

July 16, 2024

VIA EMAIL

William Andrews, Chair
Zoning Board of Appeals
Town of Upton
1 Main Street
Upton, Massachusetts 01568

RE: Proposed 40B – Upton Apartments – 47 Main Street, Upton, MA
Applicant's Response to Memorandum from Daniel Hill, Esq., dated July 5, 2024

Dear Chair Andrews and Other Board Members:

This firm represents the Applicant, Lobisser Building Corp., with regard to the Project referenced above. The following is the Applicant's response to a so-called "Attorney-Client Privileged" Memorandum, dated July 5, 2024, issued to the Upton Select Board by Attorney Daniel Hill, Esq. (the "Hill Memo"). As an initial matter, the Applicant takes exception to the manner and content of the Hill Memo for the following reasons. First, while the Applicant was informed that the Town Administrator and Select Board decided to retain Mr. Hill to review procedural issues only even though the ZBA had retained very experienced legal counsel as its 40B consultant, there is nothing in the Hill Memo which is procedural in nature, which suggests that Mr. Hill could find no procedural error or irregularity. Second, while the Select Board, like any other local Board, is certainly entitled to comment on a pending Application, the last-minute timing of the circulation of the Hill Memo is certainly suspect, and appears to have been authored in a manner designed to attempt to create new issues where none exist, or which is designed to simply to reduce density although this Project density is comparable to the density of other nearby 40B projects. Third, the Hill Memo appears to make broad, unsubstantiated allegations of violations of law or regulations without substantive evidence to back it up, even after extensive peer review was performed by professionals retained by the ZBA. Fourth, Mr. Hill is a licensed attorney, and as such, knows better than to render opinions on traffic, stormwater, planning, and design for which he is unqualified to make. Mr. Hill is neither a professional traffic engineer, civil engineer, or architect licensed in Massachusetts, and therefore is unqualified to make the statements related to such topics. As such, the statements of Mr. Hill are merely unqualified opinions as the Hill Memo makes no statement that his personal opinions were rendered with, or based upon, the advice of professionals qualified to render such opinions, and does not rise to the level of peer review and for that reason, the Applicant will not pay for the peer review of the Hill Memo. Lastly, the Hill Memo is riddled with inconsistency, bases bold statements on the review of outdated plans and materials, and simply has been prepared to interpose delay on a ZBA proceeding where the Applicant has in good faith undertaken extensive efforts

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to resolve outstanding design and regulatory issues throughout the process, both with the ZBA and Town officials, and well as with neighboring abutters.

Notwithstanding the foregoing, the Applicant has nevertheless agreed to prepare this formal response to the Hill Memo with the assistance of the Applicant's Project Team professionals, and with documentation suggesting that the issue raised has either been resolved by the Applicant's professional team, has been reviewed by the ZBA's peer review professionals and determined the matter has been satisfactorily resolved, and/or is irrelevant to the review of this Project.

Accordingly, the following is a recitation of each of the statements of opinion in the Hill Memo, followed by the Applicant Team's response to the same.

I. Summary

Under Chapter 40B, the Zoning Board's obligation under the statute is to make a decision, after weighing all the evidence, that is "consistent with local needs."¹ A decision is "consistent with local needs" if it is "reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and **the need to protect the health or safety** of the occupants of the proposed housing or of the residents of the city or town, **to promote better site and building design in relation to the surroundings**, or to preserve open spaces."²

Applicant's Response: By definition, decisions of the ZBA must be Consistent with Local Needs. There is a presumption there is a substantial Housing Need which outweighs Local Concerns given that Upton's SHI % is only 6.37%.

There is a prevailing myth that local bylaws do not apply to Chapter 40B projects, or to projects in towns that don't have 10% affordable housing. That is wrong. Local rules apply to Chapter 40B projects unless the Applicant can prove that waivers are needed to make the project economically viable, and that the need for affordable housing outweighs the "local concerns" protected by the local bylaws and regulations for which waivers are sought. This balancing test was illustrated in the seminal case of Reynolds v. Stow Zoning Bd. of Appeals, Appeals Court No. 14-P- 663 (Sept. 15, 2015), where the Court ruled that it was "unreasonable" for the zoning board to grant waivers from restrictive local bylaws given unmitigated environmental and health impacts. To put this standard in plain English, the Zoning Board need only grant waivers to the extent they are necessary to make the project economically viable, and even then, only when they do not implicate public health, safety, environmental or planning concerns.

Since the Applicant has asked for and needs waivers to deviate significantly from the Town's bylaws to build a project with a relatively extreme level of density, and "intensity of use" of the Project Site, the Zoning Board would be within its right to demand an economic justification from the Applicant for these waivers. The Board does not need to accept a density of 60 units unless the Applicant proves that such a density is

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required for the financial viability of the Project. However, even if the Applicant can meet its "economic burden of proof" under Chapter 40B, as discussed above, the Board can still deny the Project, or deny specific waivers, or condition its approval of the Project, if the detrimental impacts from the Project outweigh the need for housing.

With this background, I will next address the Project's shortcomings, from my initial review of the materials submitted to the Zoning Board.

Applicant's Response: The Applicant has clearly defined the list of waivers which it deems are necessary to be granted to enable the Project to proceed. The Applicant has never suggested certain local bylaws do not apply to the Project, except where necessary to allow the Project to proceed. Pursuant to 760 CMR 56.05(7), the Board shall grant such Waivers as are Consistent with Local Needs and are required to permit the construction and operation of the Project. The whole nature of Chapter 40B is to allow for waivers of local bylaws and requirement to enable and expedite the creation of affordable housing, and every Chapter 40B Project requires some level of waivers from local zoning and other requirements. Contrary to assertions in the Hill Memo, the Project complies with every dimensional requirement of the Zoning Bylaw except for building height and number of stories.

During this entire process, the Applicant has made adjustments to the Project (reducing both height and density) based upon comments obtained during the review process, while at the same time ensuring that the Project remains economically viable. These waivers are essential to making sure we can build a project that is viable.

II. Planning Issues

1. **Compatibility with Historic District.** The Project Site is partially within and abuts the Upton Center Historic District, and the proposed project is materially incongruent with the design standards and prevailing architecture in the District. UHD Letter 4/10/24.

Applicant's Response: The Hill Memo comment is irrelevant. The Upton Historical Society acknowledged there would be no building within the area of historic concern, and based upon a filing made by the Applicant with the Massachusetts Historical Commission (MHC), the MHC made a determination that "the Project is unlikely to affect significant historical or archeological resources."

2. Site Selection and Site Design

- a. Chapter 40B Guidelines adopted by the Department of Housing and Community Development proscribe that

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[when developing multi-family housing in the context of an existing single-family neighborhood], it is important to mitigate the height and scale of the buildings to adjoining sites.

[T]he massing of the project should be modulated and/or stepped in perceived height, bulk and scale to create an appropriate transition to adjoining sites.

Applicant's Response: The Hill Memo cites to certain factors a Subsidizing Agency may consider when issuing a Project eligibility Letter. The regulations at 760 CMR 56.04(4) set out the findings that are necessary for a determination of Project Eligibility by a Subsidizing Agency in addition to the 40B Guidelines. As a part of its Project Eligibility Letter determination, MassHousing made findings as part of its review in issuing Project Eligibility Letter. including:

- that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns;
- the Project is located on Main Street in the Center of town, and the Memorial Elementary School is steps west of the subject property at the intersection of Main Street and Fiske Avenue;
- overall, the site is well-positioned to support the proposed multifamily residential use; and,
- the site plan accommodates outdoor amenity space, including a playground and dog park. The balance of the Site remains wooded.

By virtue of the fact that MassHousing, as the Subsidizing Agency issued a Project Eligibility Letter for the Project, MassHousing made a determination that the Project satisfies these Project Eligibility criteria.

DHCD's "Handbook -Approach to Chapter 40B Design Reviews" suggests that projects can be deliberately designed to minimize disruption with neighborhood patterns.

"Affordable housing projects under c.40B often have design elements that are different from the surrounding context as described by the terms used in the regulations; e.g., use, scale. However, with careful design and consideration of the project elements in relationship to the adjacent streets and properties, the projects can better integrate with the surrounding context."

DHCD's "Handbook -Approach to Chapter 40B Design Reviews" further provides:

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"The mass and scale of a building may be reduced by altering the building's bulk. The features that can minimize the mass and scale should be about the same size as the same features on adjacent properties."

The Project does not meet any of these standards.

Applicant Response: The Hill Memo cites to selected provisions of the DHCD Design Handbook as support for the proposition that the ZBA should consider reducing massing and density. However, the Hill Memo mis-states the purpose of this Design Handbook. The introductory provisions of the Handbook state that "... the Chapter 40B Design Principles Handbook (Handbook) *was created to provide information and guidance for the design review process undertaken by the agencies subsidizing c.40B affordable housing projects in Massachusetts.*" Moreover, the Handbook states that "... while this Handbook is intended for the Subsidizing Agencies and the individuals who perform the design reviews under the regulations, the content will also inform Project proponents submitting Projects for Site Eligibility. However, *this is only a recommended approach and each of the Subsidizing Agencies will determine their specific requirements for the design review.* Those not involved in the design or review processes may use this information to understand the criteria that are considered by the Subsidizing Agencies in the review process" (emphasis added). Accordingly, the Hill Memo misuses the design considerations which may be considered by a Subsidizing Agency in its review and issuance of project eligibility letters, as a basis for the ZBA to change design and density. The Handbook design considerations are therefore irrelevant to the ZBA review process.

We note, however, the PEL made the following findings: the building is set back in the northeast portion of the Site, away from Main Street, and is oriented such that the short end of the structure is facing abutting single-family homes on Whitney Lane to minimize potential visual impact; the building's materiality is designed to break down the scale of the structure, utilizing a combination of street level masonry veneer, horizontal lap siding, vinyl shakes, vertical window bays, and individual unit-accessed balconies; in addition to the topographical siting of the structure discussed below, the building has been designed with a flat roof, to reduce the height of the building.

Notwithstanding the foregoing, over the past 10 months, the Applicant has made substantive modifications to site and building design in response to comments made by the ZBA, Fire Department, Peer Reviewers, and the public. Changes included: reduction of density by eight units, and consequent reduction in building height, movement of entrance driveway to be farther away from Whitney Lane, movement of two garages to improve buffer from Whitney Lane, elimination of basement level in response to Fire Department concerns, movement of sewer line connection to eliminate a Wetlands crossing, reduction in the number of balconies, enhanced articulation of building elevations, and, improvements to stormwater design.

- b. The Project consists of 60 apartment units and associated parking areas, driveways, and utilities on approximately 6.75 acres of land, much of it wetlands

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and associated buffer zone. This population concentration is more typical of an urban environment where there is ready access to mass transportation, and where employment, retail, recreational and municipal services are within walking distance. The Project evokes urbanism in a suburban/rural context.

Applicant's Response: The Project density is at 8.88 units per acre, which is at a density much lower than other multifamily 40B projects. For comparison purposes, that density is about one half the density that the Town is obligated to zone for under the MBTA Communities Law, which requires a density of 15 units per acre, and which the Town of Upton is required to adopt. We also note that this Project is less dense than the Project approved by the ZBA at 149 Main Street in 2018 where the density for that 44-unit project is 9.03 units per acre. We also note that this Project is located in the Upton downtown and is near restaurants, shops and other small businesses. It is near town hall, the community center and other amenities; an area well-suited for a multifamily housing community.

- c. The state's Chapter 40B program expresses a preference for projects that conform to the Commonwealth's "Sustainable Development Principles," originally adopted by the Romney Administration in 2007. To that end, the subsidizing agency (here, MassHousing) requires all applications to complete a "self-assessment" on its "sustainable development principles score card." The Project is the antithesis of smart growth. The Project Site is not supported at all by public transportation, let alone by mass transit. The closest train station, in Grafton, is more than a 3-hour walk from the Project Site, according to Google Maps. The Project will be entirely auto-dependent.

Applicant's Response: The Applicant had completed an assessment of compliance with sustainable development principles as a part of its PEL Application. By virtue of the issuance of a PEL for the Project, the Subsidizing Agency had previously determined that the Project does comply with and satisfy Sustainable Development Principles. Therefore, this comment is irrelevant to the ZBA's deliberations. Otherwise, is Mr. Hill suggesting that Subsidizing Agencies should not entertain 40B projects not located near mass transit? We doubt that EOHLC would take such a position. Notwithstanding the foregoing, the site is appropriate for housing as it is within walking distance of the Upton downtown area and has been recognized as a very good site for a residential community.

3. Open Space

- a. For a 60-unit project there is a striking lack of useable open space, recreation areas, or play areas for the residents, in particular the children. The proposed "play" area is approx. 40' x 30' (1200 square feet). Based on my quick review of GIS and aerial photos, there does not appear to be any public parks, playgrounds or outdoor recreation areas within walking distance. There is virtually no upland areas on the project site that are not proposed to be consumed by buildings, pavement or stormwater utilities.

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Applicant's Response: This is simply not true. Moreover, the Hill Memo misinterprets the context of "Open Space." Under the 40B Regulations, "Open Spaces" means "land areas, including parks, parkland, and other areas which contain no major structures and are reserved for outdoor recreational, conservation, scenic, or other similar use by the general public through public acquisition, easements, long-term lease, trusteeship, or other title restrictions which run with the land." See 760 CMR 56.02. Open spaces are available for the Project both on-site and off-site. For example, the Memorial School which includes fields, athletic courts and a playground is located .3 miles away from the site. This would be a simple six-minute walk. Furthermore, the new Upton town library is .5 miles away from the site that has a field as well. Moreover, the PEL issued by MassHousing cites to the following: the Site is located on Main Street, in the center of Upton. Main Street, or Route 140, is a two-way thoroughfare that runs east/west through the center of Upton between Milford and Grafton. There are sidewalks on both sides of Main Street, allowing for pedestrian connections to nearby local facilities and shops. Surrounding residential uses are primarily single-family homes, with a few small multi-family dwellings. Further west on Main Street are several larger multifamily structures, including the recently constructed and occupied 149 Main Street. The Memorial Elementary School is steps west of the subject property at the intersection of Main Street and Fiske Avenue. Overall, the site is well-positioned to support the proposed multifamily residential use." Moreover, a quick review of the Zoning Bylaw would lead to the conclusion there is no open space requirement for this Zoning District. Nevertheless, the Zoning Bylaw requirement for maximum building coverage is 30%, where the Project provides for 9% building coverage, thus complying with Zoning requirements. The Applicant feels that adequate play area for children has been provided. Of course, more could be provided in the upland buffer area adjacent to Whitney Lane but we doubt the Whitney Lane neighbors would appreciate this. Also, private outdoor area will be provided through patios and balconies for a number of the units. Based upon the Applicant's experiences at 149 Main, the Applicant is not anticipating that a large number of children will be living at 47 Main.

- b. There was a recent study published in the journal of SSM - Mental Health (Publisher: Elsevier), entitled "*PIC! Jgro1mds are for children: Investigating developmental/J-specific "Green Space" and child mental health.*" In the peer-reviewed study, the researchers from the School of Public Health and Department of Psychology at the University of Washington, WA investigated the association between parks/playgrounds and young child mental health and concluded that children living near parks with playgrounds have better mental health than those without playgrounds (i.e., worse mental health for children without playgrounds).

Applicant's Response: We refer to the comment above. No further comment is required.

III. Outstanding Design Issues

4. Vehicular Access

- a. There is only one driveway providing access to the Project. The

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driveway is approximately 600 feet until you get to the loop portion of the driveway around the apartment building. If there is ever an obstruction along that 600-foot section, the residents would be stranded. This section of the driveway runs along the edge of a wetland for the entire 600 feet, so flooding or icing during storms is a real potential.

Applicant's Response: Many 40B projects have been built across the state with single access driveways—including 149 Main in Upton, so it is not uncommon. There has never been an access issue at 149 Main. The Upton Fire Department is satisfied with the access and the Swept Path analysis -- which was completed based upon the largest fire fighting vehicle used in Upton. The building will have a sprinkler system that complies with all code requirements. The Fire Department will have access on all four sides of the building. There will be adequate flow and pressure for all firefighting needs. There are no fire safety issues with the driveway. The Applicant will retain a property management company which will be obligated to maintain the driveway. There are longer driveways in the Town of Upton and there is no bylaw in the Town of Upton for length of driveways.

- b. A "Truck Simulation" Plan dated September 13, 2023 was provided, showing a simulated route a large vehicle would take along the internal driveway of the Project. It is common for applicants to provide such a plan, typically prepared through the use of a computer modeling program like AutoTurn, demonstrating that the municipality's largest fire trucks and other large trucks that commonly visit a large apartment complex like this (e.g., moving trucks) can navigate the internal driveways in conformity with the state Fire Prevention Code.

The Applicant's plan, however, is deficient in a number of respects. First, there is no information on the plan describing what vehicle was used in the model (does it match the dimensions of the Upton ladder truck?), or what computer model was used. Second, the plan actually proves that the design of the Project's driveway does not comply with the state Fire Prevention Code. The use of the opposite travel lane is prohibited in the design of all new fire access roads. 527 CJ\1R §18.2.3.5.8.³ Yet, at the main driveway entrance, fire apparatus would need to enter the opposite lane of travel when entering the Project driveway and at several other points along the route inside the Project Site. Oddly, the simulation does not show how a fire truck will *exit* the Project Site, but given the sharp turning radii proposed at that intersection, the truck would most likely need to cross over the center line of Route 140 when taking a right turn. I note that the Applicant does not properly show the center line or travel lanes of either Route 140 or the internal driveway, which is another omission on this plan.

Applicant's Response: The Applicant worked with the Upton Fire Department to make sure it is comfortable with the design. A Swept Path Analysis was approved by the Fire

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Department and Stantec. The computer model used for the simulation was Carlson survey which is standard. When the truck enters the site and exits the site it stays in its own lane shown on our plan. For a private driveway, the Upton Fire department has approved of the design and fire apparatus stays within the driveway lane limit. The Project entrance from Main Street is under the jurisdiction of the MassDOT, and to the extent that MassDOT requires adjustments to the access point, the Applicant will comply with MassDOT Access Permit requirements.

- c. In the Applicant's "Updated Transportation Impact Assessment" ("TIA") dated January 26, 2024, it states available stopping sight distance ("SSD") on Route 140 at the location of the Project intersection is in excess of 650 feet in both directions. It also claims that the Project has over 650 feet of intersection sight distance ("ISD") in both directions. Providing adequate sight distances is a critical public safety consideration when reviewing large development projects. The Applicant's report does not include any diagrams or calculations supporting this conclusion, and I question the accuracy of these representations.

SSD analysis assesses the distance a driver on Route 140 must be able to see to avoid a collision with a vehicle exiting the Project driveway onto Route 140. The ISD analysis assesses the distance a driver *exiting* the Project driveway must be able to see approaching vehicles, without their line of sight being obstructed, to make a safe judgment regarding entering Route 140. The Commonwealth of Massachusetts Department of Transportation ("MassDOT") Project Development and Design Guide, Chapter 3, § 3.7 (p. 3-37) states that project designers should refer to the widely-accepted industry standards published in the manual "Geometric Design of Highways and Streets" (Green Book" 7th Edition, 2018) by the American Association of State Highway and Transportation Officials ("AASHTO"). The Applicant's

³ This requirement is not in the NFPA model code, but was adopted in Massachusetts.

traffic study references the AASHTO standards, and claims that the Project meets them.

The Applicant states that based on the recorded travel speeds in Route 140 under existing conditions, the minimum SSD and ISD necessary for this Project intersection is 305 feet in both directions. Assuming this to be correct, I question the Applicant's conclusion that it has 650 feet of SSD and ISD in either direction. Route 140 curves to the south to the west of the proposed intersection, and this has the effect of blocking sight distances in the westerly direction. Attached are several figures I prepared using the MassGIS website and measuring tools, indicating that both the SSD and ISD sight lines would cross over private property if

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they are at a length of 305 feet. SSD of 650 feet is **not** achieved west of the intersection, due to the curvature of the road, based on my basic assessment.

Concerning ISD, AASHTO guidelines specify that in making this calculation, the sight line is measured from a location **14.5 feet back** from the edge of the roadway, and 3.5 feet above the driveway grade, representing the position of the driver's eye sitting in a car that has approached, but not yet entered, the intersecting street (here, Route 140). From a distance 14.5 feet back from the edge of the road, the sight line crosses over the private property at 51 Main Street, and likely crosses over 45 Main Street to the east. See, **Figure 1** below. Absent a legally-enforceable agreement such as a license or easement, the Applicant has no way of preventing that abutting owner from installing a tree, fence, or other view obstruction on its own property.

Surprisingly, the ZBA's peer reviewer, Stantec, accepted the Applicant's conclusions of 650 feet.

Applicant's Response: In its January 26, 2024 response to Stantec's Peer Review comments, under "Sight Distance Assessment Comment:" Stantec reviewed VAI's sight distance assessment, including the SSD and ISD calculations and concurs with the results. Attorney Hill is not a Traffic Engineer or a Professional Engineer licensed to perform engineering services in the Commonwealth or to offer professional opinions concerning engineering matters. The ZBA retained the services of a qualified engineering firm with demonstrated experience in the fields of Civil Engineering and Traffic Engineering to review the Project and they have concurred that the parking supply is sufficient to support the project and that safe and efficient access can be provided. Attorney Hill may offer his opinion; however, two licensed Professional Traffic Engineers have attested to the adequacy of the transportation infrastructure to serve the Project. Attorney Hill is not qualified and is not a recognized expert in the fields of Traffic Engineering or Transportation Planning and his opinion should only be considered as just that, his opinion as a lay person.

- d. I did not see a roadway profile plan for Project driveway, which is a typical component of a plan set. The grade (slope) of the sidewalk running along the driveway appears to be exceed 6% in some locations (i.e., 338' to 344'), which exceeds the state Architectural Access Board standard of 5%. Accessible routes that exceed 5% are considered "ramps," and appropriate accommodations must be made. I did not see any details of this sidewalk or ramps in the plan set.

Applicant's Response: The site plans have been reviewed by the ZBA, the Upton DPW and the ZBA's peer review engineering professionals. No issues of concern were raised. A roadway profile plan was not required to be submitted. The Applicant will conform to

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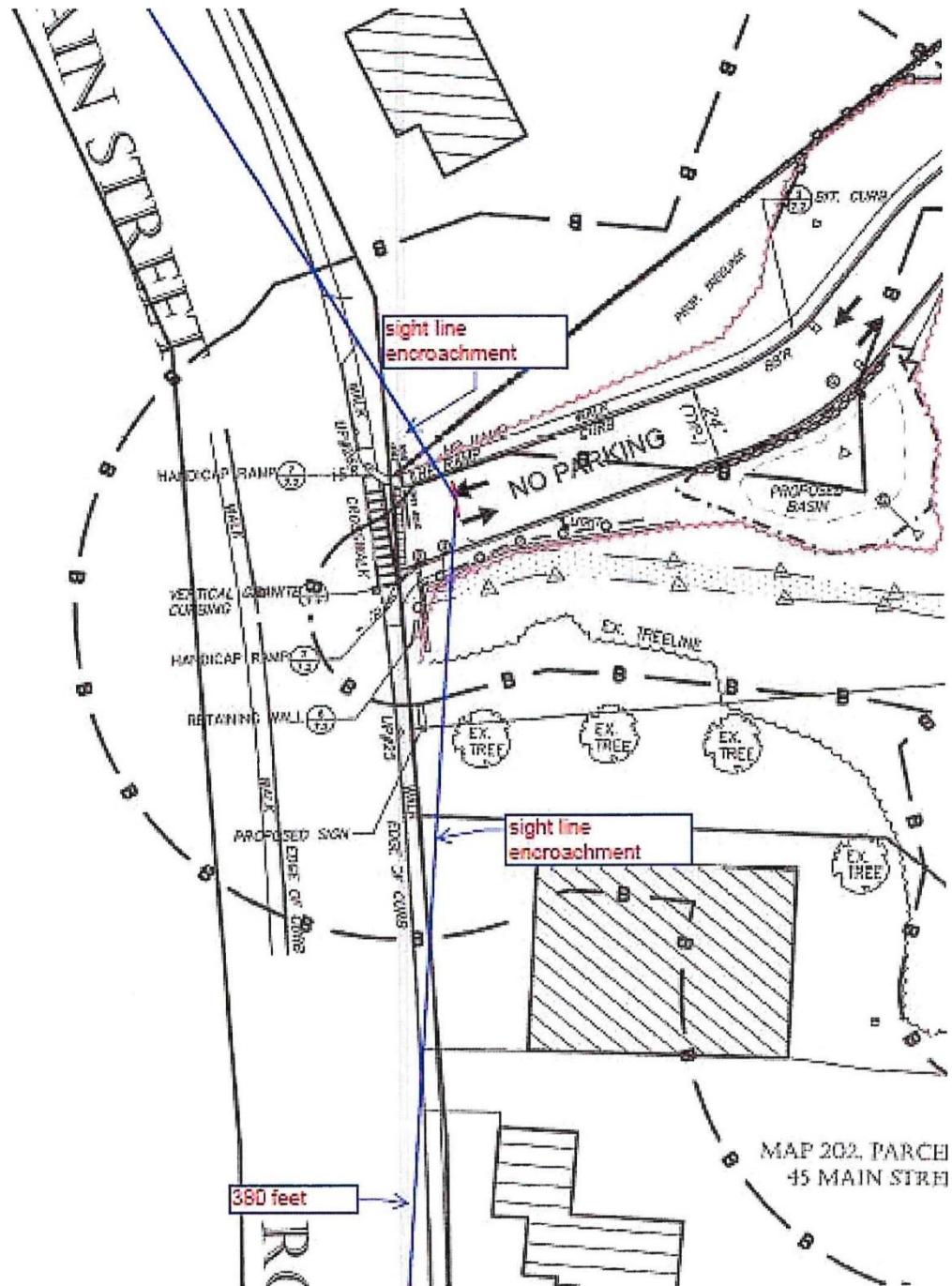
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any Fire Department and DPW requirements as the Project plans are advanced to construction level for purposes of obtaining a building permit. The standard Mr. Hill is referring to is a 5% slope from the handicap parking spaces and the building. This standard would not be used for a sidewalk along a driveway. However, we always strive to have the most safe site possible and we will add notes to the grading plan to ensure the sidewalk is constructed at no greater than a 5% slope. The Project shall also conform to all applicable state Architectural Access Board and federal ADA requirements.

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Figure 1 — Plan Sheet C-4.0



5. Stormwater Management

a. There are two proposed *surface* infiltration basins, and two proposed *subsurface* infiltration systems on the east side of the Project Site. Under the state Stormwater Handbook, stormwater infiltration systems must be set back from wetland resource areas by at least 50 feet. See, SW

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Handbook, Vol. 1, c. 1, Table RR. Further, the Handbook requires unimpeded vehicular access around the perimeter of the basin, for maintenance purposes. DEP has recently required a 15-foot flat surface at the top of an open-air infiltration basin, or a proposed memory care facility on Highland Street in Milton.

For Basin #2, a wetland is approximately 30 feet from the top of the basin, and 10 feet from the toe of the slope outside the basin, according to the Applicant's site plan (Sheet C.-5.0). The toe of the slope on Basin #1 is within 50 feet of a wetland. Basin #2 does not appear to have an access driveway.

Applicant's Response: The Applicant has gone through 10 months of reviews and revisions with Stantec with respect to stormwater design and management. It has been the ZBA's number one concern. We have come to a plan that is satisfactory to everyone and goes above and beyond what is required. The Project complies with applicable stormwater standards. Mr. Hill's dimensions are incorrect. For example, all infiltration portions of the basins are 50 feet away. The top of basin number #2 is 50 ft away from wetlands. All Basins have driveway access. The fact that Mr. Hill is citing a circumstance from Milton MA for a completely different use is irrelevant to the Project review.

- b. The Stormwater Handbook requires a minimum vertical separation of 2 feet between the bottom of the infiltration basin and seasonal high groundwater. Basins 1 and 2 were originally designed without adequate separation. The Applicant's engineer subsequently raised the elevation of these basins to achieve at least four feet of separation, but the two subsurface infiltration systems have less than four feet, requiring a mounding analysis to demonstrate that there "will be no groundwater interference. See, "Basin Cross Sections" plan sheet (C-11.0). I did not see a mounding analysis in the Applicant's stormwater report, although I had difficulty reading the copy of the report that is posted on the ZBA's website - large portions of it are illegible.

Applicant's Response: See response above. The Project stormwater design was peer reviewed by Stantec. Design modifications were made to address all concerns raised in Peer Reviews. Stantec has approved the stormwater designed. In fact, the Project will improve stormwater conditions for all abutters. Vehicle access to all basins has been incorporated into the design to ensure ease of maintenance. We also note that the groundwater mounding calculations were in the stormwater report, which were reviewed by Stantec. If the Stormwater report was difficult to read, Mr. Hill could have requested a copy from the Applicant or the Town, but to our knowledge, never bothered to do so.

6. Solid Waste Management

- a. Trash collection is proposed to be located outside of the building, rather than within a self-contained trash room within

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the building, which is more typical.

Applicant's Response: It is better sanitation practice to have waste taken outside than to remain in buildings. All units will have garbage disposals. The size of dumpsters/frequency of pick-up can be adjusted based upon actual experience. Recycling dumpster will be included.

- b. Two dumpsters are proposed, which may not be sufficient for the demand needs of an 60-unit building. Fewer dumpsters means more frequent trash collection by trucks, which increases nuisances to residents and neighbors. Exterior trash collection also presents issues with odors and rodents, and is unsightly to abutters - the dumpsters are inappropriately proposed within approx. 30 feet and 53 feet of abutting properties (45 Main Street and 15 Whitney Lane)

Applicant's Response: Mr. Hill seems to be referring to outdated plans from 2023. The Applicant has extensive experience in managing buildings and will have a professional management company involved in the management of solid waste. Based upon the Applicant's ownership and management of similar buildings, the Applicant has no concerns with the Project trash system. Size of dumpsters/frequency of pick-up can be adjusted based upon actual experience. Recycling dumpster will be included. Trash collection is proposed to be located outside of the building, rather than within a self-contained trash room within the building.

- c. It is not clear whether one of the two dumpsters would be reserved for recycling.

Applicant's Response: See comments above.

- d. There is no walking path from the side exterior door on the ground level to the rear dumpster - if there parking lot is full of cars, you would have to walk with your trash bags between parked cars. See Figure 2 below.

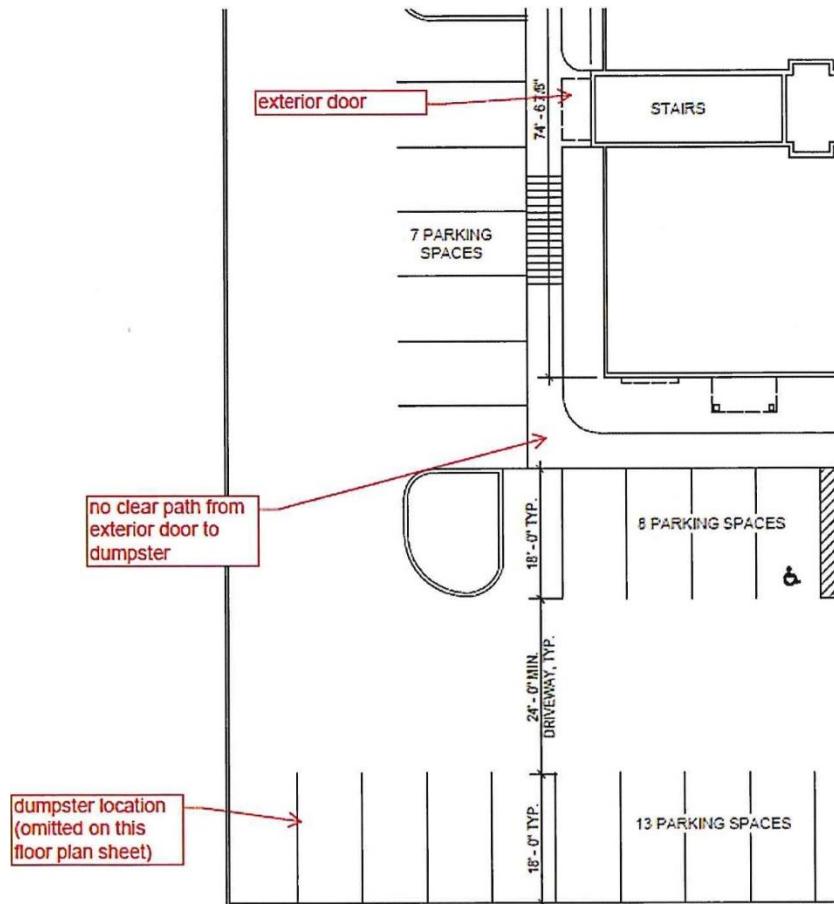
Applicant's Response: The seven spaces located on the side of the building were removed. This plan reviewed by Mr. Hill is outdated and has been superseded. However, even though it is not required, the Applicant has added a walking path.

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Figure 2 - Architectural Plan 9/7 /23



7. Parking / Loading

The Project is providing 92 spaces. The Institute of Traffic Engineers (ITE) Parking Generation Manual (5th Edition, January 2019) contains recommendations for various land use categories. For "Mid-Rise Multifamily Housing (LUC 221)" in "General Urban/Suburban" setting not within $\frac{1}{2}$ mile of rail transit, the corresponding ITE parking ratios are 1.7 spaces per dwelling unit or 1.0 spaces per bedroom, suggesting the parking supply needed to support the Project is approximately **136 spaces**. A number of factors make expansion of parking supply on the Site untenable, necessitating instead a reduction in the parking demand for the Project, which is unrealistic in light of the Project's auto dependence. Reducing the number of units in the Project is the only feasible way to provide a sufficient supply of parking to meet anticipated demand.

Applicant's Response: Mr. Hill is unqualified to render an opinion on the adequacy of parking as he is not a traffic engineer, and is incorrect in his assertions for the following reasons. First,

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the Applicant's traffic engineers, Vanasse & Associates, Inc., had stated that "the proposed parking ratio is consistent with the parking ratios observed for other multifamily residential communities in a similar setting documented by the ITE." Second, Mr. Hill used an outdated version of ITE as the basis for forming his opinion on the projected parking needs in that Mr. Hill relied on the ITE Manual (5th edition)(2019) which has been superseded by "Parking Generation, 6th Edition; Institute of Transportation Engineers; Washington D.C.; October 2023." Third, and although the Vanasse Updated TIA, dated June 15, 2023 (Updated January 26, 2024) found that "off-street parking will be provided for 105 vehicles, or a parking ratio of 1.54 parking spaces per unit," based upon 68 units, we note that with the subsequent reduction of the unit count to 60, and the provision of 93 parking spaces, leads to a parking ratio of 1.55 parking spaces per unit, a slight improvement to the proposed parking ratio. Stantec, based upon a review by its professional traffic engineer, did not disagree as to the adequacy of parking for the Project. Accordingly, the Applicant has full confidence in both firm's professional traffic engineers that parking is adequate for the Project.

- b. There is no dedicated loading area for temporary vehicle trips, such as drop-offs (e.g., Uber), delivery vehicles, moving trucks, etc. These types of temporary or transient trips are more common in this type of residential setting. Moving trucks will be a regular occurrence because this is a rental property. There does not appear to be any thought or planning into moving day logistics. A moving truck would necessarily block a driveway while loading/unloading. See Figure 3 below.

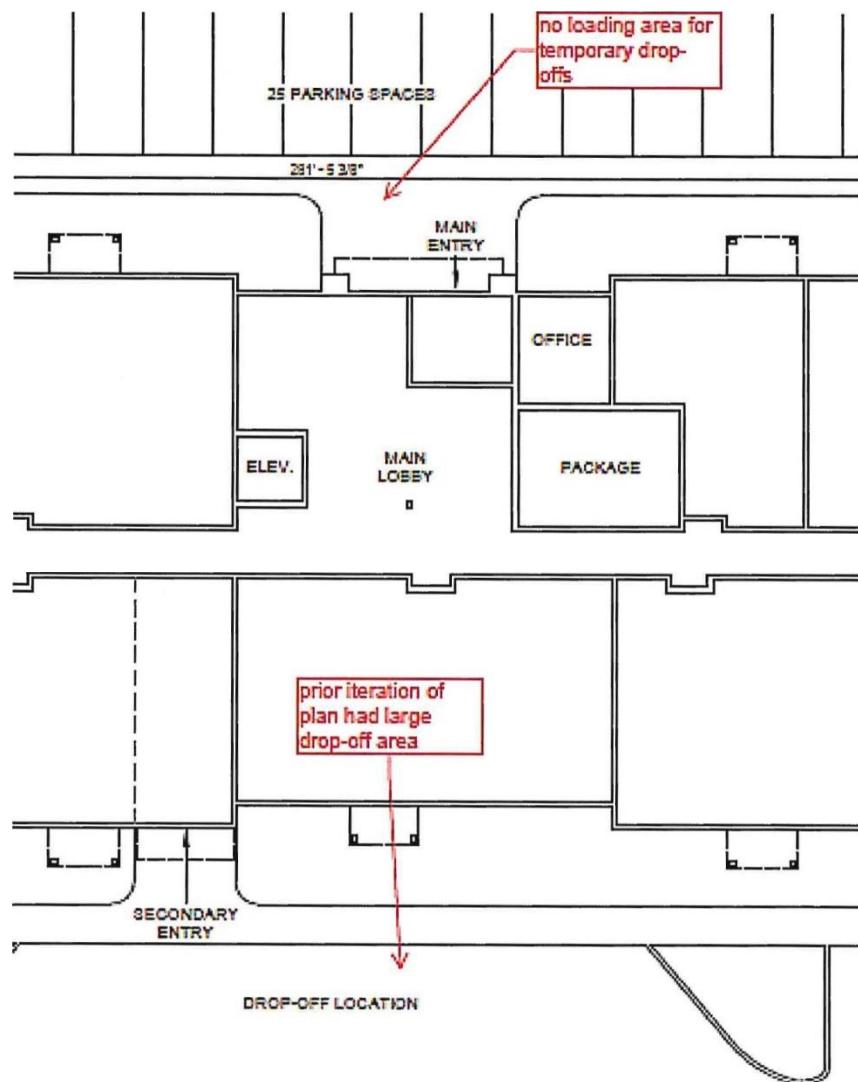
Applicant's Response: Once again, Mr. Hill uses an outdated plan set. A temporary vehicle area was added in later site plans. Vanasse and the ZBA's Traffic Peer Reviewer agree that the number of parking spaces provided is adequate. Move-ins will be coordinated by property management—spaces will be reserved for moving vans. This is how it works at all multifamily properties. As to EV Charging Stations, locations will be finalized based upon latest technology at time of installation. A temporary vehicle area was added in later plan revisions.

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Figure 3 — Architectural Plan 9/7/23



c. Stantec advised the Applicant to label the proposed loading areas and visitor parking areas on the plans, and stated on 2/16/24 that these labels were added to Sheet C-4.0. I do not see those labels, except for one loading area that is on the opposite side of the main entrance, in front of the dumpster. This is not a practical location for temporary ride share and delivery visits, and is not big enough to accommodate any trucks without blocking the fire lane.

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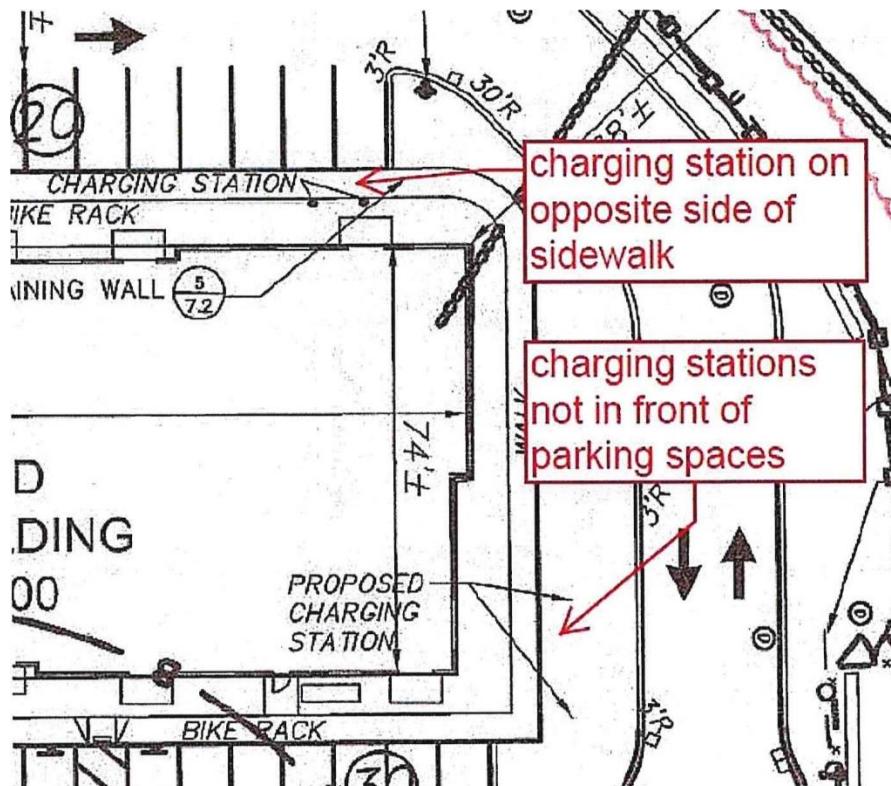
Applicant's Response: Yet again, Mr Hill is using an outdated plan that does not reflect the current site plans. The Applicant manages the multifamily community at 149 Main Street in Upton and does not have visitor parking labeled, and no issues have arisen concerning the same.

d. Two EV charging stations are apparently proposed on the northerly side of the building. This is not practical, as there is no parking spaces on that side of the building. A charging station needs to be located in front of a parking space. Two charging stations are proposed near parking spaces on the west side of the building, but they are shown on the far side of the sidewalk opposite the parking spaces, which is also not practical. A charging station has a cord to connect to the car, and this cord would block the sidewalk, even if it were long enough. Suggest that the Applicant visit a parking lot with charging stations to better understand how these work. See Figure 4 below.

e.

Applicant's Response: The Applicant has proposed 6 charging stations. The Applicant has installed electric charging stations before and has them at other projects which are either owned or managed by the Applicant, so the Applicant knows how they work. The old label is from a previous, outdated plan.

Figure 4 - Plan Sheet C-4.0



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a. Recommendations

Most of the civil design issues discussed above are directly correlated to the Applicant's proposed intensity of use of the Project Site. The significant site constraints (wetlands) make the viability of a 60-unit very challenging if not impossible without presenting non-trivial risks to public safety and environmental degradation. Moreover, the Project will predictably cause nuisances and congestion within the Project Site, due to inadequate trash management, stormwater management and parking/loading arrangements. Most of these problems are driven by an unrealistic density of 60 units, and could be ameliorated by a reduction in density and a re-evaluation of the design of the Project.

In my opinion, the Zoning Board has been deprived of peer review providing a degree of scrutiny necessary for a project of this size, scale and complexity. The Select Board could take a more active role in advocating for a smaller-scale project, and potentially engage directly with the Applicant to negotiate a smaller or different project. If the Board elects to follow that course, I would recommend that I engage my civil engineer to more thoroughly review the Project plans and provide technical advice to confirm and supplement my findings.

Please let me know if you have any questions or wish to discuss this memo.

Applicant's Response: The Project has undergone a rigorous and extensive review using experienced and qualified peer review professionals. Neighbors have been given every opportunity to participate at public hearing. All Peer Review comments have been addressed. Mr. Hill's comments are simply an opinion for which he is not qualified to offer as he is not a traffic engineer, architect, or civil engineer licensed to practice in Massachusetts. The ZBA is uniquely qualified to review a Project of this nature, that is why the ZBA has been charged with the task of reviewing projects of this nature, and it has been through. There is no reason for the Select Board, which has little project review experience, to interject itself further into a process which the ZBA has managed well. The Project at 47 Main is a reasonable, high quality 40B project in a very suitable location in Upton. It will add 60 units to Upton's SHI, and provide a 2-year Safe Harbor for the Town. For all of these reasons, the peer review of the Hill Memo would be a waste of the ZBA's and the Applicant's time and expense, the Applicant is not willing to pay for the peer review of Mr. Hill's Memo, and the Applicant is not willing to extend the date for the closing of the public hearing.

Please contact me should you have any questions. Thank you.

Sincerely,

John T. Smolak

SMOLAK & VAUGHAN LLP

William Andrews, Chair
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cc: Michael Antonellis, Director, Land Use Inspectional Services, Town of Upton
Christopher Alphen, Esq., Blatman, Bobrowski, Haverty & Silverstein, LLC
Kevin Lobisser and David Pyne, Lobisser Building Corp.
Edward H. Marchant, Advisor
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