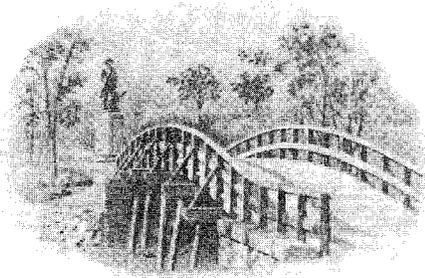


**WAYSIDE MANAGEMENT CORPORATION**  
**Property Development**

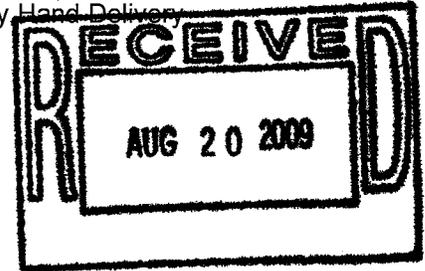
8/24/09  
⑤ A



Old North Bridge

794 Elm Street  
Concord, MA 01742  
TEL 978-369-4000  
TEL 978-263-2000  
FAX 978-263-8100

August 20, 2009  
By Hand Delivery



Board of Selectmen  
Town Hall  
472 Main Street  
Acton, MA 01720

Re: 50-56-60 Powder Mill Road

Dear Members of the Board:

This letter is to reiterate Acton Survey's recent letter concerning Section 3.1 of your Site Plan Decision 2-19-03-388 dated July 14, 2008 and provide you with additional information.

Each Condition will be addressed separately.

3.3.1 When an acceptable decision is issued by the Board the resulting Decision, or Amendment, will be recorded within 30 days of the decision date.

3.3.2 At the time a new Site Plan submissions for either, or both, 56 or 60 Powder Mill Road the Board has the right to require a ramp be constructed between 60 and 56 Powder Mill Road, if there is a demonstrative need for a ramp.

The requirement that provisions for a ramp be recorded with the deeds of the properties will unnecessarily "cloud" the Titles of both 56 and 60 and could extend to 50 if that property is separated from 56 at sometime in the future.

I still have reservations concerning constructing a ramp that would decrease the use of 56 Powder Mill Road by bisecting it with a driveway to the ramp.

3.3.3 A demolition permit has been filed for the "Doll House" at 56 Powder Mill Road. Despite having spent considerable time, money and effort into the rehabilitation of this structure it remains economically unsuitable for this site. The size, layout, age and position on the site makes it undesirable. Its proximity to Powder Mill Road and being located within the Flood Plain has caused it to be undesirable.

Having spent considerable money to rehabilitate the structure, I will continue to try to "gift it", find an alternative use or location for at least the Mansard Roof portion.

3.3.4 The fire hydrant in front of 60 Powder Mill has been installed at no cost to the Town and has been gifted to the Town.

3.3.5 Fire Lanes suitable for the turning of a fire apparatus have been marked in front of 60 Powder Mill Road.

cc: Planning, Bldg, Police, Fire → 8/24/09

3.3.6 At the time of a Certificate of Occupancy being issued for 60 Powder Mill Road the alarm devices were found to be acceptable by Deputy Fire Chief Kevin Lyons.

I also am concern about the Powder Mill Road drainage system. The pipe running through 56 Powder Mill Road is not contained in an easement and to my knowledge has never been maintained by the Town. I am willing to grant an easement, if the Town will agree to properly maintain the drainage system.

The catch basin in Powder Mill Road could collect runoff from a large drainage area, if the recent repaving of Powder Mill Road was done properly. At present the runoff that should be collected by the catch basin flows across the Village Subaru property and this runoff and a landslide onto the property from property in Concord has resulted in flooding of the Subaru parking lot. The parking lot has become broken up because of the flooding.

Notices of Intent were filed by others in both Concord and Acton to correct the damaged caused by the landslide. I was vilified during this process as I requested indemnifications and refused to allow a massive retaining wall to be constructed on my property. I did attempt to correct the blockage of drainage at the rear of Village Subaru, but was rebuffed because this would delay the stabilization of the landslide. The landslide remains uncorrected.

Hopefully, this letter will allow the Board to understand the reasons I have requested you review your decision and will allow some corrections to be made that will allow the property to become an asset to the owners and the Town.

Sincerely,

*Leo Bertolami, manager*

Leo Bertolami, Property Manager

e-mail [autoplex3@hotmail.com](mailto:autoplex3@hotmail.com)  
Cell 978-430-4000

BOB Mail  
8/14/09

8/24/09  
5 5

**Acton Survey & Engineering, Inc.**  
P.O. Box 666, 97 Great Rd. #6 • Acton, MA • 01720  
Phone: (978) 263-3666 • Fax: (978) 635-0218  
Email: [actonsurvey@actonsurvey.com](mailto:actonsurvey@actonsurvey.com)

August 12, 2009

Acton Board of Selectmen  
472 Main Street  
Acton, MA 01720

Re: 50, 56 & 60 Powder Mill Road  
Leo Bertolami – 5235

Dear Board Members:

The purpose of this letter is to present you with a synopsis of a meeting held with our client and to provide the Board and Town Staff the subjects he desires to discuss at our meeting of August 24, 2009.

1. The buildings should be considered as being on 3 separate parcels as shown on the Plan recently signed by Roland Bartl on behalf of the Planning Board.
2. Our client will place the Board's decision on file at the Registry of Deeds, assuming no appeal is made.
3. The hydrant installed by our client in front of 60 Powder Mill Road will be gifted to the Town.
4. The fire lane markings at 60 Powder Mill Road are in place.
5. Our client is willing to install steps between 60 and 56 Powder Mill Road as suggested by Selectman Friedrichs.
6. Our client remains concerned about the use of an employee car ramp between 60 and 56 being used by unauthorized persons, resulting in accidents.
7. At the request of our client this office has prepared a series on conceptual plans for the development of 56 Powder Mill Road on a stand alone basis and in conjunction with 56 and 60 individually and collectively. As a result of these studies we have concluded that the Mansard roof building [aka Doll House] should be removed as it interferes with any reasonable use of the property.

In regard to the "Doll House" we offer the following:

- The structure is located within the 100 year flood plain.

- The structure is not flood proof.
  - The front yard set back does not conform to Zoning. A 30 foot setback is required and the present setback is less than 10 feet.
  - Only the front portion appears to be of any significance.
  - Mr. Bertolami has successfully moved two larger structures [Wetherbee & Raynor houses] in Acton.
8. An easement for the existing Town Drain that crosses the property and discharges onto the property prior to flowing to the Assabet River should be granted to the Town.
9. The Town should reset the catch basin grate in Powder Mill Road so it is able to collect gutter flow that is presently being bypassed and flows across the Village Subaru Property.

Please inform us if other items that are to be discussed and on behalf of our client thank you for any consideration you may give this matter.

Very truly yours,  
Mark T. Donohoe, PE



for:  
Acton Survey & Engineering, Inc.

cc: Leo Bertolami  
Acton Planning Department

8/24/09 (5) c  
RECEIVED & FILED  
JUL 15 2008  
TOWN CLERK  
ACTON

Site Plan Special Permit – 02/19/03 – 388 (3<sup>rd</sup> Amendment)  
Autoplex Realty, LLC  
60 Powder Mill Road  
July 14, 2008

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**Board of Selectmen**

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**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 264-9612  
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bos@acton-ma.gov  
www.acton-ma.gov

**Third Amendment of Site Plan Special Permit  
DECISION  
02/19/03 - 388**

Autoplex II, LLC (formerly Autoplex Realty, LLC)

July 14, 2008

Decision of the Acton Board of Selectmen (hereinafter the Board) on the request for a third site plan special permit amendment made by Mark T. Donohoe, PE of Acton Survey & Engineering, Inc. in a letter dated January 22, 2008 on behalf of Leo Bertolami, Autoplex II, LLC (hereinafter the Applicant) for property located at 60 Powder Mill Road in Acton, Massachusetts, owned by the applicant. The property is shown on the 2007 Acton Town Atlas map J-3 as parcel 49-1 (hereinafter the Site). The third amendment request seeks elimination of the required emergency ramp/driveway connection between 60 and 56 Powder Mill Road.

The Board had issued site plan special permit decision 02/19/03 - 388 on June 23, 2003; approved red-line changes on December 19, 2005; issued a first decision amendment filed with the Town Clerk on September 26, 2006; and issued a second decision amendment recorded with the Town Clerk on July 17, 2007 – together hereinafter referred to as the Original Decision.

The Board's rules and regulations for site plan special permits, section 5.12 provide that the

Board may amend previously granted permits by written request of an applicant or on its own motion and further that it may amend a permit without a public hearing if it is not significant to the public interest and consistent with the purpose and intent of the zoning bylaw. The Board considered the request for a third amendment at a number of public meetings held after January 22, 2008 up to and including May 19, 2008. The Applicant attended the meetings, sometimes accompanied by Mr. Donohoe. The minutes of the meetings and submissions on which this decision is based upon may be referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

## **1      EXHIBITS**

- 1.1 February 2002 rental plan, 50-56 Powder Mill Road, by Acton Survey & Engineering, Inc. (AS&E) showing vehicle storage and parking layout, improved landscaping, and a future fire lane to 60 Powder Mill Road
- 1.2 As Built Notice of Intent Plan, 50-56 Powder Mill Road, dated September 2002, revised 10/3/02, by AS&E.
- 1.3 03/12/07 IDC from Robert C. Craig, Fire Chief to the Town Manager regarding fire safety and emergency accessibility concerns at 60 Powder Mill Road.
- 1.4 Parking Layout Plan dated March 21, 2007, 56 Powder Mill Road, by AS&E.
- 1.5 The Original Decision including all related plans, documents, and correspondence referred to therein.
- 1.6 Site Plan Amend Plan, dated February 17, 2007, last revised May 17, 2007 showing site plan for 60 Powder Mill Road as approved in the Original Decision (after the second amendment); including a ramp and ramp and wall detail depicting the required emergency ramp and driveway connection between 60 and 56 Powder Mill Road sized to be suitable for passage by a fire engine.
- 1.7 11/14/07 IDC from the Building Commissioner to the Managers Office regarding 2008 license renewals citing observations of violations and non-compliance with previously licenses for 50-56 Powder Mill Road and 60 Powder Mill Road, and with the site plan special permit for 60 Powder Mill Road (the Original Decision).
- 1.8 11/19/07 letter from Mr. Donohoe, AS&E to the Building Commissioner regarding flood plain compliance.
- 1.9 11/28/07 letter from Mr. Bertolami, Acton Suzuki, Inc. of 60 Powder Mill Road regarding license and permit compliance status.
- 1.10 11/28/07 letter from Mr. Bertolami, Acton Ford Rent a Car of 56 Powder Mill Road regarding license and permit compliance status.
- 1.11 12/03/07 IDC from Roland Bartl, Planning Director to the John Murray, Temporary Town Manager regarding the aforesaid violations and non-compliance issues at 50-56 Powder Mill Road and 60 Powder Mill Road.
- 1.12 12/21/07 letter from Mr. Bartl to Mr. Bertolami summarizing a 12/12/07 meeting with Mr. Bertolami, Mr. Craig and Mr. Bartl, and containing a chronology of permit actions relative to a fire lane or ramp, and driveway connection between 60 and 56 Powder Mill Road.
- 1.13 01/15/08 Site Conditions Plan, 60 Powder Mill Road by AS&E.
- 1.14 01/17/08 letter from Mr. Donohoe, AS&E about status of site development at 60 Powder Mill Road.
- 1.15 01/22/08 letter from Mr. Donohoe, AS&E to the Board of Selectmen requesting a third site plan special permit amendment for 60 Powder Mill Road.
- 1.16 01/25/08 IDC from Mr. Bartl to Mr. Murray regarding licenses renewal status for 56 and 60 Powder Mill Road and requested third site plan special permit amendment for 60 Powder Mill Road.

- 1.17 01/25/08 memo from Mr. Craig to Mr. Bartl regarding the ramp/driveway connection between 60 and 56 Powder Mill Road.
- 1.18 01/26/08 IDC from the Engineering Department to Mr. Murray regarding flood plain compliance.
- 1.19 Photographs provided by Mr. Bertolami in January 2008 showing temporary pavement markings at 60 Powder Mill Road.
- 1.20 Photographs taken by Acton police during January 2008 of 56 and 60 Powder Mill Road.
- 1.21 02/12/08 letter from Mr. Donohoe, AS&E to the Board of Selectmen with a further status report on the site development at 60 Powder Mill Road and explanation of third amendment request.
- 1.22 Site Plan Amend Plan 2/12/2008, 60 Powder Mill Road, by AS&E, last revised 4/2/08.
- 1.23 02/19/08 IDC from Mr. Bartl to Mr. Murray regarding license renewals for 56 and 60 Powder Mill Road and the third site plan special permit amendment request for 60 Powder Mill Road and 02/12/08 letter from Mr. Donohoe.
- 1.24 02/20/08 letter from Mr. Donohoe, AS&E to the Board of Selectmen regarding landscaping items at 56 Powder Mill Road.
- 1.25 February 2008 Engineering Department notes and sketch indicate that length of emergency ramp/driveway connection shown on Site Plan Amend Plan, dated February 17, 2007, last revised May 17, 2007 must be 38.5 feet.
- 1.26 03/31/08 letter from Mr. Donohoe, AS&E to the Board of Selectmen summarizing recent meetings with Town staff and further discussing the emergency ramp/driveway connection between 60 and 56 Powder Mill Road.
- 1.27 04/23/08 IDC from Mr. Bartl to Mr. Murray regarding license renewals for 56 and 60 Powder Mill Road and the third site plan special permit amendment request for 60 Powder Mill Road and 03/31/08 letter from Mr. Donohoe.
- 1.28 04/24/08 IDC from Mr. Craig to Steven Ledoux, Town Manager regarding license renewals for 56 and 60 Powder Mill Road and the third site plan special permit amendment request for 60 Powder Mill Road and 03/31/08 letter from Mr. Donohoe.
- 1.29 04/28/08 letter from Mr. Donohoe, AS&E to the Board of Selectmen about requesting a postponement of discussions on the subject matter.
- 1.30 04/28/08 letter from Allan R. Curhan of Allan R. Curhan Associates to Mr. Ledoux regarding the required connection between 56 and 60 Powder Mill Road, stating that different entities own the properties.
- 1.31 2008 Assessors Cards for 50-56 and 60 Powder Mill Road addresses, which show record ownership of both properties in one entity, Autoplex II, LLC.
- 1.32 05/14/08 letter from Mr. Donohoe, AS&E to the Board of Selectmen regarding mock-up photographs of the required ramp with two attached photos.
- 1.33 05/14/08 letter from Mr. Curhan to Stephen Anderson, Acton Town Counsel, regarding the required ramp connection, ownership of 56 and 60 Powder Mill Road, and grade differentials between the two sites.
- 1.34 05/15/08 memo from Stephen Anderson, Town Counsel, to Roland Bartl with attachments, indicating that Registry of Deeds records confirm ownership of both properties in one entity.
- 1.35 2004 annual report of Autoplex Realty LLC filed with the Secretary of State office on November 8, 2004.
- 1.36 Certificate of Amendment with name change from Autoplex Realty, LLC to Autoplex II, LLC filed with the Secretary of State office on November 8, 2004.
- 1.37 2006 annual report summary for Acton Suzuki, Inc. on file at the Secretary of State office.

## **2 FINDINGS AND CONCLUSIONS**

- 2.1 The emergency/driveway connection first appears on plans submitted to the Town in 2002 (Rental Plan 50-56 Powder Mill Road). It shows as a fire lane connection between 50-56 Powder Mill Road and 60 Powder Mill Road with arrangement of car storage spaces and maneuvering aisles that allow fire engine passage between the fire lane and the street.
- 2.2 60 Powder Mill Road has been improved under this site plan special permit and is now used as a Suzuki dealership. The as-built finished grade at 60 Powder Mill Road is +/-4 feet above the adjacent existing grade at 56 Powder Mill Road. This difference was not apparent until construction was completed. The pre-construction grade differential was +/- 1 foot.
- 2.3 56 Powder Mill Road has not seen any changes over the years that are relevant in this context. It appears at times vacant. Prescott Paint occupies space in the larger building and Acton Ford Rent-a-Car is posted at the smaller building.
- 2.4 The smaller building at 56 Powder Mill Road is also known as the "doll house". The "doll house" is an old building that has been placed on the Acton Cultural Resource list.
- 2.5 The Original Decision as it stands before this decision on the third amendment request requires a ramped emergency access/driveway connection to negotiate the as-built grade differential between the two sites. The Site Plan Amend Plan as last revised on May 17, 2007 shows the ramp's engineering details.
- 2.6 With his request to amend the site plan special permit for a third time, the Applicant is seeking relief from the ramp requirement alleging among other things different ownership of the two sites and resulting severe infringement on the practical usability of the 56 Powder Mill Road site.
- 2.7 The Town Assessor's and the Registry of Deeds show that Autoplex II, LLC is the single and joint owner of both properties.
- 2.8 The ramped connection as shown on the May 17, 2007 would begin at the top of the retaining wall on the westerly side of the Suzuki facility at 60 Powder Mill Road, span across a landscaped snow storage area, and descend onto 56 Powder Mill Road until it reaches existing grade at approximately 18-19 feet west of the existing pavement edge.
- 2.9 Thus, the ramp as required in the Original Decision would extend onto the facility at 56 Powder Mill Road by about the length of a vehicular parking or storage space.
- 2.10 The Acton Fire Chief maintains the need for a ramped emergency connection between the two sites.
- 2.11 The 2002 Rental Plan for 56 Powder Mill Road shows perpendicular vehicle parking or storage against the northern pavement edge of the property with a gap for the fire lane to 60 Powder Mill Road.
- 2.12 The installation of the ramp in accordance with the 2007 plan would occur in the same location as the fire lane shown on the 2002 plan. The ramp would eliminate one, but in no case more than two, vehicle parking or storage spaces shown on the 2002 plan.
- 2.13 The Applicant suggested that installing the ramp would require demolition of the "doll house".
- 2.14 Since the "doll house" is on the cultural resources list, its demolition is subject to Acton's General Bylaw Chapter N, also known as the Demolition Delay Bylaw.

- 2.15 The applicant asked for approval of the following as a substitute for or incentive to waiving the required ramp connection: a new and additional fire hydrant in front of 60 Powder Mill Road; fire lane demarcations for all driveway and maneuvering aisle space at 60 Powder Mill Road and on 56 Powder Mill Road in the fire land space shown on the 2002 rental plan; agreement to build the ramp if and when 50-56 Powder Mill Road, or a portion thereof, undergoes site plan special permit; and a historic preservation restriction for the "doll house" at 56 Powder Mill Road with a provision that would allow its relocation.
- 2.16 After considering the relevant evidence in the file the Board finds that there appears no real and practical impediment against the emergency ramp/driveway connection. However, the Board is willing to give the Applicant the benefit of doubt and agrees to waive the ramp subject to the following conditions.

### **3 BOARD ACTION**

Therefore, the Board voted on June 23, 2008 to GRANT the requested third amendment to site plan special permit 02/19/03 – 388 subject to and with the benefit of the conditions.

#### **3.1 CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this entire special permit null and void, without force and effect, and shall constitute grounds for its revocation, 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 This Applicant shall cause this decision to be recorded at the Registry of Deeds no later than by August 15, 2008.
- 3.3.2 The Applicant shall no later than August 15, 2008 submit to the Planning Director for Town legal review and approval a covenant to the Town of Acton in recordable form that binds the Applicant and the successors, and assigns, including all successors in ownership of both 56 Powder Mill Road and 60 Powder Mill Road to the commitment of installing an emergency ramp/driveway connection adequate for SU-30 fire apparatus use between 60 and 56 Powder Mill Road at such time as 56 Powder Mill Road is before the Town for any kind of special permit or Site Plan Special Permit. The Applicant shall cause the approved covenant to be recorded at the Registry of Deeds no later than by November 1, 2008.
- 3.3.3 The Applicant shall no later than August 15, 2008 submit to the Planning Director for Town legal review a historic preservation restriction for the "doll house" at 56 Powder Mill Road. The restriction shall follow in form and content the standard historic preservation restriction as published most recently by the Massachusetts Historical Commission. The restriction may include a provision that allows the relocation of the "doll house" on the same lot as such lot is presently configured. The Applicant shall cause the approved preservation restriction to be recorded at the Registry of Deeds no later than by November 1, 2008.
- 3.3.4 The Applicant shall no later than November 1, 2008 have installed a fire hydrant in front of 60 Powder Mill Road with the exact location to be determined by the Fire Chief.
- 3.3.5 The Applicant shall no later than November 1, 2008 have marked fire lanes sufficient in layout for SU-30 fire apparatus use: 1) on 60 Powder Mill Road on the entrance driveway, in front of the building to the ramp location, and with turn-around space in the

easterly portion of the parking lot; and 2) on 56 Powder Mill Road from the edge of pavement at the ramp location around both sides of the "doll house" to the street with the exact location and configuration to be determined by the Fire Chief.

3.3.6 The Applicant shall no later than November 1, 2008 have installed improved fire and emergency alarm devices in the building at 60 Powder Mill Road as directed by the Fire Chief.

#### **4 EFFECT OF THIS DECISION**

This decision only addresses the narrow range of issues brought forth by the Applicant in his request for the third amendment of Site Plan Special Permit 02/19/03 – 388. The Original Decision as formulated before this third amendment shall remain in full force and effect, except as specifically amended or added to herein.

The Town of Acton Board of Selectmen

  
Lauren S. Rosenzweig, Chair

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Town Engineering	Municipal Properties Director
Town Clerk	Conservation Administrator	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Assistant Assessor	

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