



Planning Board

**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 264-9636  
Fax (978) 264-9630  
pb@acton-ma.gov  
www.acton-ma.gov

**DECISION**  
06-08

**Quarry Woods PCRC**

Planned Conservation Residential Community (PCRC) Special Permit  
September 26, 2006

**GRANTED WITH CONDITIONS**

Decision of the Acton Planning Board (hereinafter the Board) on the application of Creighton and Yin Peet, 157 School Street, Wayland, MA (hereinafter the Applicant) for property in Acton, Massachusetts, owned by the Applicant. The property is located off Quarry Road and shown on the 2006 Acton Town Atlas on page C-5 as parcels 11 and 17 and includes easements owned or claimed by the Applicant, which connect said parcels to Quarry Road (together hereinafter the Site).

This Decision is in response to an application for a PCRC special permit application received by the Acton Planning Department on June 23, 2006, pursuant to Section 9 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the PCRC Rules and Regulations (hereinafter the PCRC Rules).

The Applicant presented the subject matter of the special permit application to the Board at a duly noticed public hearing of the Board on August 8, 2006. The Applicant was assisted in the presentation by Tom DiPersio of Thomas Land Surveyors & Engineering Consultants, Inc., engineer to the Applicant. The hearing was continued to September 12, 2006, but was continued immediately without discussion or deliberation to September 26, 2006, and then closed. Board members Greg Niemyski (Chairman), William King, Edmund Starzec, Ruth Martin, Michael Densen, and associate Alan Mertz were present throughout the hearing. Mr. Mertz was designated by the Chairman to sit on the Board to act on this special permit application pursuant to section 10.3.9 of the Bylaw. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

**1 EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

- 1.1 A plan entitled "Quarry Woods Planned Conservation Residential Community (P.C.R.C.) in Acton, Massachusetts" dated June 2, 2006, last revised on 9/18/06, drawn by Thomas Land Surveyors & Engineering Consultants, Inc. of 265 Washington Street, Hudson, MA consisting of nine sheets.
- 1.2 Supplemental items and documentation required by the PCRC and Subdivision Rules consisting of:
  - A properly executed Application for a PCRC Special Permit, dated June 22, 2006.

Deleted: 9

Inserted: 9

Deleted: 10

- Filing fee.
- A completed Development Impact Report, form DIR.
- A statement regarding the proposed use of the common land, received on 8/8/06.
- Certified abutters list.
- Legal Notice of Public Hearing.
- A list of requested waivers.
- Copy of the deed.
- Drainage and Water Balance Calculations; version received on 9/21/06.
- Earth work calculations.

1.3 Additional information submitted by the Applicant:

- Priority Habitat of Rare Species map for the Westford Quad.
- Peet Property map showing nearby NHESP '03 Priority Habitats for State-Protected Rare Species; by Sudbury Valley Trustees.
- Proposed Residence Plan, dated 5/4/2005, consisting of one sheet.
- Proposed Studio Plan, dated 5/4/2005, consisting of two sheets.
- Commonwealth of Massachusetts Articles of Organization for the Contemporary Arts International, Inc., and related documents.
- Letter from Steven R. Graham to the Acton Planning Board and Conservation Commission relative to access, dated 5/17/06, and related documents.
- Revised parking requirement calculations received on 9/21/06.

1.4 Agreement

- Agreement between the Peets and the Town of Acton attached hereto [substantially in the form attached with such changes as are acceptable to the Board of Selectmen or its designee \(Agreement\)](#).

Deleted: dated September 25, 2006 and

1.5 Interdepartmental communication received from:

- Acton Water District, dated 6/30/06;
- Acton Fire Chief, dated 7/27/06;
- Acton Collector's Office, dated 7/5/06;
- Acton Health Director, dated 7/3/06;
- Acton Tree Warden & Municipal Properties Dir., dated 7/3/06;
- Acton Engineering Department, dated 7/28/06, 9/7/06, and 9/21/06;
- Acton Planning Department, dated 8/4/06, 9/5/06, 9/6/06, 9/8/06.

1.6 Other:

- Hearing extension agreements dated 8/8/06 and 9/12/06.

Exhibits 1.1 through 1.4 are referred to herein as the Plan.

## 2 **FINDINGS and CONCLUSIONS**

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Site is located within the Residence 10/8 zoning district, the Affordable Housing Sub-District A, and Zones 3 and 4 of the Groundwater Protection District.
- 2.2 The Plan shows the division of Town Atlas parcel C-5/11, shown on the Plan as Lot 1 with approximately 12.9 acres, into two areas with 3.7± acres for residential use and an artist studio and 9.2± acres of common land (±71%).
- 2.3 The proposed two single-family detached dwellings are allowed on the Site in accordance with the Bylaw, including all overlay district requirements. Also proposed is an artist studio with one apartment as an educational use. Educational use as defined in the Bylaw

Deleted: 9  
 Inserted: 9  
 Deleted: 10

includes the use of land for educational purposes in a general range of subjects by a non-profit educational entity, and is allowed by right in a residential zoning district. This is consistent with the requirements of M.G.L. c. 40A, §3. Art in all its forms and expressions, the process of creating art, and the display of art objects serve an educational function in society, especially where these activities are combined with art instruction and classes, as the Applicant proposes here. To the extent the Applicant intends to conduct an art studio or "Sculpture Park" on the premises as an exempt educational use under G.L. c. 40A, § 3, and §§ 3.4.2 and 9.6.3.2 of the Bylaw, the Board has incorporated Condition 3.3.3 below to guide the Applicant as to the criteria for establishing compliance therewith.

2.4 The Applicant proposes as the qualifying non-profit educational entity Contemporary Arts International, Inc., which has filed Articles of Organization with the Secretary of the Commonwealth of Massachusetts, and which the United States Department of the Treasury has qualified as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code. It is the responsibility of the Acton Building Commissioner, in his role as the Zoning Enforcement Officer, to determine whether any activities of Contemporary Arts International, Inc. on the property qualify as an exempt educational use under G.L. c. 40A, § 3, §§ 3.4.2 and 9.6.3.2 of the Bylaw, and Condition 3.3.3 below.

Deleted: Stated

2.5 The Bylaw also allows a home occupation conducted as an accessory use to a principal residential use under certain conditions. To the extent the Applicant intends to conduct an accessory home occupation pursuant to § 3.8.1.2 of the Bylaw, the Board has incorporated Condition 3.3.1 below as to the criteria for establishing compliance therewith. It is the responsibility of the Acton Building Commissioner to determine whether the studio conforms to § 3.8.1.2 of the Bylaw and Condition 3.3.1 below. If such use qualifies as a home occupation, the Applicant is also free to apply for a special permit from the Board of Appeals to allow a limited number of employees and retail sales, although nothing herein diminishes the Board of Appeals' sole and independent authority to decide in such a matter before them.

2.6 The Applicant proposes to retain the common land in its natural state except to create scattered sites with sculptures and walking trails that will lead to them - the proposed "Sculpture Park". Also, the Plan specifically calls out a 10-foot wide trail and access bridge to be constructed in the future in a location about 200 feet southwest of the studio building and leading across a wetland to higher ground in the southeast portion of the common land. Since these improvements are shown on the Plan to be approved hereunder, they do not need later approval by the Board if they are constructed generally in the vicinity and to the dimensions shown on the Plan. The Bylaw specifies among other uses conservation, outdoor education, recreation, and park purposes as legitimate and legal uses of the common land. Thus the proposed "Sculpture Park" is consistent with the allowed uses of common land under the Bylaw, provided the common land meets the ownership criteria for private ownership set forth in the Bylaw.

Deleted: wooden

2.7 The proposed arrangement of lots, areas, and buildings complies with the dimensional requirements of Section 9, PCRC in the Bylaw. PCRC does not require lot frontage on a street, but under the special permit the Board is obligated to ensure safe and adequate access to residences and buildings.

2.8 The Plan shows a ±900-foot long common driveway from Quarry Road to the proposed single family residences and branching from that a ±450-foot driveway to the proposed studio. The proposed driveways are 14 feet wide with a turn-out at ±STA 500+00 of the common driveway. The Plan shows them paved in areas with grades and crushed stone where the terrain is substantially flat. The alignment and intersection roundings accommodate emergency vehicles (up to SU-30 design vehicles). Overall the proposed

Deleted: 9

Inserted: 9

Deleted: 10

driveway design ensures safe and adequate access and minimizes disturbances to the natural environment.

- 2.9 The proposed common driveway leads from Quarry Road to Lot 1 (as shown on the Plan) via an easement over property of Valente; then along Town Atlas parcel C-5/17, shown as lot 2 on the Plan and owned by the Applicant; and then over land owned by the Town of Acton (Town Atlas parcel C-5/24). There the Applicant has no express and recorded easement. Rather, it is generally known that the quarry on Lot 1 was once in active use and that stone was removed along the line of the proposed common driveway to Quarry Road and beyond. Since the operations at the quarry have ceased, the access road has been maintained as a wood road. The previous owner of lot 1 used it off and on for maintenance purposes and to secure the quarry with a fence. The applicant's deed to Lots 1 and 2 includes reference to rights of access to and from Quarry Road, and various record plans show wood roads and cart paths in this general location.
- 2.10 The Town has chosen not to dispute the Applicant's historic rights to pass and repass. Instead, it has reached an Agreement in principle with the Applicant on a number of easements and rights to land and water, which includes an Agreement to narrow the area of the access over the Town owned land to the 20-foot wide access and utility easement shown on the Plan to be formalized and recorded for the benefit of both parties. This Agreement is attached hereto and hereby incorporated as part of this decision and shall be executed in substantially the form attached hereto by the Applicant and on behalf of the Town by the Board of Selectmen or its designee, with any modification deemed necessary by the Board of Selectmen or its designee.
- 2.11 The Bylaw in section 9.7 gives the Board latitude in judging what access provisions are adequate and appropriate in a given situation and to allow alternative designs to the standard requirements of the Acton Subdivision Rules and Regulations. Accordingly, the Board authorizes a special exception and determines that such is in the public interest and not inconsistent with the section 9.1 as it relates to the access design modified by the Agreement referenced in the prior paragraph.
- 2.12 The proposed studio building is shown on the Plan with 11 parking spaces. The building contains a small guest residence, which is in size and function not unlike an accessory apartment where the Bylaw considers one parking space to be adequate. There are two small classrooms, a very small office, and storage space. Then there is the studio, where the Applicant intends to create, for the most part, sculptures from granite of the quarry and lying in abundance on the property. Work with stone sculptures has a decidedly industrial aspect in terms of need for space and machinery to move heavy objects and to store them while being worked on. Thus the Board regards the studio space within the building as industrial for the purpose of determining the number of required parking spaces. All in all, the Board finds that the proposed number of parking spaces is sufficient for the proposed use and is in compliance with the Bylaw.
- 2.13 The Board has received comments from various Town departments, which are listed in Exhibit 1.5 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.14 Under Massachusetts Law, property taxes must be paid prior to plan recording.
- 2.15 The Applicant has requested certain waivers from the PCRC Rules. Since the original filing the applicant has attempted to minimize the list and extent of waivers in response to departmental comments. Other requested waivers were not applicable to this development, and thus no waiver was required. What remains is addressed in section '3.1 Waivers' below.

Deleted: a

Deleted: a

Deleted: a

Deleted: , dated September 25, 2006,

Deleted: a

Deleted: 9

Inserted: 9

Deleted: 10

2.16 The proposed PCRC as shown on the Plan and as amended herein complies with the applicable requirements of the Bylaw; is in harmony with and enhances the purpose and intent of the Bylaw, specifically section 9; is in harmony with the existing and probable future uses of the area and with the character of the surrounding area and neighborhood; is consistent with the Master Plan; will not be detrimental or injurious to the neighborhood; and is appropriate for the Site.

### 3 **BOARD ACTION**

Therefore, the Board voted on September 26, 2006 by a vote of \_\_\_ (in favor), \_\_\_ (opposed) to GRANT the requested special permit, subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations.

#### 3.1 **WAIVERS**

Waiver from section 3.14.8 of the Rules, Landscape Plan: The proposed development as approved hereunder is minimally invasive in its wooded setting. The waiver is GRANTED, except to show the limits of clearing and ground disturbance, and to specify the restoration of disturbed areas with 6" loam and seeding.

#### 3.2 **PLAN MODIFICATIONS**

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless he finds that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Commissioner.

3.2.1 Show all modifications required under section 3.1 - Waivers above.

3.2.2 Provide a letter authorizing Town entry into the Site to stabilize or complete as necessary any work or improvements in the event the Applicant fails to do so.

3.2.3 Provide a list of mortgage holders.

3.2.4 Unless otherwise required by the Acton Engineering Department, which normally assigns street addresses in consultation with the Fire and Police Departments, show on the Plan the street and mailing addresses for the proposed buildings as 68 Quarry Road for the studio building, 70 Quarry Road for the residence on Area B and 72 Quarry Road for the residence on Area A.

3.2.5 Add to the Plan required procedures, methods, and specifications to ensure that the installation of the curb cut and driveway at Quarry Road does not create puddles or other water problems in or adjacent to Quarry Road.

3.2.6 Submit a common driveway maintenance agreement and covenant for the private driveway and all its appurtenances that shall

- (a) apportion the responsibility for snow and ice removal and for general maintenance among the owners of the homes and the studio;
- (b) declare that the common driveway shall remain a private way and serve not more than two single family homes and an art studio with a additional guest residence;
- (c) declare that the owners of the residences and the studio shall be jointly responsible for the removal of snow and ice and for any general maintenance and upkeep of the common driveway and any associated drainage structures and utilities; that the owners shall not petition the Town to accept the common driveway as a public way and/or to provide snow and ice removal services or any other maintenance;
- (d) include an operation and maintenance plan for the proposed drainage system to be approved by the Engineering Department; and

Deleted: 4

Formatted: Bullets and Numbering

Deleted: 9

Inserted: 9

Deleted: 10

(e) acknowledge and accept that the forgoing declarations are enforceable by the Town in a court of law.

Examples of such documents are available in the Acton Planning Department. If the proposed development is to become a condominium the foregoing provisions shall be incorporated in the condominium master deed.

**3.2.7** Submit legal documents governing the ownership and use restrictions of the common land to accommodate the proposed ownership and use of the common land consistent with the requirements of the Bylaw for private ownership of common lands in PCRCs. This document shall contain a written plan and description for the use of the common land as required in section 9.3 of the Bylaw.

**3.2.8** The Plan shall be modified to comply in all respects with the Bylaw and, unless directed otherwise by this decision, with all applicable requirements of the PCRC Rules.

### **3.3** CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. Further, failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

3.3.1 To the extent the Applicant conducts an accessory home occupation pursuant to § 3.8.1.2 of the Bylaw, that use

- (a) shall not involve retail sales,
- (b) shall be conducted entirely within a DWELLING UNIT or an accessory BUILDING by a resident and employing no persons other than the residents, and
- (c) shall be incidental to, subordinate to, subsidiary to, related to, adjunct to, minor in significance compared with, and typically associated with a residential use.

3.3.2 To the extent the Applicant intends to conduct retail sales or employ non-residents in connection with an accessory home occupation, the Applicant shall apply to the Board of Appeals for a special permit authorizing such a home occupation.

3.3.3 To the extent the Applicant intends to conduct an art studio or "Sculpture Park" on the premises as an exempt educational use under G.L. c. 40A, § 3, and §§ 3.4.2 and 9.6.3.2 of the Bylaw, such use

- (a) shall be developed in conjunction with a duly qualified and established 501(c)(3) educational corporation,
- (b) shall be developed, constructed, and operated as an educational sculpture park/studio,
- (c) may involve occasional incidental sales of art objects created and displayed on the premises,
- (d) shall not involve sales other than occasional incidental sales of art objects created and displayed on the premises, and
- (e) shall not include the display of any commercial sign or advertising whatsoever in the "Sculpture Park" or on the Site as defined herein.

3.3.4 This Decision is expressly conditioned upon the Applicant and its successors and assigns fully complying with the requirements of the Agreement (as now attached hereto or hereafter amended) between Yin Peet and Creighton Peet (the Applicant) and the Town of Acton acting by and through its Board of Selectmen or designee, subject to any and all provisions for extensions and terminations afforded therein.

3.3.5 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such

Deleted: 9

Inserted: 9

Deleted: 10

runoff or erosion occurs, the Board or the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

- 3.3.6 All requirements of the Health Director must be met.
- 3.3.7 All taxes, and penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to issuance of any building permit on the Site.
- 3.3.8 Prior to the start of any work on the Site, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Subdivision Rules. If a restrictive covenant it shall be a restriction on all buildings on the Site and no partial releases shall be granted. If not a restrictive covenant, the guarantee shall be in the amount of \$20,000 to allow the stabilization, securing, or completion by the Town as necessary, of any work begun should the Applicant fail to complete the work according to the Plan. The Board reserves the right to require additional performance guarantees for any and all items and improvements shown on the Plan to be posted as a passbook in a form acceptable to the Town of Acton Treasurer.
- 3.3.9 No work on the Site shall begin prior to the endorsement and recording of the Plan.
- 3.3.10 All common land areas shall remain in their natural state and remain undisturbed during and after construction except as shown on the Plan and allowed under this decision.
- 3.3.11 The common land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall not be reduced in area.
- 3.3.12 No portion of the common land shown on the Plan and approved hereunder, including any portion that exceeds minimum zoning requirements, shall be used to meet area, setback, or any other zoning requirements for any other development or improvement that is not shown on the Plan, specifically, it shall not be used to support additional dwelling units or house lots.
- 3.3.13 The number of dwelling units on the Site shall not be increased above the number shown on the Plan and approved hereunder.
- 3.3.14 The size of the studio building shall not be increased above the size shown on the Plan without approval from the Board.
- 3.3.15 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the endorsed Plan.
- 3.3.16 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 3.3.17 Upon completion of all work on the driveways and associated drainage structures, the installation of utility including the installations contemplated in the attached Agreement between the Applicant and the Town of Acton, and the adequate stabilization of disturbed areas according the landscaping specifications required herein, the Applicant shall submit an as-built plan. Five thousand dollars (\$5,000) of the performance guarantee above shall be held by the Town until completion, submittal, and approval of the as-built.
- 3.3.18 This Decision, the endorsed Record Plan, the approved common driveway maintenance agreement and covenant, the approved common land restriction and ownership documents, and the attached Agreement between the Applicant and the Town of Acton shall be recorded by the Applicant at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

Deleted: s

Deleted: 9

Inserted: 9

Deleted: 10

### 3.4 LIMITATIONS

The authority granted to the Applicant under this special permit is limited as follows:

- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw, the PCRC Rules, and other applicable laws and regulations.
- 3.4.2 This special permit and subdivision approval applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For substantial use to have commenced, clearing and grading on the Site as approved hereunder must be under way. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.
- 3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

Deleted: 9

Inserted: 9

Deleted: 10

**4 APPEALS**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Planning Board

\_\_\_\_\_  
Gregory E. Niemyski, Chairman

\_\_\_\_\_  
William King

\_\_\_\_\_  
Edmund Starzec

\_\_\_\_\_  
Ruth Martin

\_\_\_\_\_  
Michael Densen

\_\_\_\_\_  
Alan Mertz

Or,

Signed on behalf of the Town of Acton Planning Board:

Deleted: Singed

\_\_\_\_\_  
Roland Bartl, AICP, Town Planner

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

\_\_\_\_\_  
Eva Taylor, Town Clerk

\_\_\_\_\_  
Date

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Owner

Building Commissioner  
Engineering Department  
Dir. Of Natural Resources  
Police Chief  
Historical Commission

Health Director  
Municipal Properties Director  
Town Manager  
Assistant Assessor

I:\planning\planning board\decisions\06-08 quarry woods pcr.doc

Deleted: 9

Inserted: 9

Deleted: 10