

TRB Development Group, Inc.
Site Plan Special Permit #08/01/13-444 (Adachi)
400-408 Massachusetts Avenue
May 19, 2014 – Amended Decision



Board of Selectmen

TOWN OF ACTON
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**AMENDED DECISION
#08/01/13 - 444**

TRB Development Group, Inc.
Site Plan Special Permit
400 – 408 Massachusetts Avenue
May 19, 2014

GRANTED with Conditions

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of TRB Development Group, Inc., 36 Londonderry Turnpike, Hooksett, NH 03106 (hereinafter the Applicant), dated April 17, 2014. The application is to amend the decision of the Board of Selectmen dated December 16, 2013 granting with conditions a Site Plan Special Permit pursuant to Section 10.4 of the Zoning Bylaw (hereinafter the Bylaw) and the Site Plan Special Permit Rules and Regulations (hereinafter the Rules) for property currently owned by Mustard Seed Properties, LLC., 14 Page Road, Bedford, MA 01730 and located at 400 – 408 Massachusetts Avenue in Acton, Massachusetts. The property is shown on the 2007 Acton Town Atlas map F-3 and includes approximately 6,552 ft² of Lot 118-2, 55,893 ft² of Lot 128, 1,094 ft² of Lot 134 and entire 45,729 ft² of Lot 127 (hereinafter the Site).

This application is before the Board following a decision by the Board at a public hearing on December 16, 2013 to approve the proposed project with conditions, which included a requirement to remove 19 parking spaces proposed for the rear (south side) of the building and all associated pavement and infrastructure and relocation of the trash enclosure closer to the rear of the building in-line with the new parking space configuration. Following an appeal by the Applicant of the Board's decision to the

Middlesex Superior Court, Civil Action No. MICV2014-00012H, the Board and the Applicant jointly moved the Superior Court for an order remanding the matter back to the Board for consideration of a revised site plan that reconfigured the parking lot layout as the Board directed in its decision.

The Board held a duly noticed public hearing on May 19, 2014. Board members Mike Gowing (Chair), Katherine Green (Vice Chair), Peter Berry (Clerk), Janet Adachi and Frances Osman were present throughout the hearing. Attorney Louis N. Levine, Esq. of D'Agostine, Levine, Parra & Netburn, P.C., Josh Swerling of Bohler Engineering and Richard Mattocks of TRB Development Group, Inc. represented the Applicant. During the hearing, the Board heard testimony from the Applicant and his representatives, citizens and immediate abutters to the Site, as well as municipal staff, all prior to proceeding to close the public hearing. The minutes of the public hearing and submissions upon which this Amended Decision is based upon may be found and referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 An application package consisting of the following items and documentation consistent with the Joint Motion to Remand and Order of Remand:
 - A properly executed application form for a Site Plan Special Permit, dated April 17, 2014 and received on April 17, 2014;
 - Memorandum (consisting of 8 pages) by Timothy R. Boisvert, President of TRB Development Group, Inc., and dated April 16, 2014;
 - Site Plan (Sheet 4B), prepared by Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772, dated January 25, 2013 and last revised April 3, 2014; and
 - Certified Abutter's List.
- 1.2 Additional Interdepartmental Communication received from:
 - Water Supply District of Acton, dated April 16, 2014;
 - Acton Health Director, email dated April 18, 2014; and
 - Acton Engineering Department, dated May 8, 2014.
- 1.3 An application package consisting of the following items and documentation as required by the Rules or additionally provided:
 - A properly executed application form for a Site Plan Special Permit, dated July 31, 2013 and received on August 1, 2013;
 - Memorandum letter (consisting of 9 pages) by Timothy R. Boisvert, President of TRB Development Group, Inc., dated July 31, 2013;
 - "Stormwater Drainage Report for Proposed CVS Pharmacy", dated June 25, 2013 and prepared for TRB Development Group, Inc., by Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772;
 - "Traffic Operations Study", dated March 21, 2013 and prepared for Shops at Kelly's Corner, LLC., by TEPP, LLC. Transportation Engineering, Planning and Policy, 93 Stiles Road, Suite 201, Salem, NH 03079;
 - Page 14 of 19 of executed Purchase & Sale Agreement pertaining to Permits and Approvals;
 - Copy of Perpetual Easement documentation pertaining to subject property;
 - Copies of previously issued Building Permits, plans and Certificates of Occupancies pertaining to the subject site;
 - Town of Acton General License or Permit Application to allow 24-hour operation of proposed building; and

- Certified Abutter's List.
- 1.4 A set of engineering plans entitled "Site Development Plans for: Proposed CVS Pharmacy", prepared by Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772, consisting of 16 sheets as follows:
- Cover Sheet (1), dated January 25, 2013, revised July 8, 2013;
 - General Notes Sheet (2), dated January 25, 2013, revised July 8, 2013;
 - Demolition Plan (3), dated January 25, 2013, revised July 8, 2013;
 - Site Plan (4), dated January 25, 2013, revised July 8, 2013;
 - Grading & Drainage Plan A (5), dated January 25, 2013, revised July 8, 2013;
 - Grading & Drainage Plan B (6), dated January 25, 2013, revised July 8, 2013;
 - Utility Plan (7), dated January 25, 2013, revised July 8, 2013;
 - Soil Erosion & Sediment Control Plan (8), dated January 25, 2013, revised July 8, 2013;
 - Soil Erosion Control Notes & Details Sheet (9), dated January 25, 2013, revised July 8, 2013;
 - Landscape Plan (10), dated January 25, 2013, revised July 8, 2013;
 - Landscape Notes & Details Sheet (11), dated January 25, 2013, revised July 8, 2013;
 - Lighting Plan (12), dated January 25, 2013, revised July 8, 2013;
 - Paving Detail Sheet (13), dated January 25, 2013, revised July 8, 2013;
 - Construction Detail Sheet (14), dated January 25, 2013, revised July 8, 2013;
 - Construction Detail Sheet (15), dated January 25, 2013, revised July 8, 2013; and
 - Boundary & Topographic Survey, prepared by Control Point Associates, Inc., 352 Turnpike Road, Southborough, MA 01772, dated June 5, 2012, revised October 3, 2012, and October 23, 2012.
- 1.5 A set of architectural plans entitled "CVS/Pharmacy", prepared by BKA Architects, Inc., 142 Crescent Street, Brockton, MA 02302, and consisting of 3 sheets as follows:
- Cover Sheet (CS), dated July 19, 2013;
 - Outline Plan SK-C (OL), dated July 19, 2013;
 - Exterior Elevations (A-4.1), dated July 19, 2013; and
 - Area Calculations (OL.1), dated September 9, 2013.
- 1.6 Additional plans submitted:
- Alternative Site Plan, prepared by Bohler Engineering, dated October 3, 2013;
 - Proof Plan, prepared by Bohler Engineering, dated October 28, 2013; and
 - Proposed Flexible Parking Plan, prepared by Bohler Engineering, dated October 3, 2013, revised October 30, 2013.
- 1.7 Other correspondence submitted:
- Letter from Vincent Cuttone, dated September 5, 2013;
 - Notarized letter from Vincent Cuttone & Timothy R. Boisvert, dated September 5, 2013;
 - Letter from Richard P. Mattocks, dated October 10, 2013;
 - Letter from Michael W. Sowyrda, dated October 29, 2013; and
 - Letter from Bohler Engineering, dated October 30, 2013.
- 1.8 Interdepartmental communication received from:
- Design Review Board, dated August 21, 2013;
 - Acton Planning Director, email dated August 30, 2013
 - Acton Health Director, emails dated September 3, 2013 at 1:59pm and 4:39pm;

- Acton Engineering Department, dated August 23, 2013;
- Water Supply District of Acton, dated September 3, 2013;
- Acton Building Commissioner, email dated September 6, 2013; and
- Acton Zoning Enforcement Officer, dated September 6, 2013, revised October 31, 2013.

1.9 Correspondence submitted by abutters:

- Letter from Kelley's Corner Neighborhood Association, dated October 31, 2013.

Exhibits 1.1 through 1.8 are hereinafter referred to as the Plan or Project. In the event of any inconsistency among these documents, Site Plan (Sheet 4B) listed in Exhibit 1.1 controls.

2 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Site is located within the Kelley's Corner (KC) zoning district and Groundwater Protection District Zone 4.
- 2.2 In addition to the Zoning Bylaw, development of property located within the Kelley's Corner (KC) zoning district is governed by the "Kelley's Corner Specific Area Plan – June 1995" (hereinafter KC Plan). The KC Plan calls for redevelopments in the KC District to provide for convenient and efficient pedestrian access, safe and comfortable pedestrian environments with walkways, pedestrian conveniences and amenities, and buildings with a pedestrian-oriented scale and design. Section 5.6 of the Bylaw sets forth special provisions for the KC District intended to implement the KC Plan as amended. Section 5.6.1 of the Bylaw further summarizes the KC Plan goals and design objectives.
- 2.3 The application proposes the complete redevelopment of the Site. The Site is currently utilized by Acton Tire, Inc. which operates the Goodyear Tire vehicle service center. The Plan proposes its complete demolition and removal.
- 2.4 The proposed new use, a CVS Pharmacy, not including the potential for a future drive-up window, is permitted on the Site under the Bylaw, including all overlay district requirements.
- 2.5 The Site as proposed, contains approximately 2.51 acres (109,268 square feet) in land area, and contains on its westerly portion, the existing TD Bank branch facility.
- 2.6 The proposed CVS Pharmacy building is approximately 14,705 square feet in net floor area. The existing TD Bank building is approximately +/- 2,958 square feet in net floor area. The resulting overall floor area ratio for the newly consolidated and created lot would be approximately 0.16.
- 2.7 The Plan shows three access driveways on Massachusetts Avenue, two of which were approved under Site Plan Special Permit #04/30/10 – 424 for the TD Bank development. A third access driveway is now proposed on the far eastern side of the property and complies with the 200'-0" minimum distance separation from any other access driveways as measured from centerline to centerline. The third access driveway would provide egress only from the Site. With the exception of delivery trucks, all traffic utilizing this driveway would be required to make a right hand turn onto Massachusetts Avenue.

The Board finds that, pursuant to Section 6.7.3 of the Bylaw, the proposed third access driveway is necessary at this point in time, to provide for adequate and safe vehicular circulation. This finding

is subject to the limitations set forth in Finding 2.8 below, and Condition 3.2.1 below, respecting the potential future development possibilities involving the Site.

- 2.8 Located approximately in the middle, and encompassing the “main” access driveway into the Site, the Plan shows a 55’-0” wide “access and utility easement for future development to the rear”. The 2.77 acre parcel to the rear has significant development potential that may have a substantial impact on traffic flow in the area, specifically at the intersection of the middle “main” access driveway and the “No-Name Road” with Massachusetts Avenue.

Consequently, if and when either the property to the rear, or any other immediately abutting property south of Massachusetts Avenue is proposed for any development, traffic management in the area will require a complete re-evaluation and possible modifications on the Site, including changes to the interior vehicular circulation patterns on the Site, the three access driveways approved hereunder, and any other related features on the Site.

- 2.9 The building as proposed on the Plan has a 51’-3” front yard setback at its closest point to Massachusetts Avenue. The majority of the building is setback further. The neighboring TD Bank building is setback 34’-4” from the Massachusetts Avenue property line. The minimum front yard setback in the Kelley’s Corner District is 30’-0”.
- 2.10 The larger than required front yard setback contains a 24’-11” wide, impervious stamped concrete driveway running across the front of the proposed building.
- 2.11 The Plan proposes a total of 93 parking spaces on the property. 24 parking spaces were constructed at the time of the TD Bank development. The CVS Pharmacy development proposes the creation of 69 new parking spaces. The required minimum number in the KC District for the CVS Pharmacy is only 34. The total minimum number for both the CVS and TD Bank is only 41.
- 2.12 A Parking Proof Plan verified that compliance with the dimensional requirements of the Zoning Bylaw can be achieved, however, it is the intent of the Applicant to develop the Site as shown on the Site Plan (Sheet 4B).
- 2.13 The Board finds that the Applicant does not seek approval as part of this Site Plan Special Permit for the overhang, window or concrete pad associated with any potential future pharmacy drive-thru. They are shown on the Plan for illustrative purposes only.
- 2.14 The Board finds that, at this particular point in time, the Massachusetts Department of Transportation (MassDOT) does not support a traffic light installation at the intersection of Massachusetts Avenue and “No-Name Street”.
- 2.15 The Board finds that the proposed Site design, particularly with regards to the proposed larger than required front setback, the excessive amount of parking spaces, the creation of a third access driveway and a 24’-11” wide driveway running across the front of the property, is inconsistent with the goals and design objectives of the KC Corner Plan; however, it does comply with the requirements of the Zoning Bylaw.
- 2.16 The Board has received comments from various Town Departments and abutters, which are listed in Exhibits 1.2 and 1.8 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.17 The Site Plan as conditioned in this Amended Decision will as reasonably as possible be consistent with the Master Plan, will not be detrimental or injurious to the neighborhood in which the use is to take place, provides for convenient and safe vehicular and pedestrian movement within and through the site, provides an adequate number of parking spaces, provides adequate methods of

refuse and waste removal from the site, and is in harmony with the purpose and intent of the Bylaw.

3 BOARD ACTION

Therefore, the Board voted _____ on May 19, 2014 to GRANT the requested amendment to Site Plan Special Permit #08/01/13 – 444 subject to and with the benefit of the following Plan modifications, conditions, and limitations. The Site Plan (Sheet 4B) approved hereunder, and subject to the following Plan Modifications, Conditions and Limitations, shall be the Plan to guide development. This Amended Decision supersedes in its entirety the Board's Decision dated December 16, 2013. With respect to the Plan modifications, conditions and limitations to be satisfied prior to the issuance of a building permit as set forth below (¶¶ 3.1 (inclusive of all of its subsections), 3.2.1, 3.2.8, 3.2.20, and 3.2.21), in the event that a building permit has been issued pursuant to paragraph 6 of the Order of Remand prior to the satisfaction thereof, the Plan modifications, conditions and limitations continue to apply and must be satisfied on or before August 15, 2014, after which time the Board may demand immediate compliance, provided however, that requests for extensions will not be unreasonably denied.

3.1 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit for this Project or any portion thereof, nor shall any construction activity approved hereunder begin on the Site, until and unless the Zoning Enforcement Officer (ZEO) confirms 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 Zoning Enforcement Officer. Where approvals are required from persons, boards, commissions, or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

- 3.1.1 The Plan shall show landscape screening along the entire property line which separates the 118-2 parcel of land from the abutting residential properties located along the northern side of Nadine Road and extend approximately 60'-0" beyond the eastern edge of the Francine Road Public-Right-of-Way. The landscape screening shall be as follows: evergreen trees shall be shown at an interval of between 6'-0" (six feet) and 8'-0" (eight feet) on-center, with a note that alternate spacing patterns may be determined in the field in coordination with and approval of the Acton Tree Warden. The screening shall be installed within 1 (one) year from the date that clearing commences on the Site, or as soon as possible in the subsequent growing season.
- 3.1.2 The Plan shall show an 8'-0" high fence along 1) the entire property line which separates the 118-2 parcel of land from the abutting residential properties located along the northern side of Nadine Road and extend approximately 60'-0" beyond the eastern edge of the Francine Road Public-Right-of-Way, and 2) along the entire length of the property line which separates the 118-2 parcel of land from the parcels of land identified as 118 & 118-1 on Tax Assessor Map F-3.
For the portion of fence located in the area described under 3.1.1 above and 3.1.2 (1) herein, the fence shall be installed on the north side of the landscape screening.
- 3.1.3 Notwithstanding the Plan Modifications described above in 3.1.1 and 3.1.2, a pedestrian access connection shall be provided linking the surrounding neighborhoods to Kelley's Corner. The pedestrian access/connection shall tie into the Francine Road Public-Right-of-Way.
- 3.1.4 The Applicant shall provide a revised Landscape Plan in compliance with Section 6.7.8 (Plantings for Perimeter & Interior Landscaping Requirements) of the Zoning Bylaw.
- 3.1.5 The Applicant shall provide detailed drawings or specification cut sheets of the proposed luminaires, including details of the proposed methods of shielding if necessary, to achieve the

illumination levels indicated on the lighting plan (Plan sheet 12) and compliance with Zoning Bylaw Section 10.6 – Outdoor Lighting Regulations for Site Plan Special Permit.

- 3.1.6 The Applicant shall revise the Plan as necessary to address, to the satisfaction of the Engineering Department, all comments and concerns identified in correspondence dated May 8, 2014.
- 3.1.7 The Applicant shall revise the Plan as necessary to address, to the satisfaction of the Water Supply District of Acton, all comments and concerns identified in correspondence dated September 3, 2013.
- 3.1.8 The Applicant shall modify the Plan as needed, to comply in all respects with the Bylaw. Unless directed otherwise by this Amended Decision, the Applicant also shall modify the Plan to comply with all requirements of the Rules, and to address all departmental comments in a manner that resolves any concerns raised therein to the satisfaction of the Board.

3.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render the Site Plan Special Permit that is granted with this Decision null and void, without force and effect, and shall constitute grounds for revocation of this Site Plan Special Permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this Site Plan Special Permit using any and all powers available to it under the law.

- 3.2.1 Prior to the issuance of any building permit approved hereunder, the Applicant and the Site-owners shall agree in writing, individually or jointly, for themselves and their affiliates, successors, and/or assigns that, in the event that the properties either immediately abutting to the rear or otherwise immediately abutting properties on the south side of Massachusetts Avenue (hereinafter individually and collectively “Abutting Properties”) are proposed for development by any among the Applicant, Site-owners or their affiliates, successors, and/or assigns, pursuant to a special permit or a comprehensive permit application or otherwise, filed with the Town:
 - a. If the Board determines that the eastern most driveway approved hereunder is reasonably necessary to provide access to the proposed development on the Abutting Properties, the Board may re-evaluate and require changes to said eastern most driveway;
 - b. The Applicant, the Site-owners, and their affiliates, successors and assigns seeking permits or special permits for proposed development on the Abutting Properties shall work cooperatively with the Town of Acton and the Massachusetts Department of Transportation (MassDOT) to the extent reasonable and necessary to accommodate traffic and vehicular movements with respect to the Site, the Abutting Properties and traffic flow to and from Massachusetts Avenue (MA Route 111);
 - c. At the reasonable expense of the Applicant, the Site-owners, and their affiliates, successors and assigns seeking the permit(s) or special permit(s) for proposed development on the Abutting Properties, the Town of Acton may retain a traffic engineering consultant to assist the Town in evaluating traffic patterns and recommending improvements, including with respect to the Site, the Abutting Properties, and traffic flow to and from Massachusetts Avenue (MA Route 111).
- 3.2.2 Any traffic-management modifications(s) shall require further study and a formal Site Plan Special Permit Amendment.
- 3.2.3 The Applicant shall meet all requirements of the Town Bylaws.

- 3.2.4 The Applicant shall be diligent in complying with the erosion and sediment control plan and notes (Plan sheets 8 and 9). The Applicant shall not cause or permit the runoff of water or erosion that results in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner or the Zoning Enforcement Officer may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.2.5 No work on the Site authorized hereunder shall begin prior to the issuance of a demolition or building permit for the Site.
- 3.2.6 All work on the Site shall be conducted in accordance with the terms of this Site Plan Special Permit and shall conform with and be limited to the improvements shown on the Plan as conditioned, modified, and approved herein.
- 3.2.7 All water service lines, mains and appurtenances shall be installed in accordance with the procedures and specifications of the Water Supply District of Acton including but not limited to the Applicant's submission of a Water Impact Report and final as-built plans.
- 3.2.8 If applicable, the Applicant shall pay in full all taxes, and penalties and back charges resulting from the non-payment of taxes prior to the issuance of any Building Permit.
- 3.2.9 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 3.2.10 Any and all construction activity on the property relating to this Site Plan Special Permit shall be limited to the following hours: Monday – Friday: 7:00am – 6:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays as recognized by the Commonwealth of Massachusetts: No work permitted.
- 3.2.11 The Applicant shall make every attempt to minimize adverse or nuisance construction conditions (such as, but not limited to dust, noise and vibrations, etc.) from existing in and around the Site and affecting neighboring and abutting properties during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to individuals within the general area.
- 3.2.12 Any changes in the work that this Site Plan Special Permit authorizes and that the Plan approved hereunder depicts shall require the approval of the Board.
- 3.2.13 All activities on the Site shall comply with the Town of Acton Hazardous Material Control Bylaw.
- 3.2.14 This Project shall be established and conducted at all times in accordance with the terms of this Site Plan Special Permit and shall conform with and be limited to the improvements indicated on the Plan as modified herein.
- 3.2.15 The Applicant shall be diligent to ensure that no construction debris or material from the Site enter any of the abutting properties or the Massachusetts Avenue (Route 111) public rights-of-way. The Applicant shall be responsible for sweeping, removal of snow, and sanding of the internal roadways permitting access to clientele and emergency vehicles during construction and thereafter.
- 3.2.16 The Applicant shall ensure safe and convenient vehicular access into and around the Site during the entire duration of construction as approved hereunder. Any traffic problems that occur as a result of onsite operations and construction shall be mitigated immediately, at the expense of the Applicant, including without limitation by the use of police details as required by the Zoning Enforcement Officer, in consultation with the Chief of Police.

- 3.2.17 All construction vehicles shall be parked on the Site and on abutting and adjoining properties with the permission of the owners thereof, but shall not be parked on Massachusetts Avenue (Route 111).
- 3.2.18 Prior to any work commencing on the Site, the Applicant shall demonstrate compliance with any and all other comments/concerns provided by other municipal disciplines.
- 3.2.19 Any and all deliveries to the Site and/or Use as approved under this Site Plan Special Permit, as well as all trash collection, shall be limited to between the hours of 6:00am and 11:00pm.
- 3.2.20 Prior to any building permit being approved or issued for work on the Site approved hereunder, the Applicant shall consolidate approximately 6,552 ft² of Lot 118-2, 55,893 ft² of Lot 128, 1,094 ft² of Lot 134 and entire 45,729 ft² of Lot 127 (as shown on the 2007 Acton Town Atlas map F-3), into one single property and ownership entity. All necessary and accompanying documents, plans and plot plans creating said single property and ownership entity, shall be recorded at the Middlesex South District Registry of Deeds, and proof of such recording shall be submitted to the Zoning Enforcement Officer prior to the issuance of any building permit for work approved hereunder on the Site.
- 3.2.21 The Applicant shall ensure that this Decision is promptly recorded at the Middlesex South District Registry of Deeds or the Land Court. Proof of recording shall be forwarded to the Zoning Enforcement Officer prior to the issuance of any building permit for work approved hereunder on the Site.
- 3.2.22 Any modification, alteration, change or deviation from the Plan approved hereunder and subject to all Plan Modifications, Conditions and Limitations, which in the opinion of the Zoning Enforcement Officer is substantial in nature, shall require further Board review and approval.
- 3.2.23 Upon the completion of all work on the Site being conducted in accordance with the terms of this Site Plan Special Permit, the Applicant shall submit to the Zoning Enforcement Officer, a final certified as-built site plan stamped by a land surveyor and/or engineer as required for the information shown, showing the buildings, pavement, pavement markings, walkways, drainage facilities, utilities, outdoor lighting installations, appropriate grades and elevations, the fence and accompanying landscape screening required under Plan Modifications 3.1.1 & 3.1.2, as well as the pedestrian connection required under Plan Modification 3.1.3, all in their true relationship to lot lines. The final certified as-built site plan shall be accompanied by a Professional Engineer's certification stating that the site work has been completed in accordance with the approved Site Plan Special Permit and that all features required on the Site by the approved Plans, and the Site Plan Special Permit Decision have been field inspected by the Professional Engineer and conform with the approved design.

4 LIMITATIONS

The authority granted to the Applicant under this Site Plan Special Permit is limited as follows:

- 4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 4.2 This Site Plan Special Permit applies only to the Site identified in this Amended Decision and to the proposed uses and activities shown and noted in the Plan.
- 4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Amended Decision.

- 4.4 This Site Plan Special Permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this Amended Decision with the Town Clerk, except for good cause, or if construction under this Site Plan Special Permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 2 years. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to this Site Plan Special Permit and to require any appropriate modifications of the Plan.
- 4.5 To the extent permitted by law, the Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Site Plan Special Permit with or without a public hearing upon the request of the Applicant, the Site Owners and their affiliates, successors and assigns, or upon its own motion.

5 APPEALS

Any person(s) aggrieved by the issuance of this Site Plan Special Permit has the right to appeal pursuant to M.G.L., Ch. 40A, §. 17 and shall file such appeal within 20 days after the filing date of this Amended Decision with the Town Clerk.

The Town of Acton Board of Selectmen

Mike Gowing, Chair

Date Filed with Town Clerk

Eva K. Szkaradek, Town Clerk

This is to certify that the 20-day appeal period on this Amended Decision has passed and there have been no appeals made to this office.

Eva K. Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Owner

Building Commissioner
Town Engineer
Conservation Administrator
Police Chief
Assistant Assessor

Health Director
Municipal Properties Director
Town Manager
Acton Water District
Planning Department

DRAFT