



Planning Department

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TOWN CLERK, ACTON

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January 24, 2012

### Notice of Public Hearing on Proposed Zoning Changes

Please publish the following as a LEGAL NOTICE on *February 2, 2012* and *February 9, 2012*.

Acton Planning Board public hearing - 2/21/12, 8:30 PM, Town Hall – Faulkner Room (204), on proposed zoning bylaw and map changes to: (A) Amend definition of Agriculture; (B) Rezone 145-149 Great Road (Brookside Shops) to Limited Business; (C) amend parts of section 7 (Sign and Advertising Devices), and establish a separate fine for violations of section 7; (D) Amend regulation of political signs; (E) Clarify specifications for lot access, frontage, width and yard; (F) Amend regulations for residential accessory uses such as garages, sheds, and barns; (G) Amend regulation of nonconforming lots and structures on nonconforming lots; (H) Amend regulation for renting rooms as accessory to residential use; (I) Allow motor vehicle sales as accessory use to vehicle repair shop; (J) Allow and regulate drive-up windows at banks and pharmacies; (K) increase the maximum allowed gross vehicle weight for vehicle sales, repair and body shops. Agricultural operations will not be impacted. Proposals are available at the Planning Department in Town Hall.

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**ARTICLE ZA (2012ATM) # AMEND ZONING BYLAW - DEFINITION OF AGRICULTURE**  
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw by deleting section 3.2.1 and replacing it with a new section 3.2.1 as follows:

3.2.1 Agriculture – Commercial agriculture or farming as defined in M.G.L Ch. 128, s. 1A; the boarding, keeping or raising of livestock, including horses, as a commercial enterprise; aquaculture; silviculture; horticulture; floriculture; or viticulture; the use of BUILDINGS and STRUCTURES for the primary purpose of these activities; and the sale of farm products. The aforesaid uses and activities shall be limited to parcels of 2 acres or more, whereby land divided by a public or private way or a waterway shall be construed as one parcel, and they shall be subject to and in conformance with the definitions, criteria, thresholds, and requirements as they pertain to these activities conducted on not less than 2 acres or not less than 5 acres, respectively, all as set forth in MGL Ch. 40A, s. 3.

*[Note – Section 3.2.1 currently reads:*

*3.2.1 Agriculture - On a parcel of more than five acres: Agriculture, including the boarding, keeping or raising of livestock; horticulture (including without limitation the growing and keeping of nursery stock and the sale thereof, whether such nursery stock is grown in the ground or in burlap, containers, or other suitable manner, provided it is nourished, maintained and managed while on the premises); floriculture; or viticulture; the use of buildings and structures for the primary purpose of these activities, including the sale of farm products. All of the aforesaid shall be subject to and in conformance with the definitions and requirements for these activities under MGL Ch. 40A, s. 3. On a parcel of two acres or more: Cultivating, harvesting and storing of field crops, produce or fruit, and storage of farm equipment that is necessary for these activities; the boarding, keeping and raising of not more than one horse, goat or sheep, plus its offspring up to one year of age.]*

, or take any other action relative thereto.

### **SUMMARY**

The State Zoning Act definition and exemptions for agriculture (M.G.L. Ch. 40A, s. 3) have changed and expanded several times in recent years. This article aligns Acton's zoning bylaw with these amendments up to Chapter 240, Sec. 79 of the Acts of 2010.

The referenced M.G.L Ch. 128, s. 1A defines farming or agriculture as “farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market”.

The referenced M.G.L. Ch. 40A, s. 3 states that “No zoning ordinance or by-law shall (...) prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and

September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises".

The Acton zoning bylaw allows agriculture or farming in all zoning districts. This zoning change is perfunctory. The State law prevails over local law in any case.

Direct inquiries to: Roland Bartl, Planning Director: [planning@acton-ma.gov](mailto:planning@acton-ma.gov) / (978) 929-6631  
Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

**ARTICLE ZC (2012ATM) #**  
(Two-thirds vote)

**AMEND ZONING MAP – BROOKSIDE SHOPS**

To see if the Town will vote to amend the Zoning Bylaw, Map Number 1, by changing the zoning district designation for Town Atlas parcel F-4/37 (145 to 149 Great Road) from Residence 8 (R-8) to Limited Business (LB), or take any other action relative thereto.

**SUMMARY**

145-149 Great Road is the site of Brookside Shops (Staples, Trader Joe's, Talbots, etc.). Originally zoned for General Business, the site was rezoned to single-family residential (R-8) in 1990 as part of a comprehensive zoning plan for Great Road. The then-owners of the subject site objected to the rezoning of their property and availed themselves of statutory grandfathering protection devices to preserve the pre-1990 General Business zoning for their property. Brookside Shops was built about ten years ago under these grandfathering protections in conformance with pre-1990 General Business District zoning requirements.

Today, the grandfathering protections for the subject property have expired, and the site is subject to R-8 zoning regulations. Severe non-conformity restrictions result from the mismatch between the established commercial use and the residential zoning regulations. This makes it often impossible for the existing businesses to implement changes to their establishments, or to change business establishments in the plaza, without frequent involvement by the Board of Appeals for special permits or variances. This article is intended to acknowledge the commercial nature of the property that now exists.

The General Business District no longer exists in Acton. The proposed LB zoning is consistent with other business properties along Great Road. LB zoning for the site will not eliminate all non-conformities, but will reduce them considerably.

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Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

To see if the Town will vote to amend the Zoning Bylaw, Section 7 (Signs and Advertising Devices) as follows:

- A. In section 7.2 – Definitions, insert a new sub-section 7.2.11 as stated below and renumber current sub-sections 7.2.11 through 7.2.17 to 7.2.12 through 7.2.18 respectively:

7.2.11 **LED SIGN** – A SIGN that features light emitting diodes arranged in a pattern to create pictures, symbols or letters.

In sections 7.4.3.4 a), 7.5.16, and 7.5.17 replace all occurrences of the word “NEON” with “NEON or LED”; and

*[Note - Sections 7.4.3.4 a), 7.5.16 and 7.5.17 currently read:*

*7.4.3.4 a) NEON SIGNS, subject to Sections 7.5.17 and 7.13.1.6.*

*7.5.16 WINDOW SIGNS – WINDOW SIGNS, other than a NEON SIGN, in the Business, Village, Industrial and Office Districts shall not require a SIGN Permit provided that their aggregate DISPLAY AREA covers no more than 25 percent of the window in which they are ERECTED. Such SIGN shall not be illuminated. WINDOW SIGNS promoting a public service or charitable event shall not be calculated in the allowable 25 percent.*

*7.5.17 NEON WINDOW SIGNS – NEON WINDOW SIGNS in the Business, Village, Industrial, and Office Park Districts shall not require a SIGN Permit provided that the DISPLAY AREA shall not exceed ten square feet or cover more than 25% of the window in which they are ERECTED, whichever is less. There shall be not more than one such SIGN allowed per PRINCIPAL USE. In the Village Districts, a NEON WINDOW SIGN may only be placed in a ground floor window. As with any other SIGN, a NEON WINDOW SIGN shall not be illuminated longer than 30 minutes before opening of after closing of the store or business.]*

In section 7.13 dealing with signs requiring a special permit from the Planning Board, delete sub-section 7.13.1.6, and replace it with the following:

7.13.1.6 Except in the Village Districts, a NEON or LED SIGN to be ERECTED on a LOT in place of a SIGN otherwise permitted, provided it features an individualized, custom made design showing only a drawing, logo, symbol or illustration, but not letters. A NEON or LED SIGN hereunder shall comply with all applicable dimensional standards. A NEON SIGN shall be composed of primarily single strand glass tubing with a maximum 1 inch diameter.

*[Note - Section 7.13.1.6 currently reads:*

*7.13.1.6 Except in the Village Districts, a NEON SIGN to be ERECTED on a LOT in place of a SIGN otherwise permitted, provided it features an individualized, custom made design showing only a drawing, logo, symbol or illustration, but not letters. A NEON SIGN hereunder shall comply with all applicable dimensional standards. It shall be composed of primarily single strand glass tubing with a maximum 1 inch diameter.]*

- B. In section 7.2 – Definitions, insert a new sub-section 7.2.19 as follows:

7.2.19 **TEMPORARY OR SPECIAL EVENT SIGN** – A temporary SIGN to announce a church bazaar, fair, circus, festival, business or shop opening, special sale by a store or business, or similar event; or a temporary sign for a business in place of a permanent sign.

And, change the words “Special Event Sign(s)” to “TEMPORARY SPECIAL EVENT SIGN(S)” wherever they occur in the zoning bylaw.

- C. In section 7.3 – Signs Prohibited in All Districts, delete section 7.3.8 and replace it with the following:

7.3.8 Where this Bylaw requires minimum side or rear yards for BUILDINGS AND STRUCTURES, any FREESTANDING SIGN ERECTED in such minimum yard, unless such SIGN is a directional SIGN listed in Section 7.5.3.

*[Note - Section 7.3.8 currently reads:*

*7.3.8 Any SIGN ERECTED in a side or rear yard required under this Bylaw unless such SIGN is affixed to an existing BUILDING, or unless such SIGN is a directional SIGN listed in Section 7.5.3.]*

- D. Delete section 7.4.3.8 and replace it with the following:

7.4.3.8 Where possible, the light fixtures used for SIGN illumination should classify as "energy efficient", as defined by the power utility company serving the LOT.

*[Note – Section 7.4.3.8 currently reads:*

*Light fixtures including bulbs or tubes used for SIGN illumination should be selected and positioned to achieve the desired brightness of the SIGN with the minimum possible wattage while ensuring compliance with all applicable requirements of this Bylaw. Where possible, the fixtures used for SIGN illumination should classify as "energy efficient", as defined by the power utility company serving the LOT.]*

- E. In section 7.6.2, Time Limitations for SIGN Permit, change the words “60 days” and “60 day” to “45 days” and “45 day” respectively.

*[Note – Section 7.6.2 currently reads:*

*7.6.2 Time Limitations – The Zoning Enforcement Officer shall approve or disapprove any application for a SIGN Permit within 60 days of receipt of the application. If the Zoning Enforcement Officer should fail to approve or disapprove an application for a SIGN Permit within such 60 day period, the application shall be deemed to be approved.]*

- F. In section 7.10, Special Event Signs, insert after the 9th sentence, which reads “The display of all such SIGNS, taken together, shall be limited to 45 days per PRINCIPAL USE for each calendar year”, the following additional sentence:

“In addition, such SIGNS may be erected for the duration between the application filing date for a permanent sign permit pursuant to section 7.6 and up to 45 days after the issuance of such sign permit.”

And,

Delete the last sentence of section 7.10.

*[Note – Section 7.10 currently reads:*

*Special Event SIGNS – One SIGN may be ERECTED to announce a church bazaar, fair, circus, festival, business or shop opening, special sale by a store or business, or similar event. Such SIGN may identify the event and the date of the event, and it may display the event's sponsor, organizer or main feature. It shall not exceed 10 square feet in DISPLAY AREA and shall be ERECTED on the same LOT where the event is to occur. Such a SIGN shall neither be ERECTED on a sidewalk, walkway or driveway, nor be ERECTED within 5 feet from the sideline of a STREET or right of way customarily used by the general public. Such SIGN shall not be illuminated and shall comply with the provisions of Sections 7.3 and 7.4, except as set forth in this section. Notwithstanding subsections 7.3.4, 7.3.6, and 7.4.1, a Special Event SIGN may be a MOVABLE SIGN, may consist of a flag or balloon, may be decorated with ribbons, flags, streamers or balloons which remain reasonably within the confines of the*

*SIGN, and in Village Districts may be made with materials not otherwise allowed. Such a SIGN shall be removed not later than 1 day after completion of the event. Only one such SIGN shall be ERECTED per PRINCIPAL USE at any given time. The display of all such SIGNS, taken together, shall be limited to 45 days per PRINCIPAL USE for each calendar year. No Special Event Signs shall be erected without a SIGN permit issued by the office of the Zoning Enforcement Officer pursuant to section 7.6, which may be a blanket SIGN permit that covers all special event SIGNS for a PRINCIPAL USE for up to one calendar year. The SIGN permit shall state the specific dates during which the Special Event SIGN may be ERECTED and the specific location on a LOT. The SIGN owner shall maintain records throughout the calendar year sufficient to demonstrate compliance with this section including without limitation dated photographs confirming when each Special Event SIGN was ERECTED and removed.]*

G. Delete section 11.1.2 and replace with:

11.1.2 Fine – Violation of this Bylaw shall be punishable by a fine of \$300.00 for each offense, except that violation of Section 7 of this Bylaw shall be punishable by a fine of \$50.00 for each offense. Each day that a violation of this Bylaw continues shall constitute a separate offense.

*[Note – Section 11.1.2 currently reads:*

*11.1.2 Fine – Violation of this Bylaw shall be punishable by a fine of \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense.]*

, or take any other action relative thereto.

### SUMMARY

This article makes changes to the provisions regulating signs and advertising devices as recommended to the Planning Board by the Economic Development Committee.

Part A would allow LED signs in the same manner that Neon signs are allowed.

Part B would provide a definition for Special Event Signs, which are further regulated in Section 7.10.

Part C clarifies the meaning of section 7.3.8 without intending to change its effect and application, which is to prohibit freestanding signs in the minimum required side and rear yard.

Part D would shorten section 7.4.3.8 to its essential point encouraging the use of energy efficient light fixtures.

Part E would shorten the maximum time frame for the issuance of administrative sign permits from 60 days to 45 days.

Part F would allow for temporary signs while businesses are awaiting permits for permanent signs, and delete the owner's record keeping requirement pertaining to their use of special event signs.

Part G would establish \$50.00 fines issued for violations of the sign regulations in Section 7 of the zoning bylaw, whereas the fines for all other zoning bylaw violations remain at \$300.00.

Direct inquiries to: Roland Bartl, Planning Director: [planning@acton-ma.gov](mailto:planning@acton-ma.gov) / (978) 929-6631

Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

To see if the Town will vote to amend the General Bylaw, Chapter E (General Public Regulations) as follows:

In section E45 (Non-Criminal Disposition) delete Chapter M and replace with the following:

Chapter M - Zoning Bylaw; enforcing persons: Zoning Enforcement Officer. - Fine: Violation of the Zoning Bylaw shall be subject to a penalty of \$300.00 for each offense, except that violation of Section 7 of the Zoning Bylaw shall be subject to a penalty of \$50.00 for each offense. Each day that a violation of the Zoning Bylaw continues shall constitute a separate offense.

*[Note: This section currently reads:*

*Chapter M - Zoning Bylaw; enforcing persons: Zoning Enforcement Officer. - Fine: \$300 for each offense. Each day that a violation continues shall constitute a separate offense.]*

, or take any other action relative thereto.

### SUMMARY

This article amends the Town's General Bylaw on the non-criminal disposition for violations of the Zoning Bylaw consistent with the zoning bylaw amendment in Part G of the previous article.

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Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

**ARTICLE ZE (2012ATM) #**  
(Two-thirds vote)

**AMEND ZONING BYLAW – POLITICAL SIGNS**

To see if the Town will vote to amend the Zoning Bylaw by deleting section 7.5.12 and replacing it with a new section 7.5.12 as follows:

7.5.12 Political SIGNS – In addition to WINDOW SIGNS, SIGNS may be ERECTED on a LOT displaying political messages. Such SIGNS shall be stationary and shall not be illuminated. The height of such SIGNS shall not exceed 4 feet and their DISPLAY AREA shall not exceed 6 square feet. SIGNS associated with a political event such as elections, primaries, balloting, or voter registration shall be removed within 5 days after the event.

*[Note – Section 7.5.12 currently reads:*

*7.5.12 Political SIGNS – In addition to WINDOW SIGNS, one SIGN may be ERECTED on a LOT displaying a political message. Such a SIGN shall be stationary and shall not be illuminated. Its height shall not exceed 4 feet and its DISPLAY AREA shall not exceed 6 square feet. SIGNS associated with a political event such as elections, primaries, balloting, or voter registration shall not be ERECTED earlier than 25 days prior to such event and shall be removed within 5 days after the event. SIGNS not associated with a particular political event shall be ERECTED for a period of no longer than 30 days, or if ERECTED for a longer duration shall not exceed 2 square feet in DISPLAY AREA. Such SIGN may be a MOVABLE SIGN.]*

, or take any other action relative thereto.

**SUMMARY**

This article relaxes and, in some cases, eliminates the regulations for political signs. The existing standards functioned merely as guidelines that were often ignored by political campaigns. In addition, enforcement of all the previous standards was potentially subject to challenge on the grounds that the signs are constitutionally protected free speech. If adopted the remaining regulations will continue reasonable time, place and manner regulations, such as prohibition of illumination of political signs, height and display area limits, and retain the requirement that signs related to a political event must be removed in a reasonable period of time after the event is over. If passed, enforcement of this section will still be analyzed on a case by case basis to ensure the Town's actions are consistent with constitutional protections.

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Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

To see if the Town will vote to amend the Zoning Bylaw as follows:

A. Delete section 1.3.1 (Definition of Access) and replace it with a new section 1.3.1 as follows:

- 1.3.1 ACCESS: ACCESS shall mean that (1) there is sufficient right of vehicular passage onto the LOT from the STREET on which it has FRONTAGE and (2) vehicular passage is or may be provided between the FRONTAGE and the STRUCTURE on the LOT. Such ACCESS shall be consistent with the USE or potential USE of the LOT. Nothing in this definition shall be construed to require:
1. Actual entry through the LOT'S FRONTAGE if, in the opinion of the license or permit granting authority, alternate means of entry will better fulfill the purposes of this Bylaw;
  2. Actual or potential ACCESS through the minimum required FRONTAGE set forth elsewhere in this zoning bylaw; or
  3. Actual or potential ACCESS through any portion of the LOT that meets minimum LOT width requirements set forth elsewhere in this zoning bylaw.

*[Note – Section 1.3.1 currently reads:*

*1.3.1 ACCESS: The actual or potential provision of vehicular entry onto a LOT by means of its FRONTAGE on a STREET to a degree consistent with the USE or potential USE of the LOT. For example, in the case of a residential LOT, ACCESS shall mean that (1) there is sufficient right of vehicular passage onto the LOT from the STREET on which it has FRONTAGE and (2) vehicular passage is or may be provided between the FRONTAGE and the DWELLING UNIT on the LOT. Nothing in this definition shall be construed to require actual ACCESS over the STREET or through the FRONTAGE if, in the opinion of the license or permit granting authority, alternate means of ACCESS will better fulfill the purposes of this Bylaw.]*

B. Delete section 1.3.10 (definition of frontage) and replace it with the following:

- 1.3.10 FRONTAGE A continuous LOT line along the sideline of a STREET. The sideline of a STREET is defined by the front boundary lines of LOTS along a STREET and not necessarily the pavement edge of a STREET or sidewalk.

*[Note – Section 1.3.10 currently reads:*

*1.3.10 A continuous LOT line along the sideline of a STREET.]*

C. Delete section 5.2.2.2 (specification for measuring frontage for lots on more than one street) and replace it with a new section 5.2.2.2 as follows:

- 5.2.2.2 If a LOT has FRONTAGE on more than one STREET, the FRONTAGE on one STREET only may be used to satisfy the minimum required LOT FRONTAGE.

*[Note – Section 5.2.2.2 currently reads:*

*5.2.2.2 If a LOT has FRONTAGE on more than one STREET, the FRONTAGE on one STREET only may be used to satisfy the minimum LOT FRONTAGE.]*

D. Delete section 5.2.3 (specification for measuring lot width) and replace it with a new section 5.2.3 as follows:

5.2.3 LOT Width – The minimum required LOT width shall be determined by measuring the diameter of a circle, which can be located along a continuous but not necessarily straight line from any LOT FRONTAGE to the principal STRUCTURE on the LOT without the circumference of the circle intersecting the side LOT lines.

*[Note – Section 5.2.3 currently reads:*

*5.2.3 LOT Width – LOT width shall be determined by measuring the diameter of the largest circle which can be located along a continuous, but not necessarily straight line from the LOT FRONTAGE to the principal STRUCTURE on the LOT without the circumference intersecting the side LOT lines.]*

E. Delete section 5.2.4 (specification for measuring front yards) and replace it with a new section 5.2.4 as follows:

5.2.4 Front Yards – Front yards shall be the distance measured in a straight line between any LOT FRONTAGE and the nearest point of any BUILDING or STRUCTURE, excluding roof overhangs. Roof overhangs shall not extend further than two feet into the minimum required front yard. A LOT having FRONTAGE on two or more STREETS shall have two or more front yards, each of which shall comply with the minimum required front yard. In no case shall any BUILDING or STRUCTURE be located closer to the sideline of a STREET than the minimum required front yard. The sideline of a STREET is defined by the front boundary lines of LOTS along a STREET and not necessarily the pavement edge of a STREET or sidewalk.

*[Note – Section 5.2.4 currently reads:*

*5.2.4 Front Yards – Front yards shall be the distance measured in a straight line between the LOT FRONTAGE and the nearest point of any BUILDING or STRUCTURE, excluding roof overhangs. Roof overhangs shall not extend further than two feet into the minimum required front yard. A LOT having FRONTAGE on two or more STREETS shall have two or more front yards, each of which shall comply with the requirements of the front yard provisions. In no case shall any BUILDING or STRUCTURE be located closer to the sideline of a STREET than the minimum required front yard.]*

, or take any other action relative thereto.

### SUMMARY

This article clarifies definitions and specifications for access, frontage, width, and front yard consistent with past and current interpretations of the zoning bylaw.

Direct inquiries to: Roland Bartl, Planning Director: [planning@acton-ma.gov](mailto:planning@acton-ma.gov) / (978) 929-6631  
Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

**ARTICLE ZG (2012ATM) #**  
(Two-thirds vote)

**AMEND ZONING BYLAW – RESIDENTIAL  
GARAGES, BARNs, SHEDS, ETC.**

To see if the Town will vote to amend section 3.8.1 of the Zoning Bylaw (ACCESSORY USES Permitted in the Residential Districts and dwellings in the Non-Residential Districts) by deleting sub-section 3.8.1.1 and replacing it with the following:

3.8.1.1 Private garages or carports; solar systems; greenhouses; tool sheds; barns; swimming pools or tennis courts provided that such recreational facilities are used only by the residents and their guests.

*[Note – Section 3.8.1.1 currently reads:*

*3.8.1.1 Private garage or carport for not more than four motor vehicles, solar system, greenhouse, tool shed or barn; swimming pool or tennis court provided that such recreational facilities are used only by the residents and their guests.]*

, or take any other action relative thereto.

**SUMMARY**

There is considerable ambiguity in the zoning bylaw language of section 3.8.1.1, specifically with respect to garages, carports, tool sheds, and barns as accessory to residential uses. Questions arise as land owners want to build multiple buildings of this type on their lots, or provide garaging space for more than the specified four motor vehicles. Recent Board of Appeals decisions highlighted the apparent ambiguity of this section. This intends to eliminate any ambiguities by allowing any number of garages or car ports for any number of vehicles; any number of solar system installations and greenhouses; any number of tool sheds and barns; and any number of pools and tennis courts.

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Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

To see if the Town will vote to amend the Zoning Bylaw by deleting Sections 8.1 (Nonconforming Lots) and 8.3.6 (Structures on Nonconforming Lots) and replacing them with a new Section 8.1 as follows:

**8.1 Nonconforming Lots**

- 8.1.1 Continuation of Existing LOT – The requirements of Section 6 of “The Zoning Act” Chapter 40A of the General Laws, as amended, shall apply.
- 8.1.2 Changes to Unimproved LOTS – Any unimproved LOT which complied with the minimum area, FRONTAGE, LOT width, yard and depth requirements, if any, in effect at the time the boundaries of the LOT were defined by recorded deed or plan, may be built upon for single FAMILY, or where permitted two-FAMILY, residential USE, notwithstanding the adoption of new or increased LOT area, FRONTAGE, LOT width, yard or depth requirements, provided that:
  - 8.1.2.1 At the time of the adoption of such new or increased requirements such LOT was held, and has continued to be held, in ownership separate from that of adjoining land; and
  - 8.1.2.2 The LOT had at least 5,000 square feet of area and 50 feet of FRONTAGE at the time the boundaries of the LOT were defined; and
  - 8.1.2.3 Any proposed STRUCTURE is situated on an unimproved LOT so as to conform with the minimum yard requirements, if any, in effect at the time the boundaries of such LOT were defined. In the case where no minimum yard requirements were in effect at the time the boundaries of such LOT were defined, the minimum front yard shall be 20 feet and the minimum side and rear yards shall be 10 feet.
- 8.1.3 Replacement of Single- and Two-Family Dwellings on Nonconforming Lots – A STRUCTURE in single family residential USE on a nonconforming LOT may be razed and rebuilt for single family residential USE; and a STRUCTURE in two-family residential USE on a nonconforming LOT may be razed and rebuilt for two-family residential USE; in both cases subject to the following conditions and limitations:
  - 8.1.3.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.
  - 8.1.3.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.
  - 8.1.3.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor’s office.
  - 8.1.3.4 Additions to the replacement STRUCTURE may be made after two years following the date of initial occupancy of the replacement STRUCTURE, if

otherwise permissible and subject to any permits and special permits that may be required.

- 8.1.4 Extensions, alterations or changes of Single- and Two-Family Dwellings on Nonconforming Lots – One or more extensions, alterations or changes to a single or two-family residential STRUCTURE on a nonconforming LOT shall be deemed not to increase any nonconformity and shall not require special permits under Section 8.1.5, provided that such extensions, alterations or changes comply with all applicable yard requirements and in total do not increase the size of the STRUCTURE by more than 15 percent of the GROSS FLOOR AREA in existence on April 1, 2012 or the date that LOT became nonconforming, whichever is later.
- 8.1.5 In all other cases, the Board of Appeals may, by special permit, allow such reconstruction of, or extension, alteration or change to a single or two-family residential STRUCTURE on a nonconforming LOT, where it determines either that the proposed modification does not increase the nonconformity or, if the proposed modification does increase the nonconformity, it will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.

*[Note Sections 8.1 and 8.3.6 currently read:*

- 8.1 Nonconforming LOTS** - Any LOT which complied with the minimum area, FRONTAGE, LOT width, yard and depth requirements, if any, in effect at the time the boundaries of the LOT were defined by recorded deed or plan, may be built upon or used for single FAMILY, or where permitted two-FAMILY, residential USE, notwithstanding the adoption of new or increased LOT area, FRONTAGE, LOT width, yard or depth requirements, provided that:
- 8.1.1 At the time of the adoption of such new or increased requirements such LOT was held, and has continued to be held, in ownership separate from that of adjoining land; and
- 8.1.2 The LOT had at least 5,000 square feet of area and 50 feet of FRONTAGE at the time the boundaries of the LOT were defined; and
- 8.1.3 Any proposed STRUCTURE is situated on an unimproved LOT so as to conform with the minimum yard requirements, if any, in effect at the time the boundaries of such LOT were defined. In the case where no minimum yard requirements were in effect at the time the boundaries of such LOT were defined, the minimum front yard shall be 20 feet and the minimum side and rear yards shall be 10 feet.

### **8.3 Nonconforming STRUCTURES**

- 8.3.6 Replacement of Single- and Two-Family Dwellings – A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE, or rebuilt for single family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE, or rebuilt for two-family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; in both cases subject to the following conditions and limitations:
- 8.3.6.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.
- 8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.
- 8.3.6.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor's office.

8.3.6.4 *Additions to the replacement STRUCTURE may be made after two years following the date of initial occupancy of the replacement STRUCTURE, if otherwise permissible and subject to any permits and special permits that may be required.]*

, or take any other action relative thereto.

## SUMMARY

This article attempts to clarify a notoriously confusing area of zoning law – nonconforming lots. By way of background, the Acton ZBL provisions governing nonconforming uses, structures and lots must comply with Chapter 40A, Section 6, which provides (in relevant part):

Except as hereinafter provided, **a zoning ordinance or by-law** shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but **shall apply to any change or substantial extension of such use**, to a building or special permit issued after the first notice of said public hearing, **to any reconstruction, extension or structural change of such structure** and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent **except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure**. Pre-existing nonconforming structures or uses may be extended or altered, provided, that **no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood**. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A. (Emphasis added).

Under the current Acton ZBL, Section 8.1 governs changes to unimproved nonconforming lots and Section 8.3.6 governs rebuilding of structures on nonconforming lots after voluntary demolition. The interpretation of these two sections, however, has been mired in confusion due to the fact that:

- Section 8.1 does not explicitly limit its application to unimproved lots, as opposed to nonconforming lots with existing structures;
- The placement of Section 8.3.6 is under the “Nonconforming Structures” section of the Acton ZBL, rather than the “Nonconforming Lots” section;
- The absence of a section in the Acton ZBL governing changes to single or two-family residences on nonconforming lots that are not complete demolitions, although such changes are permitted within the parameters of G.L. Chapter 40A, Section 6; and
- It is not clear when and how the Acton Zoning Board of Appeals should apply Chapter 40A, Section 6 to proposed changes on nonconforming lots.

Section 8.3.6 was adopted at the 2007 Annual Town Meeting to allow for the intentional demolition and rebuilding of single or two-family homes on nonconforming lots by right, provided that the replacement is (at least initially) not larger than the original structure. This was Acton’s attempt to control so-called “mansionization”, at least on nonconforming lots. This type of local zoning control has been blessed by the Supreme Judicial Court in *Bjorkland v. Zoning*

*Board of Appeals of Norwell*, 450 Mass. 357, 363 (2008). *Bjorkland* involved the proposed reconstruction of a single family home on a nonconforming lot, where the proposed reconstruction complied with all dimensional requirements, except the prior nonconforming lot size, which did not change. The *Bjorkland* Court held that building a larger structure, although compliant with current zoning, “increase[s] the nonconforming nature of the structure,” requiring a determination under Chapter 40A, Section 6 that such nonconformity is not substantially more detrimental to the neighborhood. Over the last 5 years, the Acton Zoning Board of Appeals has repeatedly been asked to interpret Section 8.3.6 in the context of reconstruction of or changes to structures on nonconforming lots that comply with all current dimensional regulations and do not change the nonconforming aspect of the property (*i.e.* lot size or configuration). In doing so, it has been unclear how to apply Section 8.3.6 in conjunction with the mandates of Chapter 40A, Section 6.

This article attempts to resolve the confusion by amending Section 8.1 (Nonconforming Lots) to:

1. Make the current provisions of Section 8.1 explicitly govern only unimproved lots.
2. Move Section 8.3.6 within the heading of “Nonconforming Lots” under Section 8.1.
3. Remove any reference to voluntary demolition and demolition as a result of fire or natural disaster, where that distinction is unnecessary. Demolitions due to fire or natural disaster are treated the same as voluntary demolitions and reconstructions under the Acton ZBL. This removal is not intended to result in a change in rights with respect to demolitions under those circumstances.
4. Allow modest extensions, alterations or changes of structures on nonconforming lots by right.
5. Add a default provision that permits changes to structures on nonconforming lots where it has been determined by the Acton Zoning Board of Appeals that the proposal is entitled to relief under Chapter 40A, Section 6.
6. Bring Section 8.1 in conformance with the other sections in the Acton ZBL dealing with nonconformity by making explicit that such lots are permitted to persist according to Chapter 40A, Section 6.

Direct inquiries to: Roland Bartl, Planning Director: [planning@acton-ma.gov](mailto:planning@acton-ma.gov) / (978) 264-9636  
Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

**ARTICLE ZI (2012ATM) # AMEND ZONING BYLAW – RENTING & BOARDING ROOMS**  
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw by deleting section 3.8.1.3 (renting of rooms or boarding as an accessory use in residential districts) and replacing it with as new section 3.8.1.3 as follows:

3.8.1.3 The renting of rooms or boarding for not more than three persons; except that by Special Permit from the Board of Appeals the renting of rooms or boarding to more than three persons may be allowed. In either case, the service shall be operated by a resident owner of the premises.

*[Note: Section 3.8.1.3 currently reads:*

*3.8.1.3 The renting of rooms or boarding for not more than four persons; except that by Special Permit from the Board of Appeals the renting of rooms or boarding to more than four persons may be allowed. In either case, the service shall be operated by a resident owner of the premises.*

, or take any other action relative thereto.

**SUMMARY**

The renting of rooms and boarding is an allowed accessory use currently permitted by right in the residential zoning districts and dwellings in the non-residential zoning districts for up to four persons; and by special permit for more than four persons. This article makes the Acton ZBL consistent with M.G.L. Ch. 140, § 22. That section of State law governs licensing of boarding houses and requires a local license for boarding more than three persons. The local licensing authority under that section is the Board of Selectmen. This article would reduce the boarding by right under the Acton ZBL from four to three to conform with State law.

Direct inquiries to: Roland Bartl, Planning Director: [planning@acton-ma.gov](mailto:planning@acton-ma.gov) / (978) 929-6631  
Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

To see if the Town will vote to amend the Zoning Bylaw by inserting under section 3.8.3 (Accessory Use Permitted in any Zoning District) a new sub-section 3.8.3.7 as follows:

- 3.8.3.7 In any zoning district where, pursuant to the Table of PRINCIPAL USES, Vehicle Repair is a USE allowed by right (Y) or by special permit (SPS), the sale of used motor vehicles as an ACCESSORY USE to Vehicle Repair, provided that:
- a) Any motor vehicle that is for sale does not exceed a maximum gross vehicle weight of 14,000 pounds;
  - b) Not more than 10 used motor vehicles shall be for sale at any one time;
  - c) Where Vehicle Repair requires a special permit, such special permit has been issued and the Vehicle Repair USE is in compliance with said special permit; and
  - d) Where Vehicle Repair requires a special permit, not more than 5 motor vehicle that are for sale shall be placed for open-air display between the STREET and any BUILDING on the LOT and such open-air display area shall comply with the standards of Section 6.7 or 6.9 of this Bylaw as applicable for the zoning district in which the Vehicle Repair USE is located.

*[Note: Related Use Definitions in the Zoning Bylaw:*

*3.5.20 Vehicle Repair – Establishment where the principal service is the mechanical repair, excluding body work, of automobiles, trucks, boats, motorcycles, trailers, recreational vehicles, farm equipment or similar motor vehicles, having a maximum gross vehicle weight of 10,000 pounds and a wheel base no larger than 135-inches, provided that all but minor repairs shall be conducted entirely within a BUILDING.*

*3.5.22 Vehicle Sale, Rental – Facility for the rental, leasing or sale of automobiles, trucks, boats, motorcycles, trailers, recreational vehicles, farm equipment or similar motor vehicles having a maximum gross vehicle weight of 10,000 pounds and a wheel base no larger than 135-inches; including open-air display. The open-air display area shall comply with the standards of Section 6.7 of this Bylaw.*

*See separate article in this warrant proposing to change the gross vehicle weight limit to 14,000 pounds.]*

, or take any other action relative thereto.

### SUMMARY

Vehicle repair as a defined principal use in Section 3.5.20 of the zoning bylaw is allowed by right in the Limited Business (LB), Powder Mill (PM), Light Industrial (LI) and Small Manufacturing (SM) zoning districts, and by special permit in the West Acton Village (WAV) and Kelley's Corner (KC) zoning districts. Vehicle Sales as a defined principal use in Section 3.5.22 is allowed by right only in the LB and PM zoning districts. The owner of a vehicle repair shop in the WAV zoning district has approached the Planning Board about adding a used car sales business. This article would accommodate the sale of used motor vehicles as an accessory use to auto repair shops with certain conditions and requirements as set forth in the article. The particular repair business in the WAV zoning district is pre-existing non-conforming, meaning it came into existence prior to the special permit requirement of the zoning bylaw. The owner would have to obtain a special permit before they can obtain a license to sell used motor vehicles on the property. Special permits are discretionary and can impose conditions and requirements pertaining to the property and the business on it. Auto dealer licenses are issued by the Board of Selectmen and come up for renewal once a year. This provides an annual opportunity to check for special permit compliance.

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Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

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To see if the Town will vote to amend the Zoning Bylaw section 3.8.2 (Accessory Use Permitted in the Office, Business, and Industrial Districts) by deleting subsection 3.8.2.2 and replacing it with the following:

- 3.8.2.2 Drive-up facilities in a bank or pharmacy subject to the grant of a special permit by the Board of Selectmen and the following requirements and limitations:
- a) Drive-up facilities shall be located only on the side or rear of a building; not on the front of a building that faces a street except where a building fronts on more than one street.
  - b) There shall be only one drive-up lane and window in a pharmacy.
  - c) Drive-up facilities at pharmacies shall be only for customers with prescription drop-offs or pick-ups.

*[Note: Subsection 3.8.2.2 currently reads:  
3.8.2.2 Drive-up facilities in a bank.]*

, or take any other action relative thereto.

#### **SUMMARY**

Currently, the zoning bylaw allows drive-up facilities in a bank by right. It does not allow drive-up facilities in pharmacies. This article would provide that drive-up facilities in banks and pharmacies are allowed by special permit from the Board of Selectmen subject to certain requirements and limitation on location, size, and use. The zoning bylaw will continue to prohibit restaurant drive-up facilities.

Direct inquiries to: Roland Bartl, Planning Director: [planning@acton-ma.gov](mailto:planning@acton-ma.gov) / (978) 929-6631  
Selectman assigned:

**Board of Selectmen:**

**Finance Committee:**

**Planning Board:**

To see if the Town will vote to amend the Zoning Bylaw, Section 3.5.20 (Vehicle Repair), 3.5.21 (Vehicle Body Shop), and 3.5.22 (Vehicle Sale Rental) by deleting from each of these sections the words “maximum gross vehicle weight of 10,000 pounds and a wheel base no larger than 135-inches” and replacing them in each of these section with:

“maximum gross vehicle weight of 14,000 pounds”.

*[Note: Sections 3.5.20 through 3.5.22 currently read::*

*3.5.20 Vehicle Repair – Establishment where the principal service is the mechanical repair, excluding body work, of automobiles, trucks, boats, motorcycles, trailers, recreational vehicles, farm equipment or similar motor vehicles, having a maximum gross vehicle weight of 10,000 pounds and a wheel base no larger than 135-inches, provided that all but minor repairs shall be conducted entirely within a BUILDING.*

*3.5.21 Vehicle Body Shop – Establishment where the principal service is the repair and painting of automobiles, trucks, boats, motorcycles, trailers, recreational vehicles, farm equipment or similar motor vehicles having a maximum gross vehicle weight of 10,000 pounds and a wheel base no larger than 135-inches, provided that all but minor repairs shall be conducted entirely within a BUILDING*

*3.5.22 Vehicle Sale, Rental – Facility for the rental, leasing or sale of automobiles, trucks, boats, motorcycles, trailers, recreational vehicles, farm equipment or similar motor vehicles having a maximum gross vehicle weight of 10,000 pounds and a wheel base no larger than 135-inches; including open-air display. The open-air display area shall comply with the standards of Section 6.7 of this Bylaw.*

*See separate article in this warrant proposing to change the gross vehicle weight limit to 14,000 pounds.]*

, or take any other action relative thereto.

#### SUMMARY

This article would increase the gross vehicle weight limit for vehicles sold and services in Acton from 10,000 to 14,000 pounds. Based on US DOT commercial truck classification, this proposed higher limit includes all light duty trucks from Class 1 (e.g. Ford Ranger) to Class 3 (e.g. Ford F 350). The US DOT classifications do not use wheelbase.

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Selectman assigned:

**Board of Selectmen:**  
**Finance Committee:**  
**Planning Board:**