

Record of Decision
MACARTHUR AVENUE LLC,
4 MacArthur Avenue (Parcel ID #14-4-900)
Devens (Harvard), MA
February 23, 2021

1. Owner/Applicant:

MacArthur Avenue, LLC, 133 Pearl Street, Boston MA 02110.

2. Premises and Proposed Project:

The applicant is seeking a Level 2 Unified Permit for Site Plan Approval for the demolition of an existing building and construction of a 55,000 sf light industrial facility and associated parking, drainage improvements as well as utility connections. Property located at 4 MacArthur Avenue, Devens (Harvard), MA (Deed Reference: Bk: 54306 Pg. 1) in the Innovation Technology Business district the Viewshed Overlay District and the Watershed Protection Overlay District.

3. Submission:

The application includes the following, which all become part of the record:

1. DEC Completed Application Form (D20-109);
2. 4 MacArthur Avenue Certified Abutters lists (Devens) dated 12/17/2020; MacArthur Avenue, LLC, submitted a Level II Unified Permit application package, including the application (12/08/2020), Industrial Performance Standards Checklist, Stormwater Management Plan, LEED v 4 checklist, Landscape and Water Maintenance Plan dated 12/3/2020, Prospect Hill Overlook Viewshed Analysis, a site plan received on December 8 , 2020 later revised and dated 12-18-2020.
3. Level 2 Unified Permit Checklist (completed by Applicant);
4. Site Plans prepared by Eugene T. Sullivan, Inc., 230 Lowell Street, Suite 2A, Wilmington, Massachusetts; entitled: “ Proposed Building, 4 MacArthur Avenue– Devens, Massachusetts” consisting of the following sheets dated 12-03-2020:
 - T100 Title Sheet
 - C.1 Existing Conditions
 - C.2 Site Layout Plan
 - C. 3 Drainage and Utilities
 - C.4.1 Construction Details
 - C.4.2 Construction Details
 - L.1 Landscaping Plan
 - SL.1 Site Lighting Plan
 - A.1 Building Elevations
5. Stormwater Management Report prepared for MacArthur Avenue LLC by Eugene T. Sullivan, Inc (ETS) 230 Lowell Street, Suite 2A, Wilmington, Massachusetts; dated 12/3/2020 and part of the application package;
6. Cover letter from Eugene T. Sullivan to Neil Angus dated 12/17/20 including list of abutters, LEED Green Building Checklist, revised cover sheet by ETS, landscaping plan prepared by James K. Emmanuel associates, photometric plan, and erosion

- controls plan by ETS;
7. Nexius ITB Use letter dated 10/26/2020;
 8. Public Hearing Notice to abutters and interested parties (including certified mail return receipts) dated December 21, 2020;
 9. Public Hearing legal notice publication memo to Nashoba Publications, dated December 17, 2020 (publication dates December 25 and January 1, 2021);
 10. Public Hearing Notice to Board of Selectman and Planning Boards, Towns of Ayer, Harvard and Shirley, dated December 21, 2020, and received December 28, 2020 from Peter Lowitt, Director DEC.
 11. Determination of Completeness, dated December 10, 2020.
 12. Public Hearing Notice to Town Clerks of Ayer, Harvard, Shirley, Lancaster, MassDevelopment, dated December 21, 2020, from Peter Lowitt/Kate Clisham.
 13. Community Cable Advisory Committee notice, dated December 21, 2020, to run December 21-January 26, 2021;
 14. Public Hearing Notice to the Secretary of State, dated December 21, 2020.
 15. DEC Staff Report, dated 1/26/21 (3 Pages);
 16. Plan Circulation memo dated December 10, 2020, from Neil Angus to MassDevelopment Re: Unified Permit Application – 4 MacArthur 1 Page);
 17. Revised Site Plans entitled: “Proposed Building 4 MacArthur Ave. revised 1/13/2021; including a new Sheet EC.1, Erosion and Sedimentation Control Plan dated 1/13/21; a cover letter; an updated Storm Drainage Management Report dated 1/13/21; A Long Term Pollution Prevention Plan dated 1/15/2021; 4 MacArthur Viewshed undated but received 1/15/21; and 4 MacArthur response to Review Comments letter to Neil Angus from Eugene Sullivan (ETS) dated 1/15/2021, eight pages.
 18. Letter to Eugene Sullivan from Neil Angus dated 12/31/2020 DEC Review Comments, six pages.
 19. Nitsch Engineering Peer Review Comments letter to Neil Angus from Paige Simmons, PE and Jennifer Johnson, PE dated December 31, 2020 pages) covering stormwater;
 20. Letter to Neil Angus from Paige Simmons, PE and Jennifer Johnson, PE of Nitsch Engineering Inc., dated January 21, 2021 second round of review (7 pages).
 21. Revised Staff Report to DEC from Peter Lowitt dated February 4, 2021;
 22. Draft Record of Decision – 4 MacArthur Avenue, dated 2-4-21 (8 pages);
 23. Design Review approval letter from Ed Starzec, MassDevelopment, to Peter Lowitt dated 12/17/2020;
 24. 3rd Round of Plan revisions received 2-12-2021 including Plan review letter; revised plans last updated 1/13/2021; and revised Storm Drainage Management Report dated 2-9-2021;
 25. 3rd Review letter from Paige Simmons, PE; JNEI to Neil Angus, DEC dated 2/16/2021 addressing remaining stormwater review comments;
 26. Letter to Peter Lowitt, DEC from Gene Sullivan, PE dated 2/17/2021 re: Paved areas on site;
 27. Staff report prepared by Peter Lowitt, FAICP and Neil Angus, AICP dated February 18, 2021, (2 pages);
 28. Letter from Eugene Sullivan, PE, to Peter Lowitt, dated January 29, 2021 requesting

waiver withdraw and public hearing continuance (1 page);

29. Email correspondence as follows:

To:	From:	Date:	Subject:
Mediaonene.com	Kate Clisham	12/17/20	Legal Notice
Neil Angus	Gene T. Sullivan	12/8/2020	Application package
Neil Angus	Gene T. Sullivan	12/10/2020	SL1 and abutters list
Mark Cohen	Peter Lowitt	1/15/2021	4 MacArthur Utility Comments
Neil Angus	Gene T. Sullivan	1/15/2021	CAD files
Peter Lowitt	Ed Starzec	12/17/2020	Design Review letter
Neil Angus	Gene T. Sullivan	12/16/2020	Response memo and documents
Neil Angus	Gene T. Sullivan	12/16/2020	Response documents 2
Peter Lowitt	Steve Goodman	9/8/2020	Nexius ITB use memo 1
Peter Lowitt	Jennifer Johnson	1/22/2021	Nitsch comment letter 2
Ed Starzec	Gene Sullivan	12/17/2020	Building elevations
Neil Angus	Mark Cohen	12/16/2020	Utility lines
Neil Angus	Gene Sullivan	12/22/2020	Missing response to comments
Gene Sullivan	Neil Angus	12/22/2020	Request for missing items
Gene Sullivan	Neil Angus	12/21/2020	Truck traffic information
Neil Angus	Mark Cohen	12/14/2020	Utility comments and plan
Gene Sullivan	Peter Lowitt	2/4/2021	Continuance request revised
Gene Sullivan	Peter Lowitt	1/29/2021	Continuance request
Neil Angus	Gene Sullivan	1/27/2021	Peer Review Comments
Neil Angus	Gene Sullivan	1/25/2021	Staff review
Gene Sullivan	Neil Angus	1/25/2021	Acknowledge receipt staff report
Gene Sullivan	Peter Lowitt	1/16/2021	Landscaping plan
Peter Lowitt	Gene Sullivan	2/12/2021	Update on plan revisions
Gene Sullivan	Peter Lowitt	2/12/2021	3 rd round of plan revisions
Peter Lowitt	Gene Sullivan	2/12/2021	Receipt of revised plans
Peter Lowitt	Paige Simmons, JNEI	2/12/2021	3 rd round of plans to review
Neil Angus	Paige Simmons, JNEI	2/16/2021	3 rd review letter
Peter Lowitt	Neil Angus	2/17/2021	3 rd review comments email
Gene Sullivan	Peter Lowitt	2/16/2021	Excessive impervious on site
Peter Lowitt	Gene Sullivan	2/17/2021	Paved areas on site
John Marc-Aurele	Peter Lowitt	2/17/2021	Do they need MS4 conditions?
Peter Lowitt	John Marc-Aurele MD Engring	2/17/2021	No, all stormwater handled onsite
Gene Sullivan	Peter Lowitt	2/19/2021	Draft staff report and rod

4. Unified Permit Components and Actions:

The Unified Permit for this project includes Site Plan Approval for construction of a 55,000sf building with parking, driveway, drainage, utilities and associated improvements as well as demolition of the existing building for 4 MacArthur Avenue, Devens, MA.

5. Process:

MacArthur Avenue LLC, submitted a Level II Unified Permit application package on December 4, 2020. The pre-permitting conference was completed on September 23, 2020, and the Determination of Completeness was issued on December 10, 2020. Copies of the application and plans were received by the surrounding Towns on December 28, 2020. Legal notices were placed in Nashoba Publications on December 25, 2020 and January 1, 2021. Certified Mail notice was sent to abutters on December 21, 2020. The 30-day public comment period expired on January 28, 2021. No public comments were received. The public hearing opened on January 26, 2021 and was continued to February 4, 2021 and continued again until February 23, 2021 at the request of the Applicant, and closed that same date. The Commission voted on February 23, 2021.

6. Waivers:

The following waiver was requested as part of this application.

1. *A waiver from 974 CMR 3.04(1)(a) to allow a 10' front setback instead of the required 25' setback for the Givry Street frontage.*

The lot is located at the corner of Givry and MacArthur. In order to provide distance from the abutting Fort Devens military facility and to address having two frontages the Applicant requests this waiver.

The Commission voted all in favor to grant the requested waiver.

7. Findings:

The DEC finds that:

1. The proposed use is a permitted use in the Innovation and Technology Business Zoning District as per Exhibit D of the Devens Bylaws.
2. The project is located within a Watershed Protection Water Resources Protection District. The final plans, with the conditions listed herein, comply with the Stormwater Management Provisions and Water Resource Protection District Regulations in 974 CMR 4.08 to protect the ground and surface water resources through the implementation of best management practices during construction as well as long-term.
3. The project is located with the Viewshed Overlay District. Based upon the Viewshed Analysis, the Applicant has undertaken all reasonable efforts to design the building and site to take advantage of natural screening and, with conditions, has designed the building facade treatments and colors to blend the building into the adjacent landscape and minimize significant visual impacts.
4. The Applicant proposes 63 parking spaces. This 1.1 spaces per 1000 square feet for light manufacturing provides sufficient parking for the intended use.
5. The on-site Storm Water Management system has been designed so that there are no untreated discharges from the site– all runoff will be pretreated through an on-site treatment train that includes biofiltration, on-site infiltration, and mechanical filtration. Discharges from the site, with conditions, have been designed to meet the MA DEP SWM Standards and DEC regulations in order to satisfy EPA MS4 requirements. Discharge to the Devens Municipal Stormwater System is under the jurisdiction of and subject to the review and approval of the Devens Engineering Department.
6. Regarding the approval criteria listed in 974 CMR 3.03(2):
 - (a) The Site Plan complies with 974 CMR 3.00 and with the applicable provisions of the By-Laws.
 - (b) The development lies on a lot that is recorded at the Registry of Deeds.
 - (c) The application is Complete.
 - (d) All access is designed to provide for safe vehicular and pedestrian travel.
 - (e) Access and circulation enables prompt fire, police, and emergency response.
 - (f) Adequate capture and discharge of stormwater and surface water runoff and compliance with applicable portions of the "Devens Stormwater Pollution Prevention Plan" has been achieved.
 - (g) Connections with Devens utility, power and communication systems exist and new connections will be approved by MassDevelopment.

- (h) Facilities required under the Water Resources Protection Bylaw and the related Design Standards have been included.
- (i) The plans comply with Landscaping Design Standards through the preservation of existing specimen trees and wooded areas to the maximum extent feasible with conditions.
- (j) A wetlands determination of applicability is not applicable to this project.
- (k) Industrial Performance Standards will be adhered to as per the final plans.
- (l) The proposed use provides sufficient parking for the intended use;
- (m) The project will not interfere with existing traffic patterns.
- (n) The applicant has agreed to participate in the Devens Transportation Management Initiative.
- (o) Adequate water supply exists in terms of quantity, quality, and water pressure for domestic needs and fire protection.
- (p) Connection to sanitary sewers will be made for this project.
- (q) The building design meets the minimum standards as established by Mass Development for the district in which the lot is located.
- (r) Soil testing indicates that the soils are capable of supporting the proposed development;
- (s) The development has been designed with due consideration for public health;
- (t) Adequate climate change mitigation, adaptation and greenhouse gas emission mitigation measures have been conditioned and incorporated in accordance with 974 CMR 4.11.

8. Conditions:

The DEC voted to impose the following conditions:

- 1) Prior to demolition of the existing building, the Applicant shall submit a demolition permit to the DEC. All applicable federal, state, and local permits necessary for construction must be obtained prior to the start of construction. Copies of permits issued by those other than the DEC must be filed with the DEC, including, but not limited to, an EPA Construction General Permit, and Driveway curb cut permit from MD/Devens Public Works.
- 2) In accordance with the Devens By-Laws, Article III, Section K 1. a., no soil, loam, sand, gravel, or other earth materials shall be permanently removed from any lot within Devens, except in accordance with the Devens Soil Management Policy, compliance with 974 CMR 407, and approval from the DEC.
- 3) Prior to commencing any intrusive earth work within Devens (due diligence, construction of otherwise) all personnel to be on site shall view an Unexploded Ordinance/Munitions of Explosive Concern (UXO/MEC) video briefing provided by the Devens Fire Department.
- 4) Once the appeal period has expired, the Applicant shall submit final approved plans to the DEC for endorsement. The Applicant shall file the endorsed plans and the final Record of Decision with the Registry of Deeds and proof of recordation shall be submitted to the DEC prior to commencement of construction.

- 5) Prior to commencement of construction, limits of disturbance shall be flagged in the field and all necessary erosion controls and tree protection shall be inspected by DEC Staff. A written report documenting compliance with the approved erosion and sedimentation controls shall be maintained by the developer and made available to the DEC for review upon request. The best management and maintenance practices for the Site as articulated in the Applicant's Erosion and Sediment Control Plan and Notes and Stormwater Pollution Prevention Plan (SWPPP), shall be strictly adhered to, now and in the future. Additional controls shall be implemented at the discretion of the DEC or its Staff.
- 6) An Irrigation system is not part of this approval. The Applicant is required to obtain administrative approval for any future proposed irrigation. Such system must comply with 974 CMR 4.08 and 8.09.
- 7) No outdoor storage is permitted other than what is shown on the plans (refuse/recycling).
- 8) Prior to endorsement, the final plans shall be revised to include the following changes:
 - a. Waivers granted to be included on final plans.
 - b. Include a plan showing a night-time (between 11 p.m. and 7 a.m.) program of reduced illumination. This program will designate which lights may remain on overnight to ensure safety within loading areas/open areas of the site. All lighting shall be properly shielded and downward directed to prevent off-site glare.
 - c. Coordinate installation of utilities, drainage, landscaping in the right of way, and sidewalk installation with DEC Staff, MassDevelopment Utilities, Engineering Department and DPW.
- 9) All building finishes shall not contain any reflective materials, including but not limited to metal flashing, mechanical enclosures, window frames/treatments, doors, roofing material or building trim. Any roof top mechanicals that are not able to be non-reflective will need to be shielded with a non-reflective barrier. Building roofs and upper tiers and trim shall not be lit.
- 10) A Hazardous Materials spill prevention control and countermeasure plan for the facility shall be prepared and submitted to the Fire Chief and DEC prior to issuance of a certificate of occupancy.
- 11) The Applicant shall file annual reports to the DEC in October of each year indicating how they are maintaining their on-site stormwater management facilities. This is an on-going condition once construction is completed.
- 12) Landscaping shall be maintained in good condition in accordance with the approved landscape plan and 974 CMR 3.04(m). The applicant is required to submit a letter confirming a one-year guarantee of all approved landscaping once installed. Any dead or damaged landscaping must be replaced promptly. Tree protection fences shall be installed prior to the commencement of any construction activities on site and maintained in areas where construction is being conducted. Any existing trees marked for preservation that are damaged, killed or removed shall be replaced in accordance with 974 CMR 3.04(8)(d)8.

- 13) There is no approval of signs implicitly or explicitly granted in this Unified Permit and any erection of signs of any type will require subsequent DEC approval.
- 14) The Applicant shall provide As-Built Plans and accompanying information for all site improvements in accordance with the DEC As Built Policy, prior to issuance of a final Certificate of Occupancy.
- 15) All uses/tenants proposed for this building shall be in accordance with permitted uses as listed in the (Innovation Technology Business Zoning District). Each new tenant will be required to obtain written approval from the DEC/LUA prior to occupancy.
- 16) The Applicant shall utilize ultra-low-noise fans and/or sound enclosures for all rooftop mechanicals and HVAC units. Any exhaust or noise generating equipment shall be directed towards the Givry or MacArthur side of the building.
- 17) Any parking lot expansion beyond the 63 parking spaces will require review and approval by the DEC.
- 18) Wherever "Applicant" is referenced in the Conditions set forth herein, it refers to the Applicant, its successors and assigns.
- 19) Jackson Gate from Route Two shall be the primary means of truck access to and from the site on a permanent basis, with other gates to be used only in an emergency situations or during protracted construction when the Jackson gate is unavailable. The Applicant shall post signs that all trucks must enter and exit Devens via the Jackson Gate at Route 2 on the exit gate of the facility. The Applicant shall take appropriate measures to encourage all automobile traffic associated with this project to use Jackson Gate to the maximum degree feasible.
- 20) The facility shall comply with the Massachusetts Anti-Idling law (5-minute restriction). The Applicant shall post signage at all loading docks and drop-off areas notifying drivers of this requirement.
- 21) Any additional parking will require a Level 2 Unified Permit from the DEC.

9. Decision:

The Public Hearing closed on February 23, 2021 and the DEC voted on February 23, 2021, to grant the requested waiver, issue findings, including that the application complied with Approval Criteria in 974 CMR 3.03(2), to impose Conditions, and to approve the Site Plan to demolish an existing building and construct a new 55,000sf facility with parking, driveway, drainage, utilities and associated improvements for 4 MacArthur Avenue.

10. Building Permit:

The Building Commissioner, along with the Electrical and Plumbing Inspectors, must review architectural/structural drawings and specifications and approve them in writing, prior to issuance of a building permit. All requirements in the Massachusetts Building Code, the Massachusetts Sanitary Code, and the Devens Fire Chief must be met. When this approval is obtained, the building permit may then be integrated with this Record of Decision; together they will constitute the Unified Permit for this project and in turn, allow construction to commence.

11. Permit Duration:

In accordance with 974 CMR 1.10, unified permits shall remain in effect so long as the approved activities are commenced within six months of the date of the DEC or the LUA produces a written decision and approved activities are completed within two years. It is further noted that there is a thirty-day “reconsideration period” during which an applicant, a Town, or an aggrieved person may request the DEC reconsider its action (By-Laws, Article IV, Sections C through F). Work performed during this period, which begins on February 24, 2021 and terminates March 24, 2021, is “at risk”.

Approved by:

Date

Peter C. Lowitt, FAICP, Director
Devens Enterprise Commission

Certification

Middlesex, SS

I certify the above is a true action and record of the Devens Enterprise Commission and that Peter C. Lowitt, Devens Land Use Administrator/Director, is empowered by the Devens Enterprise Commission to sign this Record of Decision on its behalf.

Date

Kathryn Clisham, Notary
My Commission expires _____