

F Y I



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

Planning Department

May 29, 2008

Samantha Parslow
Sal Panetta
5 Willow Street
Acton, MA 01720

Re: food vending truck/trailer

Dear Samantha; Dear Sal:

You have inquired about the possibility of establishing a more or less seasonal food vending business in a converted utility van (or similar) on your property at 5 Willow Street in West Acton. I apologize for the belated answer. The subject turned out to be quite a bit more complicated than the seemingly simple question might suggest at first glance. Case law plays into it heavily, which is not always easily discernable without Town Counsel research and advice. Below, I will try to summarize Town Counsel's conclusions.

First the facts as I understand them:

The property is in the West Acton Village (WAV) zoning districts. You presently operate a vehicle repair service at the property. That use may be allowed in the WAV zoning district with a special permit from the Board of Selectmen. Your particular automobile repair business is pre-existing non-conforming in that a special permit was never issued because the use goes back many years and likely stems from a time that predates the enactment of zoning in Acton in the 1950's. Pre-existing non-conforming uses are legal and enjoy protections from prohibition by new zoning bylaws. But changes, expansions, or cessations in such uses can greatly diminish or wipe out existing zoning protections.

In addition to the vehicle repair business, you operate a storage service on this property. Customers can store various items on your property or in buildings on your property for a fee for certain periods of time. Storage or warehousing is a prohibited use in the WAV zoning district. As with the vehicle repair business, I deem this business activity as pre-existing non-conforming.

The food vending proposal – legal conclusions:

1. The proposed business is permitted by the Bylaw because it can be characterized as a restaurant. It is permitted by right in the WAV zoning district because it is a restaurant with fewer than ten seats.

2. You must obtain a common victualler's license from the Board of Selectmen to undertake the proposed food vending business.
3. **However**, if you obtain the license and begin undertaking the food vending business, that action would destroy or wipe out the grandfathered status of the vehicle repair and the storage business uses and essentially turn them into illegal uses against which I would have to take zoning enforcement action.
4. The problem with the vehicle repair use could possibly be cured if you apply to the Board of Selectmen for a special permit for this use, and if the Board of Selectmen after a public hearing, decide in their sole discretion to grant the requested special permit. It is quite likely that with any such special permit, the Board of Selectmen would require changes and improvements on your property that may include landscaping, closing of the curb cut on Willow and Central Street to an narrower more standard driveway, general clean up of outdoor storage areas, fixing up of buildings, etc.
5. The problem with the storage use cannot be cured by a special permit because it is plainly prohibited in the WAV zoning district. That use would have to be stopped immediately with the beginning of any restaurant or food vending business on the property.

Please feel free to contact me if you have any questions about this, or if you would like to further explore and discuss your options.

Sincerely,

A handwritten signature in cursive script that reads "Roland Bartl". The signature is written in black ink and is positioned above a horizontal line that extends to the right.

Roland Bartl, AICP
Planning Director

cc: Town Manager
Planning Board

g:\bin\roland newsals auto - food vending question.doc