

LIST OF WAIVERS

As required under 760 CMR 56.05(2)(h), the following is a list of Waivers to “Local Requirements and Regulations,” including waivers from the Ayer Town Bylaws, as amended (“General Bylaw”), inclusive of the Ayer Zoning Bylaw, as amended, with amendments through April 2020 (the “Zoning Bylaw”), and other Local Requirements and Regulations as defined under Section 56.02 of the Chapter 40B Regulations (760 CMR 56.00 et seq.), including all local legislative, regulatory, or other actions which are more restrictive than state requirements, if any, including local zoning and wetlands ordinances, subdivision and board of health rules, and other local rules, codes, and regulations, in each case which are in effect on the date of the Project’s application to the Board. In addition to the following list of requested Waivers listed below, the Applicant requests an exception from each and every provision or requirement of all Local Requirements and Regulations issued by a “Local Board” (defined under the Chapter 40B Regulations as meaning any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council, as well as all boards, regardless of their geographical jurisdiction or their source of authority [that is, including boards created by special acts of the legislature or by other legislative action] if such local board perform functions usually performed by locally created boards) with which any aspect of its Comprehensive Permit Application, including but not limited to its proposed site development plans and any other information hereinafter submitted to the Board, is inconsistent.

****Note** that pursuant to 760 CMR 56.00 (the “Chapter 40B Rules”) specifically described under 760 CMR 56.05(7), “zoning waivers are required solely from the “as-of-right” requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district.” Accordingly, any waivers which reference special permit requirements are included only for illustration purposes.

AYER ZONING BYLAW (Revised through April 2020)				
BY-LAW/REG.	TITLE	DESCRIPTION	REQUIRED	PROPOSED
Section 1.4	Applicability		All buildings or structures erected, constructed, reconstructed, altered, enlarged or modified, and the use of all premises in the Town “shall be in conformity with the provisions of these Bylaws” Where Zoning Bylaw imposes greater restrictions than those imposed by other regulations, permits, easements or agreements, the provisions of the Zoning Bylaw to control.	Waived to the extent that Comprehensive Permit decision grants waivers from the applicability of specific provisions of the Zoning Bylaw; the Comprehensive Permit serves as a master permit.
Section 3.5 (including Subsections 3.5.1, 3.5.2, 3.5.3, 3.5.4, 3.5.5, 3.5.7 and 3.5.8)	Site Plan Review	Site Plan Review undertaken by Planning Board Section 3.5.1.A - Applicability	Per Section 3.5.1.A Site Plan Review by the Planning Board required for the following uses or activities, including “construction, alteration or expansion of or change of use within a municipal, institutional, commercial, industrial or multi-family structure” as well as the “clearing or grading more than 10,000 sq. ft of land, unless specifically exempt under Section 9.6;” and “any use requiring a special permit” excepting where single or two-family dwelling requires special permit	Waived to allow Project, consisting of six residential multifamily structures and one community building and affiliated infrastructure as shown on the Project Plans, to be developed in two phases for a total of 106 dwelling units, with accessory uses and infrastructure as approved by the Comprehensive Permit. Building permits to issue consistent with Comprehensive Permit and Project Plans.

AYER ZONING BYLAW (Revised through April 2020)				
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Section 3.5 (including Subsections 3.5.1, 3.5.2, 3.5.3, 3.5.4, 3.5.5, 3.5.7 and 3.5.8), cont'd	Site Plan Review	<p>3.5.2 Other permits and approvals (e.g., building permits, certificates of occupancy, zoning compliance certificates) not to issue unless site plan approval granted and/or construction in accordance with site plan approval</p> <p>3.5.3 Procedures and submittal requirements of site plan application</p>	<p>Per Section 3.5.2.A: "No building permit shall issue for any use or activity requiring site plan review unless the Planning Board has reviewed and approved a site plan therefore, or unless ninety days lapse after the submission of a site plan application without action by the Planning Board. Also, no permit to issue for use or activity requiring special permit with site plan approval until a special permit has been granted or 90 days have lapsed from the date of public hearing; no certificate of occupancy or zoning compliance to issue unless site is constructed in accordance with site plan approval.</p> <p>Per Section 3.5.3 requires site plan submittal to Planning Board in accordance with rules/regulations of Planning Board, hearing to be held within 45 days of submission, and details lapse/constructive approval upon Planning Board failure to act.</p>	<p>Waived to allow Project, consisting of six residential multifamily structures and one community building and affiliated infrastructure as shown on the Project Plans, to be developed in two phases for a total of 106 dwelling units.</p> <p>Building permits to issue consistent with Comprehensive Permit and Project Plans.</p>

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Section 3.5 (including Subsections 3.5.1, 3.5.2, 3.5.3, 3.5.4, 3.5.5, 3.5.7 and 3.5.8), Cont'd	Site Plan Review	Section 3.5.4 Decision Criteria	Per Section 3.5.4.A, Planning Board shall approve site plan if: 1) Site Plan meets all applicable requirements of Bylaw; 2) given location, type, extent of land use proposed, the design of building form, location, egress points, grading and other elements could not be reasonably altered to reduce clearing and grading on the site, or reduce the volume of cut and fill; the number of removed trees, the length of removed or altered stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion or threat of air or water pollution; improve pedestrian, bicycle or vehicular safety both onsite and egressing from it; improve access to each structure for fire/emergency service equipment; reduce visual intrusion; improve building design or scale or site design; reduce glares from headlights, reduce light trespass onto adjacent lots or streets or light overspill; and 3) variances required of Zoning Board have been granted. Per Section 3.5.4.B, Planning Board may impose reasonable conditions, including performance guarantees.	Waived to allow Project, consisting of six residential multifamily structures and one community building and affiliated infrastructure as shown on the Project Plans, to be developed in two phases for a total of 106 dwelling units. Comprehensive Permit subsumes all local permits/approvals per Chapter 40B.
		Section 3.5.5 Performance Guarantee	Per Section 3.5.5, as a condition of approval, Planning Board may require performance bond or cash security be posted with Town	Building permits to issue consistent with Comprehensive Permit decision and Project Plans.
		Section 3.5.7 – Special Permit with Size Plan Review	Per Section 3.5.7, where special permit and site plan review, to be combined as single application.	Waiver granted from request for performance bond or cash security.

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Section 3.5 (including Subsections 3.5.1, 3.5.2, 3.5.3, 3.5.4, 3.5.5, 3.5.7 and 3.5.8), Cont'd	Site Plan Review	Section 3.5.8 – Calculating Number of Units in Development through Site Plan Review	Residential developments (including multi-family) approved through site plan review is calculated based on formula (net developable area divided by allowable density in zoning district)	Waived. Project consists of six residential multifamily structures and one community building and affiliated infrastructure as shown on the Project Plans, to be developed in two phases for a total of 106 dwelling units.
Section 5.2	Table of Use Regulations	Description of Uses Allowable in Zoning Districts; Section 1.3 describes residential use of townhouse or multi-family dwelling.	<p>Per Class of Use (Residential Uses), Section 1.3 (Townhouse or Multi-Family Dwelling) is regulated in the following zoning districts as shown below:</p> <p>A-2 District – Multifamily dwelling is not allowed</p> <p>General Bus. District – Multifamily dwell use is allowed upon ZBA Special Permit</p> <p>Limited Industry – Multifamily dwelling use is not allowed.</p>	Waived. Project consists of 106 multifamily units, housed in six MF residential buildings, as depicted on the Project Plans, and including but not limited to and accessory community/multipurpose building for management office and related facilities and supportive services such as including but not limited to, gathering, wellness, exercise, office, and other parking, utilities and other appurtenant uses customary and incidental accessory uses to multifamily residential uses, all as depicted on Project Plans as provided in the Comprehensive Permit Decision.

Applicant: NOAH

Project: Ayer Commons

AYER ZONING BYLAW (Revised through April 2020)				
BY-LAW/REG.	TITLE	DESCRIPTION	REQUIRED	PROPOSED
Section 5.2 and Section 5.3	Residential Accessory Uses, described in Table of Use Regulations (Section 5.2) and described in Section 5.3	Describes Accessory Residential Uses	<p>The following are defined accessory uses under Section 5.3:</p> <ul style="list-style-type: none">A. Accessory building to garage up to 3 vehicles;B. Accessory structure (gazebo, tennis court, pool)C. Accessory ApartmentD. Home OccupationE. Bed and BreakfastF. Rooming HouseG. Family Day Care <p>Under Table of Uses (Section 5.2), Other accessory uses if accessory to a permitted use are permitted in A2 and General Business districts, but not permitted in Light Industry District</p>	Waived; Project's accessory uses to be described in Comprehensive Permit, to include parking and infrastructure per Project Plans; Community/Multipurpose Building to provide leasing/management office, gathering, wellness/exercise, office space as well as programing available to community residents and public (at no charge); play area and dog yard, as shown on the Project Plans

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<u>BY-LAW/REG.</u>	<u>TITLE</u>	<u>DESCRIPTION</u>	<u>REQUIRED</u>	<u>PROPOSED</u>
Section 6, Section 6.1	Density & Dimensional Regulations; Section 6.1: General Provisions		In each district, no land shall hereafter be used, occupied or changed and no structure or building shall hereafter be erected, altered, moved or used or occupied unless it complies with the provisions as set forth in the Schedule of Dimensional Requirements herein, except as provided in GL c.40A, §6 for nonconforming circumstances. Variances and exceptions from the minimum requirements shall be as set forth in the notes to the schedule of Dimensional Requirements, and as provided elsewhere in Bylaw.	Waived to the extent that Comprehensive Permit decision grants waivers from the applicability of specific provisions of the Zoning Bylaw; the Comprehensive Permit serves as a master permit.

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BY-LAW/REG.	TITLE	DESCRIPTION	REQUIRED	PROPOSED
Section 6, Section 6.2	Schedule of Dimensional Regulations	<p>Establishes minimum lot area, yard requirements, maximum building height, maximum building coverage, minimum open space percentage</p> <p>NB: Project is located within three zoning districts, Residence A-2, General Business and Light Industry. The majority of the Project is to occur within the areas zoned General Business, with the westernmost portions in Light Industry District and a portion of the Phase II residential building and associated parking to be within the Residential A-2 district.</p>	<p><u>General Business Zoning District</u> Min Lot Area: 15,000 SF Max Bld Height: 35' Max Stories: 3 Max Bld Cover: 60% Min Lot Frontage 100' Max FAR: 1.25 Front Yd Setback: 30' Side Yd Setback: 25' Rear Yd Setback: 20' Min. Open Space: 20%</p> <p><u>Light Industry Zoning District</u> Min Lot Area: 120,000 SF Max Bld Height: 40' Max Stories: 3 Max Bld Cover: 50% Min Lot Frontage 100' Max FAR: 1.25 Front Yd Setback: 25' Side Yd Setback: 25' Rear Yd Setback: 30' Min. Open Space: 30%</p> <p><u>Residence A-2</u> Min Lot Area: 24,000 SF (2fam) Max Bld Height: 35' Max Stories: 2.5 Max Bld Cover: 15% Min Lot Frontage 100' Max FAR: N/A Front Yd Setback: 20' Side Yd Setback: 15' Rear Yd Setback: 25' Min. Open Space: 80%</p>	<p>Lot Area 10.59 ac/461,000 SF (no waiver)</p> <p>Building Height – 5 two-story MF buildings, 1 three-story MF building and a 1-floor community building in Phase I; one four-story MF building in Phase II.</p> <p>Waiver of height/number of stories for two of Project's residential buildings: i) three-story MF structure (42' 6 ½') associated with Phase I; and ii) four-story MF structure (56' 4") associated with Phase II, as shown on Project Plans.</p> <p>Building Coverage: 10.88% (no waiver)</p> <p>Frontage: 521' (no waiver)</p> <p>FAR: .217 (no waiver)</p> <p>Front Setback: 25' (no waiver)</p> <p>Side Setback: 15' (no waiver)</p> <p>Rear Setback: >30' (no waiver)</p> <p>Open Space: 72.3% overall (But >80% open space for portion of site within A-2 zoning district) (no waiver)</p>

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Section 6, Section 6.3B	Additional Requirements, Multiple Buildings on a Lot		Every building shall have frontage on a way, public or private, except that with Planning Board approval it may use a clear unobstructed passageway at least 20' wide over the lot on which it is located to said way.	Waived; building layout on Property as shown on Project Plans, which includes five MF buildings fronting on Fitchburg Road and three other buildings (two MF residential and a community building) located behind the front buildings, and accessed via interior drive configuration, with drive aisle at least 20' wide.
Section 6, Section 6.3H	Minimum Floor Area; Dwelling Units	Establishes Minimum Floor areas for dwelling units	750 SF for a dwelling unit on one floor	Waived to allow for 18 of the one-bedroom units to be sized between 576-686 SF, as shown on Project Plans.

AYER ZONING BYLAW (Revised through April 2020)				
BY-LAW/REG.	TITLE	DESCRIPTION	REQUIRED	PROPOSED
Section 8.2, Section 8.2.5	Floodplain Overlay District; :Use Regulations	Establishes Floodplain District as overlay zoning district; described permitted uses, prohibited uses and uses allowed by special permit issued by Zoning Board	<p>Per Section 8.2.5.A (Prohibited Uses), “[a]ll new construction and encroachments including grading, filling, excavating, substantial improvements and other development is prohibited unless:</p> <ol style="list-style-type: none"> 1. A technical evaluation by a Registered Professional Engineer demonstrates that the new construction will not result in flood levels during the occurrence of the base flood discharge; and 2. Is otherwise allowed by Special Permit from Board of Appeals under Subsection C. <p>Section C (Uses allowed by Special Permit), provides (1) “buildings and sheds accessory to uses” allowed in overlay district and “driveways and roads” are permitted subject to a special permit; and (2) “land in the Floodplain Overlay District. proven to satisfaction of Board of Appeals as being in fact not subject to flooding or not unsuitable because of drainage conditions for any use which would otherwise be permitted if such land were not, by operation of this section, in the Floodplain Overlay District” and the Board finds that the use will not interfere with the general purposes of the district and not be detrimental to human health, safety or welfare, then a special permit may issue</p>	Waived. Work within floodplain associated with laying out and construction of subsurface 4” sewer line running through a portion of the FEMA A zone in the central portion of the Property to be approved by Zoning Board as part of Comprehensive Permit.

AYER ZONING BYLAW (Revised through April 2020)				
BY-LAW/REG.	TITLE	DESCRIPTION	REQUIRED	PROPOSED
Section 9, Section 9.12	Off-Street Parking Requirements		For Multifamily Buildings: 1.5 spaces per one-bedroom 2 spaces for 2+ bedrooms Plus 5% additional for visitor or minimum of one space 30 1-bedrooms = 45 spaces 76 2/3-bedrooms = 152 spaces 5% visitor = 10 spaces Total required: 207 spaces	Waived to allow for a total of up to 157 parking spaces, consisting of up to 93 surface parking spaces developed in Phase I and up to 64 parking spaces (20 surface and 44 covered parking spaces) developed during Phase II, all as depicted on the Project Plans, with all surface parking to be shared among all unit tenants, employees and visitor parking.
Section 9, Section 9.1.6	Landscaping and Lighting Requirements	<p>A. Buffer Areas</p> <p>B. Interior Landscaping</p> <p>C. Sidewalks</p>	<p>Per Section 9.1.6A, parking facilities with more than five parking spaces are to have a landscaped buffer with an average width of the buffer on all sides of the lot of ten feet.</p> <p>Per Section 9.6.B.1, at least 10% of paved area of a parking facility with more than 25 spaces shall be landscaped open space.</p> <p>Per Section 9.6.B.2, at least one tree per ten parking spaces.</p> <p>Per Section 9.6.C.2/3, a 4-foot landscaped strip is to be located between the right-of-way and the sidewalk. Placement of trees is to average one tree per linear foot of frontage; shrubs or bushes at ration of twelve per tree.</p>	<p>Waived. As shown on the Project Plans, the average width of the landscaped buffer is five feet.</p> <p>No waiver sought; project includes 10.9% landscaped open space</p> <p>Waived. Landscaped areas of surface parking as shown on Project Plans.</p> <p>Waived. Consistent with the Project Plans, a grassed area is proposed between the front sidewalk and the right-of-way line of the street (Fitchburg Road).</p>
Section 9, Section 9.1.9	Bicycle Accommodations	Bicycle parking/lockers	1 bike parking space/locker for 2 dwelling units up to ten units, thereafter, one pace per four dwelling units. 106 unit MF dwelling would require 29 bicycle parking spaces or lockers	Waived. Bike parking as to be provided by Comprehensive Permit decision.

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Section 9.2A	Open Space and Landscaping Standards	Applicable to multifamily developments in any district	Section 9.2.A.2 requires at least 50% of required open space be located in the front or side yards of the lot, unless waived due to unique site conditions, lot shape or access.	Waived. As to portion of entire site, open space as provided in front yards is 34,132 SF. Total open space is 328, 954 SF, inclusive of 5.69 acres (247,900 SF) undeveloped land.

TOWN OF AYER GENERAL BYLAWS AND REGULATIONS				
<u>BY-LAW/REG.</u>	<u>TITLE</u>	<u>DESCRIPTION</u>	<u>REQUIRED</u>	<u>PROPOSED</u>
Regulations for Administering the Town of Ayer Wetland Bylaw, including Sections 2, 5 and 7	Regulations under General Bylaws, Article XXVI	<p>Section 2, Part B – Performance Standards within Buffer Zone</p> <p>Section 5 – Permitting Applications and Procedures</p> <p>Section 7 – Wetlands Mitigation</p>	<p>Section 2, part B.3 describes performance standard for work in outer 50’ Buffer Zone. Section 2, Part B.2 establishes an “inner 50-foot No Disturb Zone” for previously undisturbed lands (lands “predominantly natural character” or altered after May 1996 without a permit). Within inner 50’ buffer, grading, landscaping, clearing or cutting of vegetation, filling, excavating and construction of roads and structures. Driveways, roadways, fences and stormwater facilities may be allowed in 50’ no disturb zone when no feasible alternative exists.</p> <p>Section 5 – establishes filing a notice of intent application under Bylaw.</p> <p>Section 7 – Provides for wetlands mitigation to meet performance standard under State Act, Local Bylaw or as condition of a waiver under Section 3 of local bylaw.</p>	Waived. Work associated with wetland resources and buffer zone to be approved subject to Order of Conditions under State Wetlands Protection Act.
General Bylaws, Article XVIII	Removal of Earth in the Town of Ayer	Earth removal in excess of 10 cubic yards requires permit from Board of Selectmen	No person, individual or corporation shall remove soil, loam, sand gravel or other earth produces in excess of 10 cubic yards without approval of Board of Selectmen after hearing and due notice.	Waived to allow construction of the Project, as approved by the Comprehensive Permit and Project Plans. (Procedural waiver).

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TOWN OF AYER GENERAL BYLAWS AND REGULATIONS				
BY-LAW/REG.	TITLE	DESCRIPTION	REQUIRED	PROPOSED
General Bylaws, Article XXXXI, Section III	Flood Plain District	Use Regulations within Flood Plain Overlay District (Zone A)	Per Section III, no buildings or structures shall be erected, constructed or substantially improved, no earth materials dumped, filled, excavated or transferred, unless a special permit is issued by the Building Commissioner. Section II requires application to Board.	Waived to allow project development, consistent with waiver granted under Section 8.2 and 8.2.5 of the Zoning Bylaw for work within Floodplain Overlay District.
General Bylaws, Article XXLV, Section 5	Street Opening and Driveway Access Permits	Section 5 establishes a security bond that may be imposed	“A satisfactory company authorized to do business in the Commonwealth of Massachusetts, in a sum required by the Board of Selectmen or Regulations, conditioned substantially that the applicant shall guarantee the faithful and satisfactory performance of work in all respects, and shall replace or restore that portion of any public way in which said applicant, his employees or agents makes an excavation.	Waiver of performance bond. Applicant is non-profit developer, seeking to develop 100% affordable housing development.
Town of Ayer Building Department Fees	Town of Ayer Building Department Fees	Fee schedule for building permit fees.	Multifamily Dwelling: \$.75/SF Foundation/Basement: \$.75/SF Attached Garage: \$.68/SF Decks/Porches: \$.68/SF Demolition Permit: \$12.50 per \$1,000 Certificates of Occupancy: \$150	Waiver of all building permit, demolition and certificate of occupancy fees. .

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<u>BY-LAW/REG.</u>	<u>TITLE</u>	<u>DESCRIPTION</u>	<u>REQUIRED</u>	<u>PROPOSED</u>
Water and Sewer Rate Schedule and Fees Town of Ayer, Massachusetts	Water and Sewer Rate Schedule and Fees Town of Ayer, Massachusetts, effective July 1, 2021	Connection Fees for Water and Sewer	Water Connection Fees (dependent on size of service line): \$1,500 per ERU and up to \$35,000 Sewer Connection Fee: \$5,400 per ERU	Waived. Applicant is non-profit developer, seeking to develop 100% affordable housing development Project will include a 4" force sewer main extending from manhole in Isaac's Lane and to tap into existing water main on Fitchburg Road. Waiver is not sought from water and sewer fees, only from connection fees associated with water and sewer lines.