will help mitigate the rise in surface water temperature from the stone retaining walls.

Recommendation: Include additional vegetation replacement with consideration to shading of Mill Brook and improvement to native wildlife habitat.

Applicant's Response 4/1/2021: The tree removal at the top of Mill Brook originally proposed will not be proceeding. The surveyors have determined that those trees, which sit in close proximity to the Property line, are actually on the abutter's property. The Applicant does not have the lawful authority to remove these trees.

BETA1: Based on Sheet L101 of the Landscaping Plans and BETA's Site Visit, there are approximately five trees in this area that will no longer be removed. Tree protection measures should be specified on the Demolition plans for this area. Sheet L101 also depicts a proposed screening fence through the trunks of the trees to remain, which may need to be relocated to avoid impacts to the trees.

Additional plantings, including shrub species, should be considered within the planting beds along the Riverwalk

Recommendations:

- (a) Specify tree protection measures where proposed on the Demolition Plans.
- (b) Review fence location to ensure no interference with existing trees.
- (c) Include shrub plantings in the landscaped beds along the Riverwalk to help increase shading along Mill Brook.

BETA2: *BETA’s Recommendations have been addressed as follows:*

- (a) *The Demolition Plan has been revised to call out the location where tree protection is required. BETA recommends this plan be incorporated into a final complete Site Development Plan Set.*
- (b) *The Applicant’s response states the proposed railing that follows Mill Brook will avoid the trees. BETA recommends the Decision include a condition requiring the existing trees along Mill Brook be protected during construction.*
- (c) *See Comment 7, BETA2 (b). Addressed.*

REQUESTED WAIVERS

The Applicant has requested a waiver from ten (10) provisions in the Wetland Protection Bylaw and Regulations. The provisions for which a waiver has been requested are presented below in Table 1, along with BETA’s comments on the purpose and need of each request.

BETA1: The Applicant did not provide responses to BETA’s waiver request evaluation. Where needed, updated responses are provided in Table 1, labeled “BETA1”.

BETA2: *The Applicant provided an updated narrative describing the Waiver Requests. Table 1 presents the updated Waivers requested. BETA’s initial and April 13, 2021 comments have been removed from the Table and updated via comments labeled “BETA2.”*

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

Proposed Provisions to be Waived	Comments on Waiver Request
Regulations, Section 20C – Bank Performance Standards	<p><u>BETA2:</u> <i>Based on correspondence, issuance of this Waiver is supported by the Conservation Commission. Waiving this Provision will allow Ryder Brook to be relocated but will not result in the new Brook being considered a Resource Area. This Waiver will prevent adding restrictions to nearby properties.</i></p> <p><u>Recommendation:</u> <i>Include a Condition stating the Bank of the relocated Brook shall be protected in perpetuity.</i></p>
Regulations, Section 22 – Land Under Water Bodies Performance Standards	<p><u>BETA2:</u> <i>See above. This Waiver is also supported by the Conservation Commission.</i></p> <p><u>Recommendation:</u> <i>Include a Condition stating the Land Under the relocated Brook shall be protected in perpetuity.</i></p>

<p>Regulations, Section 25D – 25’ No Disturbance in AURA Performance Standards</p>	<p><i>BETA2:</i> According to the local regulations under this section, “This No-Disturbance area shall at a minimum contain the same amount of area of undisturbed and natural vegetation from its pre-project state. A previously disturbed or previously developed 25-foot area shall be restored to a naturally vegetated state to the greatest extent practicable”.</p> <p><i>The Applicant has demonstrated that the Project will result in a decrease in impervious area within the 25-foot NDZ.</i></p> <p><i>Waiving this provision will prevent the Commission from requiring removal of the parking spaces along the driveway to Ryder Street.</i></p>
<p>Regulations, Section 25C – Alternatives Analysis for Work in 100-foot AURA</p>	<p><i>BETA2:</i> This provision states “Only when the Applicant proves through a written alternative analysis that reasonable alternatives are not available or practicable, the Commission may, in its discretion, allow temporary, limited, or permanent disturbance as appropriate and consistent with this Section...”</p> <p><i>Granting this Waiver is not required for permitting this Project under the Bylaw, however, granting the Waiver would also not significantly impact the public interests the onsite resource areas provide.</i></p>
<p>Bylaw, Section 4(b) paragraph 5 – 200-foot undisturbed vegetation in RA</p>	<p><i>BETA2:</i> The Bylaw states “The Commission (...) may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 200-foot riverfront area or bordering land.”</p> <p><i>This provision of the Bylaw is not a required performance standard. Given the existing degraded conditions within the 200-foot Riverfront Area and ACC’s comments on the Project to date, it is unlikely they would require a 200- foot undisturbed area. A Waiver from this provision may not be necessary, however, it could be granted without significant impacts to the environment.</i></p>
<p>Bylaw, Section 16 and Regulations, Section 11 – Permitting and Consultant Fees</p>	<p><i>BETA2:</i> The applicant is requesting a waiver of 50% of the local filing fees. The filing fees for this project would fall under Section 11.A.4. “N3” of the Regulations (Multiple dwelling structures) and Section 16.B.5. of the Bylaw. The fees presented in these sections are not consistent. Granting this waiver would result in a decrease of local filing fees from around \$15,000 to \$7,500.</p> <p><i>These filing fees are used by Conservation Commissions to fund review of Projects by staff. BETA defers to the Conservation Commission to comment on whether the requested filing fee would be adequate to fund their staff’s review of this Project.</i></p>
<p>Bylaw, Sections 10 & 11 – Bond Requirements</p>	<p><i>BETA2:</i> The applicant is requesting a waiver of the bond requirements in the Bylaw. Given the proximity of the Project to the onsite resource areas, and the potential for the Project to impact Protected Resource Areas, BETA recommends retaining the right to require a performance bond, primarily related to the stream relocation portion of the Project.</p>

Conclusions

The Project will require issuance of an Order of Conditions by the ACC under the Massachusetts Wetlands Protection Act and its Regulations. Because the Project has been filed under the M.G.L. Chapter 40B provisions, the ZBA administers the local Bylaws, including the Arlington Wetland Protection Bylaw, Article 8 and Regulations for Wetland Protection. The Applicant has requested that the ZBA waive specific sections of the Town of Arlington Wetland Protection Bylaw, Article 8 and Regulations for Wetland Protection.

Based on BETA's review of the Project Materials, granting the requested Waivers of the Town of Arlington Wetland Protection Bylaw, Article 8 and Regulations for Wetland Protection will not have a significant impact on the public interests provided by the onsite resource areas with the exception of possibly one waiver request. Granting a Waiver of Sections 10 and 11 of the Bylaw would eliminate the Commission's ability to require a performance bond to fund the relocation and/or planting of the brook if the Developer should fail to properly complete the work or if the plantings fail.

If you have questions about any of these comments, please feel free to contact me at any time. Thank you.

Very truly yours,

BETA Group, Inc.



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