

12/18/06

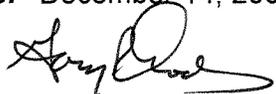
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TOWN OF ACTON

Building Department

INTERDEPARTMENTAL COMMUNICATION

To: Board of Selectmen **Date:** December 14, 2006

From: Garry A. Rhodes, Building Commissioner 

Subject: Site Plan Special Permit #10/09/03-394
1 & 19 Maple Street, Montuori Realty Trust (Shupert)

The board is in receipt of a request to extend the Site Plan Special Permit Decision. The Decision lapsed on May 11, 2006. The Decision provides in part;

This Site Plan Special Permit shall lapse on May 10, 2006 unless work approved by this permit has commenced except for good cause. Any request for extensions shall be made at least thirty (30) days prior to expiration. The Board reserves the right to amend the permit by its own or at the request of the Petitioner with or without a new hearing.

I have spoken to Town Counsel about the lapse of permits. He advised that if the Board wants to they can set a new expiration date if the Board finds the request is justified by "good cause". The Board would also have to waive the requirement that any extension must be made thirty days prior to expiration. I leave both determinations to the Board.

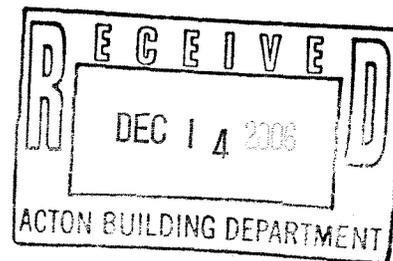
I should note the Building Permit has been applied for and is ready to issue if the Board grants the request. I have attached a copy of the Decision and amendment.

cc: BOS 12/15/06

STAFF HAS MADE NO RECOMMENDATION
AS TO LENGTH OF EXTENSION PENDING
THE BOARD'S DETERMINATION AS TO WHETHER
TO GRANT THE REQUEST.



Montuori Realty Trust
44 Green River Way
Watertown, Ma 02472



December 14th, 2006

Board of Selectman
Acton Town Hall
472 Main Street
Acton, Ma 0172

Re: Special Permit #10/09/03-394

Dear Board of Selectman,

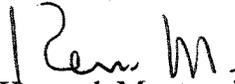
The delay in starting the project at 1-19 Maple St. was a function of several factors which needed to fall into place in order to ensure the project was on a properly capitalized, sound financial footing. This required the leasing and selling of other properties owned by the principles in this project (which took considerably longer than expected) and lining up a reliable and competent builder that the principles had previous experience with once the selling and leasing was completed.. These events now in place will provide the project with the depth it requires to start and finish regardless of volatile market conditions.

This now requires however that we ask you to extend the special permit which had an original expiration date of May 11, 2006.

We hope you value the conservative business plan we took with this project to ensure a quality construction period and follow through to an occupied site .

Thank you and our apologies for the extra consideration and time this is asking of the Board.

Sincerely


Kenneth Montuori
Trustee

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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Montuori Realty Trust (hereinafter the Petitioner) for the property located at 1 & 19 Maple Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map H2A Parcels 42 and 42-1.

This Decision is in response to an application submitted to the Board on November 09, 2003 by the Petitioner for a Site Plan Special Permit under Section 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) to construct two buildings to be used as a building trade shop and offices with associated parking.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order on December 01, 2003 at 7:15 P.M. and continued until January 05, 2004 at 7:15 P.M. again until February 09, 2004 at 7:45 P.M. again until March 22, 2004 at 7:15 and closed April 26, 2004 at 7:15 in the Selectmen's Hearing Room at the Acton Town Hall. Board members F. Dore` Hunter, Peter Ashton, Walter Foster, William Shupert III, and Robert Johnson were present throughout the proceedings.

The record of the proceedings and submissions upon which this permit is based may be referred to in the Office of the Town Clerk, or the Office of the Board.

Exhibit I

A properly executed application for Site Plan approval received October 09, 2003, a booklet containing a certified abutters list, USE description, other permits, record plan, drainage calculations, water balance calculations, earth removal calculations and a traffic study. Seven sheet set of engineered plans dated October 08, 2003 revised December 1, 2003, March 12, 2004 and April 21, 2004. A one sheet set of building plans. Three letters from Acton Survey & Engineering, Inc. dated December 08, 22, 2003 and January 27, 2004.

Exhibit II

Interdepartmental Communication (IDC) from the Town Manager to the Town Staff requesting comments. The following IDC's were received:

1. Building Commissioner dated November 24, 2003, December 31, 2003, January 29, 2004, March 18, 2004 and April 22, 2004
2. Town Planner dated October 23, 2003
3. Fire Chief dated November 14, 2003
4. Municipal Properties Director dated October 29, 2003
5. Engineering Administrator dated January 24, 2003
6. Health Director dated October 27, 2003
7. Water District dated October 21, 2003
8. Recreation Director dated November 07, 2003
9. Transportation Advisory Committee dated November 06, 2003, undated, and April 29, 2004
10. Historic District Commission dated April 26, 2004

Exhibit I is hereinafter referred to as the Plan

1.0 Findings and Conclusions

Based upon its review of the exhibits and records of the proceedings, the Board found and concluded that:

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- 1.1 The site is located in South Acton Village Zoning District and Zone 4 of the Groundwater Protection District. The use is allowed.
- 1.2 The Bylaw section 10.4.3.4 provides that sidewalks are required along the entire frontage of a lot. The Bylaw § 10.4.3.4 (d) allows the Board to waive the sidewalk requirement if it finds that such a sidewalk is not necessary for the safe movement of pedestrians and bicyclist. The Board finds sidewalks are necessary for the safe movement of pedestrians, however, the exact location of the sidewalk could not be decided. The Applicant agreed to provide a gift equal to \$30/foot of frontage until such time as it is determined how best to provide for the safe movement of pedestrians.
- 1.3 The Bylaw section 6.9.2.6 (b) provides for access driveways located in the South Acton Village Zoning District to be no more than 20 feet wide. The Plan indicates the driveway is 24 feet wide which is in conflict with Bylaw § 6.9.2.6 (b). The Applicant has agreed to decrease the width down to 20-feet wide. The Transportation Advisory Committee recommended the decreased width include a concrete island as the original design did. The Board finds the concrete island is appropriate due to the one-way traffic circulation on Maple Street. If in the future, the layout of Maple Street changes the Board may allow the Applicant to remove the island without further hearings.
- 1.4 The parking lot exterior lighting complies with Bylaw § 10.4.3.2 if properly shielded. The exterior lighting also complies with § 10.4.3.2 if properly shielded. The Bylaw on exterior lighting was recently changed at the Annual Town Meeting. The Board finds no additional changes to the exterior lighting shall be made unless it complies with the current standard.
- 1.5 The Bylaw section 10.4.3.9 provides for the Board to consider that the proposed buildings are compatible with their surroundings. The Board finds the proposed buildings are compatible with their surroundings if built as presented.
- 1.6 The Plan includes what is identified as Parcel A. Parcel A is not included in the zoning calculations. The Petitioner has indicated he may either transfer or lease the property to an abutter. The Board finds either a transfer or lease will not have a detrimental effect on this property and is therefore not limited.
- 1.7 The Plan as herein modified:
 - Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
 - Will provide for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation including emergency vehicles, on or adjoining the site.
 - Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
 - Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
 - Is consistent with the Master Plan.
 - Is in harmony with the purpose and intent of this Bylaw.
 - Will not be detrimental or injurious to the neighborhood in which it is to take place.
 - Is appropriate for the site and complies with all applicable requirements of this Bylaw.

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Therefore, the Board voted to **GRANT** the requested Site Plan Special Permit subject to and with the benefit of the following Plan modifications, conditions and limitations.

2.0 Plan Modifications

Prior to the issuance of a Building Permit or the start of any construction on the site, the Petitioner shall cause the Plan to be revised to show the following additional, corrected or modified information. The Building Commissioner shall not permit any construction activity to 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. Where approvals are required from persons other than the Building Commissioner, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Commissioner before the Commissioner shall issue any Building Permit or permit any construction on the site. The Petitioner shall submit five copies of the final plans as approved for construction by the Building Commissioner to the Building Commissioner prior to the issuance of a Building Permit.

2.1 The plan shall be revised to provide for a 20-foot wide access driveway including a concrete island.

3.0 Conditions

- 3.1 The Petitioner shall provide a gift in the sum of \$12,900 (430. x \$30/ft. of sidewalk) at the time of the first building permit being issued. The town shall use the money to provide for safe pedestrian movement in South Acton to the train station.
- 3.2 The exterior lighting shall not be changed unless it complies with the then current Bylaw standards.
- 3.3 The proposed buildings shall be built as shown on the plan as it concerns the exterior design.
- 3.4 Prior to occupancy or use of the new building, an as-built plan shall be supplied by the engineer of record certifying the project was built according to the approved documents. The as-built plan shall show all pavement, building and drainage structure locations above and below grade in their true relationship to lot lines, and include appropriate grades and elevations. In addition to the engineer of record, said plan shall be certified by a Mass. Registered Land Surveyor.

4.0 Limitations

The Authority granted to the Petitioner by this permit is limited as follows:

- 4.1 This permit applies only to the site, which is the subject of this petition. All construction shall be conducted in accordance with the terms of this permit and shall be limited to the improvements shown on the Plan.
- 4.2 There shall be no further development of this site without written consent of the Board of Selectmen as outlined within the Acton Zoning Bylaw. The Petitioner may transfer Parcel A if he chooses without further approval of the Board.
- 4.3 This Decision applies only to the requested Site Plan Special Permit. Other permits or approvals required by the Acton Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.

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- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision, all nonconforming signs shall be removed prior to the issuance of the Building Permit.
- 4.5 The hauling of earth to and from the site shall be restricted to the hours between 9:00 AM and 4:00 PM Monday through Saturday.
- 4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the Acton Zoning Bylaw.
- 4.7 This Site Plan Special Permit shall lapse on May 10, 2006 unless work approved by this permit has commenced except for good cause. Any request for extensions shall be made at least thirty (30) days prior to expiration. The Board reserves the right to amend the permit by its own or at the request of the Petitioner with or without a new hearing.

5.0 **Appeals**

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this day of May ,2004

F. Dore` Hunter, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

Christine Joyce, Recording Secretary

Date filed with Town Clerk

Edward J. Ellis, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Montuori Realty Trust. has passed and there have been no appeals made to this office.

Date

Edward J Ellis, Town Clerk

cc: Petitioner
Building Commissioner
Planning Board
Engineering
Conservation
Director of Municipal Properties
Board of Health
Town Clerk
Planning Boards - Concord, Littleton, Westford, Maynard, Carlisle, Boxboro, Stow, Sudbury

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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Montuori Realty Trust (hereinafter the Petitioner) for the property located at 1 & 19 Maple Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map H2A Parcels 42 and 42-1.

This Amended Decision is in response to an application submitted to the Board on May 18, 2004 by the Petitioner for an amendment of the Site Plan Special Permit under Section 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) to reconfigure the size of the buildings and Parcel A.

Under the Rules and Regulations of Site Plan Special Permits § 5.12 the Board may amend a decision without a new public hearing provided it finds that the amendment is not significant to the public interest and is consistent with the purpose and intent of the bylaw. Board members F. Dore` Hunter, Peter Ashton, Walter Foster, William Shupert III, and Robert Johnson were present throughout the proceedings.

The record of the proceedings and submissions upon which this permit is based may be referred to in the Office of the Town Clerk, or the Office of the Board.

Exhibit I

An amended plan dated October 8, 2003 and revised through May 18, 2004

Exhibit I is hereinafter referred to as the Plan

1.0 **Findings and Conclusions**

Based upon its review of the exhibits and records of the proceedings, the Board found and concluded that:

- 1.1 The Board finds the amendment is not significant to the public interest and is consistent with the purpose and intent of the bylaw.
- 1.2 The Decision Site Plan Special Permit # 10/09/03-394 will remain in effect except as revised by the amended Plan.
- 1.3 The Plan as herein modified:
 - Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
 - Will provide for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation including emergency vehicles, on or adjoining the site.
 - Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
 - Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
 - Is consistent with the Master Plan.
 - Is in harmony with the purpose and intent of this Bylaw.
 - Will not be detrimental or injurious to the neighborhood in which it is to take place.
 - Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted to **GRANT** the requested amended Site Plan Special Permit.

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2.0 **Appeals**

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this day of November ,2004

F. Dore` Hunter, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

Christine Joyce, Recording Secretary

Date filed with Town Clerk

Edward J. Ellis, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Montuori Realty Trust. has passed and there have been no appeals made to this office.

Date

Edward J Ellis, Town Clerk

- cc: Petitioner
- Building Commissioner
- Planning Board
- Engineering
- Conservation
- Director of Municipal Properties
- Board of Health
- Town Clerk
- Planning Boards - Concord, Littleton, Westford, Maynard, Carlisle, Boxboro, Stow, Sudbury