



Planning Department

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MEMORANDUM

To: Board of Appeals **Date:** July 9, 2010

From: Roland Bartl, AICP, Planning Director *R. B.*

Subject: **Powder Mill Properties LLC – (Bertolami) 48, 50& 56 Powder Mill Road
Petition for Special Permit under ZBL, Section 4.1.8 – Flood Plain (#10-04)
4th Hearing Session - continued from May 17, 2010**

1. **ZBL Section 8.6 – Special Provisions to Enhance Access for Handicapped Persons v. ZBL Section 4.1.8 – Filling of a Flood Plain**

At the last hearing session, the peer reviewer noted the existence of ZBL section 8.6. It waives the special permit for handicapped access facilities designed in accordance with the requirements of the Mass. Architectural Access Board. The applicant is now asking for a formal determination by the Board on this matter.

In the supplemental materials submitted to the Board for this hearing session the applicant attempts to demonstrate to the Board that the proposed filling of the flood plain meets the criteria of ZBL Section 8.6. I agree with this construct of the Bylaw. If, after review of the materials submitted and further explanation at the hearing, the Board finds that the proposed filling of the flood plain is necessary to construct a handicapped access facility that meets Architectural Access Board requirements, then no special permit is required for the filling. Nevertheless, the work must comply with the 2% fill limit in the flood plain.

The revised plan (5/24/10 revision) shows a retaining wall with revised grading. Presumably this reduces the proposed amount of fill from the earlier plan iteration. However, it unclear to me why if the entire fill proposed on the east side of the retaining wall is necessary. Perhaps some plans showing the grades in profile would help.

2. **ZBL Section 4.1.8 – Substantial Improvement in a Flood Plain and Floodway Requires a Special Permit (see also ZBL sections 4.1.1.7)**

As noted in my March 3, 2010 memorandum to the Board, the proposed work on the site in its entirety constitutes a Substantial Improvement as defined in section 4.1.1.7, which by far exceeds the scope of improvements for facilitating access for handicapped persons. Substantial Improvement is not listed under by-right permitted uses within the floodway fringe. A portion of the building sits within the floodway, where substantial improvements are prohibited without a

special permit from the Board of Appeals (see section 4.1.4 b). It follows, that the proposed work for the site and for the building on the site requires a special permit from the Board of Appeals for Substantial Improvement in the flood plain under ZBL section 4.1.8.

3. Calculated Fill Amounts

There are two numbers for the proposal now before the Board. Only one can be correct:

1. The applicant's engineer calculates 1316 cubic feet at 1.8% < 2%.
2. The peer review engineer calculates 884 cubic feet at 1.2% < 2%.

The Engineering Department notes that the Board of Appeals granted a special permit for the filling of 260 cubic feet in two areas of the site "to provide a flat parking area and to provide access to the adjoining lot at 60 Powder Mill Road" (Decision #01-19 and sketch plan in the package). If this fill work or any completed portion of it was done, it must be added to the total fill on the site. If it was done in total, the two respective fill numbers would then change to:

1. 1316 cf + 260 cf = 1576 cf at 2.2% ≥ 2%.
2. 884 cf + 260 cf = 1144 cf at 1.6%.

The applicant should document whether the fill approved in 2001 was done in its entirety, or to which extent or amount, or not done. Depending on which of the above fill numbers the Board accepts as true, the combined fill may exceed the 2% limit.

While the Board may decide that this matter is not within their purview pursuant to ZBL section 8.6, the question about the previously authorized fill on the site must still be resolved to the satisfaction of the Zoning Enforcement Officer. Since a special permit is still required for Substantial Improvement this matter might as well remain within the record of the hearing. Below, I recommend yet another hearing continuance. If the Board and the applicant agree on a continuance, the applicant should provide clarity on the issue of the previously approved fill.

4. The ramp to 60 Powder Mill Road

A ramp to 60 Powder Mill Road is required in the event of a special on either 60 Powder Mill Road or 48, 50 & 56 Powder Mill Road (B.o.S. Site Plan Special Permit #2/19/2003-388 – 3rd amendment). The special permit event is now triggered with this application before the Board of Appeals. The ramp would require additional fill, which must be quantified. The ramp will not qualify for special permit exclusion under ZBL section 8.6.

The applicant had originally been granted an audience with the Board of Selectmen in June 2010 to discuss matters related to the applicant's various properties in this area of Town including the required ramp. The applicant has since asked to reschedule the meeting to July 26, 2010. This request has been accommodated. While I am not suggesting that I would know the outcome of the upcoming discussion with the Selectmen, it is within the realm of possibilities, although by no means assured that the Selectmen may decide to waive the requirement for the ramp. Until then, it does not make sense to go through the exercise of calculation the fill required for the ramp. Therefore, **I recommend a hearing continuation to a date after July 26, 2010.**

cc: Applicant, Town Manager