



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 929-6611
Fax (978) 929-6350

Janet K. Adachi
Chairperson, Board of Selectmen

April 9, 2014

Acton Beacon Legal Ad Division

Below please find a copy of a legal advertisement to appear in the Acton Beacon on April 24 and May 1, 2014

Please send the bill to:

TRB Development Group, Inc.
36 Londonderry Turnpike
Hooksett, NH 03106
Phone # (603)-669-8500

Please send proof copy and tear sheet to:

Town Manager's Office
472 Main Street
Acton, MA 01720

Very truly yours,
Christine Joyce
Town Manager's Office

Selectman Adachi

**LEGAL NOTICE
TOWN OF ACTON
NOTICE OF HEARING**

The Acton Board of Selectmen will hold a public hearing on May 19, 2014 8:30 PM in the Francis Faulkner *Hearing Room in Town Hall, 472 Main Street, Acton on the amendment under a court remand of the Site Plan Special Permit # 8/01/13-444, TRB Development Group, Inc. for a CVS Pharmacy to be located at 400 Massachusetts Ave, Acton, MA 01720. The application and accompanying plans can be inspected at Town Hall during normal business hours.*

Acton Board of Selectmen

Lisa Tomyl

From: Scott Mutch
Sent: Thursday, April 17, 2014 1:54 PM
To: Roland Bartl; Steve Ledoux; Stephen Anderson
Cc: Jessica A. Wall; Manager Department; Kristen Domurad-Guichard
Subject: RE: Acton/CVS - Remand Order and Schedule

TRB (CVS) just submitted the new Site Plan package and it is date stamped received by the Town Clerk with today's date. Rich Mattocks also verbally assented to the May 19, 2014 hearing date.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm. Sincerely,

Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner
Town of Acton
Planning Department
472 Main Street
Acton, MA 01720
Tel: (978) 929-6631
Fax: (978) 929-6340
Email: planning@acton-ma.gov
Website: www.acton-ma.gov

From: Roland Bartl
Sent: Wednesday, April 16, 2014 3:08 PM
To: Steve Ledoux; Stephen Anderson; Scott Mutch; Kristen Domurad-Guichard
Cc: Jessica A. Wall; Manager Department
Subject: RE: Acton/CVS - Remand Order and Schedule

nothing here, yet

- except that Rich Mattocks called for a question to finalize the parties' in interest mailings for the hearing notice. I expect him today or tomorrow to drop them off so that we can send them from here.

Roland Bartl, AICP
Planning Director
Town of Acton
472 Main Street
Acton, MA 01720
978-929-6631

From: Steve Ledoux
Sent: Wednesday, April 16, 2014 1:11 PM
To: Stephen Anderson; Roland Bartl; Scott Mutch; Kristen Domurad-Guichard
Cc: Jessica A. Wall; Manager Department
Subject: RE: Acton/CVS - Remand Order and Schedule

Unless Scott or Roland have anything, my office has not seen anything submitted from Lou Levine

Steven L Ledoux
Town Manager

472 Main Street
Acton, MA 01720
Telephone (978) 929-6611

When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

From: Stephen D. Anderson [<mailto:SAnderson@AndersonKreiger.com>]
Sent: Wednesday, April 16, 2014 12:46 PM
To: Steve Ledoux; Roland Bartl; Scott Mutch; Kristen Domurad-Guichard
Cc: Jessica A. Wall
Subject: Acton/CVS - Remand Order and Schedule

All:

I have attached the Order of Remand dated 4/11/14 and entered on 4/15/14.

I understand that the remand hearing is scheduled for 5/19/14. Please confirm that Lou has (a) filed the Submission Package (and when he did so), and (b) assented to that date for the hearing.

Absent an extension, the drop dead date for the Decision on Remand is 6/10/14 (60 days from the date of the Order). So given the Board's current schedule, the Board should decide the matter on remand either on 5/19 or at its next meeting on 6/9/14. The remand decision should be filed with the town Clerk by 6/10/14.

Steve

Stephen D. Anderson
ANDERSON & KREIGER LLP
One Canal Park, Suite 200
Cambridge, MA 02141
t: 617-621-6510
f: 617-621-6610
m: 617-510-1159
www.andersonkreiger.com
[Environmental and Land Use blog](#)



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ANDERSON & KREIGER LLP



STEPHEN D. ANDERSON
sanderson@andersonkreiger.com
T: 617-621-6510
F: 617-621-6610

April 17, 2014

Federal Express

Steven L. Ledoux, Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

RE: TRB Development Group, Inc., et als v. Janet K. Adachi, et als
Middlesex Sup. Ct. C.A. No. 14-0012

Dear Steve:

I have received from Lou Levine one original of the Settlement Agreement with original signatures of TRB and Lou Levine. I have compiled a fully executed original consisting of (a) their original signed Settlement Agreement, (b) the original signature page signed by you and Janet, and (c) the exhibits. I have enclosed that fully executed original with this letter. I am copying Lou so that he has a copy of this fully executed original.

I cannot create a second original Settlement Agreement because I only have one set of original signatures from Lou. So I cannot provide Lou with an original, fully executed Agreement.

Please let me know if you have any questions.

Sincerely

A handwritten signature in blue ink, appearing to be "SDA", written over a blue horizontal line.

Stephen D. Anderson

SDA:lb

cc: Louis N. Levine, Esq. (Via Email w/Encl.)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made on this 8th day of April, 2014, by, between and among the following parties:

1. TRB Development Group, Inc., MUSTARD SEED PROPERTIES, LLC, Notca LLC and Anna Ludwig, Trustee of Parker Lane Investment Trust, Plaintiffs in Middlesex Superior Court Civil Action Number 2014-0012 (the “Plaintiffs”); and
2. Janet K. Adachi, Michael Gowing, Katie Green, David Clough and John Sonner, as they are the members of the Board of Selectmen of the Town of Acton, Middlesex County, Massachusetts (the “Board”).

RECITALS

WHEREAS, in Middlesex Superior Court Civil Action Number 2014-0012 (the “Litigation”), the Plaintiffs have appealed the Board’s Site Plan Special Permit Decision dated December 16, 2013 concerning property located at 400-408 Massachusetts Avenue to be developed and used as a CVS Store and TD Bank (the “Decision”).

WHEREAS, in the Litigation, the Plaintiffs object to certain conditions, limitations and required plan modifications in the Decision.

WHEREAS, the parties have participated in mediation of the Litigation.

WHEREAS, all parties believe that the interests of justice may be served by a remand of the Litigation to the Board to consider at a public hearing a revised site plan for the project and a revised Site Plan Special Permit Decision.

AGREEMENTS

NOW THEREFORE, for adequate consideration the receipt and sufficiency of which are hereby acknowledged, the Plaintiffs and the Board agree as follows:

1. The Effective Date of this Agreement will be the date on which it is fully executed by the duly authorized representatives for the Plaintiffs and the Board.



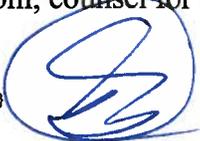
2. Within three days of the Effective Date of this Agreement, counsel for the parties will file with the Court the Joint Motion for Remand and proposed Order of Remand attached hereto as **Exhibits A and B** respectively.

3. Within five days of the Order of Remand being approved and entered by the Court (or such other time as counsel for the parties may agree), the Plaintiffs will submit to the Board an updated Site Plan Special Permit submission package for the proposed project conforming to the Revised Site Plan Sheet Number 4 attached hereto as **Exhibit C** and including updated plan sheets, an updated certified abutters list, required notice and publication costs (the "Submission Package").

4. Within thirty days of the receipt of the Submission Package (or such other time as counsel for the parties may agree), the Board will notice and hold a public hearing on the revised site plan.

5. Subject to input at the public hearing and to the views of newly elected Board members who will replace two of the current Board members upon the expiration of their terms of office, the Board will issue a Revised Site Plan Special Permit Decision regarding the Submission Package and file with the Court within thirty (30) days of the close of the public hearing, but no later than sixty (60) days from the date of the Order of Remand, including addressing in the Revised Site Plan Special Permit Decision the Plaintiffs' challenges to certain conditions in the existing Decision taking into account the "Suggested Resolution to Plaintiffs' Challenges to Conditions in Decision" attached hereto as **Exhibit D**.

6. After receiving the Revised Site Plan Special Permit Decision, the parties agree that the Court should proceed as follows: In the event the Revised Site Plan Special Permit Decision is acceptable to the Plaintiffs and becomes final without any third party appeal therefrom, counsel for the parties will promptly file appropriate stipulation resolving Litigation



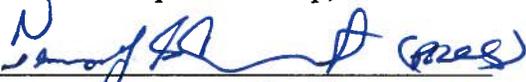
in accordance with the Revised Site Plan Special Permit Decision. Alternatively, in the event the Revised Site Plan Special Permit Decision is not acceptable to the Plaintiffs or is appealed by any third party, counsel for the parties will so notify the Court; the Plaintiffs and the Board reserve all of their respective rights with respect to the Litigation and the Revised Site Plan Special Permit Decision; and the Litigation shall proceed forthwith with respect to the Revised Site Plan Special Permit Decision; provided, however, that no party may use in the Litigation or in any appeal concerning the Revised Site Plan Special Permit Decision any confidential, mediation-related, or other settlement communications between or among the parties or their respective representatives.

7. Nothing herein, pursuant to G. L. c. 40A, §11, shall prevent or delay the issuance of a building permit (in accordance with the most recent Site Plan Special Permit Decision) during the pendency of the Litigation.

The Plaintiffs,
By their duly authorized representatives,

The Acton Board of Selectmen,
By its duly authorized representatives,

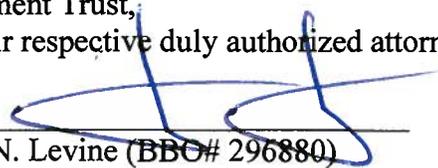
TRB Development Group, Inc.


By: Timothy R. Borsucant
Its: PRESIDENT
04.08.14

Janet K. Adachi, Chair

MUSTARD SEED PROPERTIES, LLC,
Notca LLC, and
Anna Ludwig, Trustee of Parker Lane
Investment Trust,
By their respective duly authorized attorney,

Steven Ledoux, Town Manager



Louis N. Levine (BBO# 296880)
D'Agostine, Levine, Parra & Netburn, P.C.
268 Main Street
Acton, MA 01720
(978) 263-7777 x228
llevine@dlpnlaw.com

April 8, 2014



in accordance with the Revised Site Plan Special Permit Decision. Alternatively, in the event the Revised Site Plan Special Permit Decision is not acceptable to the Plaintiffs or is appealed by any third party, counsel for the parties will so notify the Court; the Plaintiffs and the Board reserve all of their respective rights with respect to the Litigation and the Revised Site Plan Special Permit Decision; and the Litigation shall proceed forthwith with respect to the Revised Site Plan Special Permit Decision; provided, however, that no party may use in the Litigation or in any appeal concerning the Revised Site Plan Special Permit Decision any confidential, mediation-related, or other settlement communications between or among the parties or their respective representatives.

7. Nothing herein, pursuant to G. L. c. 40A, §11, shall prevent or delay the issuance of a building permit (in accordance with the most recent Site Plan Special Permit Decision) during the pendency of the Litigation.

The Plaintiffs,
By their duly authorized representatives,

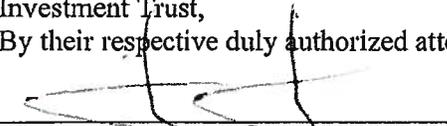
TRB Development Group, Inc.



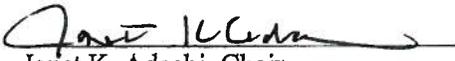
By: Timothy R. Boisvert
Its: PRESIDENT

04:08:14

MUSTARD SEED PROPERTIES, LLC,
Notca LLC, and
Anna Ludwig, Trustee of Parker Lane
Investment Trust,
By their respective duly authorized attorney,


Louis N. Levine (BBO# 296880)
D'Agostine, Levine, Parra & Netburn, P.C.
268 Main Street
Acton, MA 01720
(978) 263-7777 x228
llevine@dlpnlaw.com

The Acton Board of Selectmen,
By its duly authorized representatives,


Janet K. Adachi, Chair


Steven Ledoux, Town Manager

April 8, 2014



EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 14-0012

TRB DEVELOPMENT GROUP, INC.)
MUSTARD SEED PROPERTIES, LLC,)
NOTCA LLC and ANNA LUDWIG,)
TRUSTEE OF PARKER LANE INVESTMENT)
TRUST)
Plaintiffs)
)
v.)
)
JANET K. ADACHI, MICHAEL GOWING,)
KATIE GREEN, DAVID CLOUGH and)
JOHN SONNER, As They Are the Members)
of and Constitute the Board of Selectmen of)
Acton, Middlesex County, Massachusetts)
Defendants.)

JOINT MOTION TO REMAND

All parties move that this Court enter an Order of Remand, substantially in the form attached hereto, to permit the defendant Acton Board of Selectmen (“Board”) to hold a public hearing and consider issuing an amended Site Plan Special Permit Decision for an amended site plan resulting from the successful mediation of this matter before Retired Judge Rudolph Kass.

As grounds for this motion, the parties state as follows:

1. The Plaintiffs have appealed the Board’s Site Plan Special Permit Decision dated December 16, 2013 concerning property located at 400 - 408 Massachusetts Avenue to be developed and used as a CVS Store and TD Bank (the “Decision”). The Plaintiffs object to certain conditions, limitations and required plan modifications in the Decision.

2. The Parties have engaged in mediation to find a mutually agreeable design for the proposed project and to address other issues in the Decision.

3. The parties jointly seek a remand from this Court for the Board to consider at a public hearing a revised site plan for the project and a proposed amended decision on the Site Plan Special Permit Decision.

4. It is in the interests of judicial economy and conserving the resources of the parties that the matter be remanded to the Board for further proceedings.

WHEREFORE, the parties request the order of remand from this Court, the Court retaining jurisdiction of this matter.

The Plaintiffs,
By their attorneys,



Louis N. Levine (BBO# 296880)
D'Agostine, Levine, Parra & Netburn, P.C.
268 Main Street
Acton, MA 01720
(978) 263-7777 x228
llevine@dlpnlaw.com

The Defendants,
By their attorneys,

Stephen D. Anderson (BBO# 018700)
ANDERSON & KRIEGER LLP
One Canal Park, Suit 200
Cambridge, MA 02141
(617) 621-6536
sanderson@andersonkreiger.com

April __, 2014

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party by U.S. mail on April __, 2014

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 14-0012

TRB DEVELOPMENT GROUP, INC.)
MUSTARD SEED PROPERTIES, LLC,)
NOTCA LLC and ANNA LUDWIG,)
TRUSTEE OF PARKER LANE INVESTMENT)
TRUST)
Plaintiffs)
)
v.)
)
JANET K. ADACHI, MICHAEL GOWING,)
KATIE GREEN, DAVID CLOUGH and)
JOHN SONNER, As They Are the Members)
of and Constitute the Board of Selectmen of)
Acton, Middlesex County, Massachusetts)
Defendants.)

ORDER OF REMAND

This matter having come before the Court on the joint motion of all parties for an order of remand, it is hereby ordered that:

1. This matter is remanded to the Acton Board of Selectmen ("Board") to hold a public hearing and consider issuing an amended Site Plan Special Permit Decision concerning property located at 400-408 Massachusetts Avenue to be developed and used as a CVS Store and TD Bank based on an amended site plan resulting from the mediation of this matter.
2. Within five days of the Order of Remand being approved and entered by the Court (or such other time as counsel for the parties may agree), the Plaintiffs will submit to the Board an updated Site Plan Special Permit submission package for the proposed project conforming to the Revised Site Plan Sheet Number 4 attached hereto including updated plan sheets, an updated certified abutters list, and required notice and publication costs ("Submission Package").
3. Within thirty days of the receipt of the Submission Package (or such other time as counsel for the parties may agree), the Board will notice and hold a public hearing on the revised

site plan.

4. Subject to input at the public hearing and to the views of newly elected Board members who will replace two of the current Board members upon the expiration of their terms of office, the Board will issue and file with the Court a Revised Site Plan Special Permit Decision regarding the Submission Package within thirty (30) days of the close of the public hearing, but no later than sixty (60) days from the date of this Order, including addressing in the Revised Site Plan Special Permit Decision the Plaintiffs' challenges to certain conditions in the existing Decision taking into account the "Suggested Resolution to Plaintiffs' Challenges to Conditions in Decision" attached hereto.

5. After receiving the Revised Site Plan Special Permit Decision, the Court will proceed as follows: In the event the Revised Site Plan Special Permit Decision is acceptable to the Plaintiffs and becomes final without any timely appeal therefrom, counsel for the parties will promptly file appropriate stipulation resolving this action in accordance with the Revised Site Plan Special Permit Decision. Alternatively, in the event the Revised Site Plan Special Permit Decision is not acceptable to the Plaintiffs or is appealed by any third party, counsel for the parties will so notify the Court; the Plaintiffs and the Board reserve all of their respective rights with respect to this action and the Revised Site Plan Special Permit Decision; and the Litigation shall proceed forthwith with respect to the Revised Site Plan Special Permit Decision; provided, however, that no party may use in this action or in any appeal concerning the Revised Site Plan Special Permit Decision any confidential, mediation-related, or other settlement communications between or among the parties or their respective representatives.

6. Nothing herein, pursuant to G. L. c. 40A, §11, shall prevent the issuance of a building permit (in accordance with the most recent Site Plan Special Permit Decision) during the pendency of this action.

7. The Court retains jurisdiction of all matters which are the subject matter of this action, including the Decision originally appealed and any Revised Site Plan Special Permit Decision to be issued by the Board in accordance with this Order.

SO ORDERED,

_____, J.

Dated: April __, 2014

ZONING ANALYSIS TABLE

GENERAL NOTES: ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.

REQUIREMENT	COMMENTS
MIN. LOT AREA	10,000 SQ. FT.
MIN. LOT FRONTAGE	100 FT.
MIN. LOT DEPTH	100 FT.
MIN. FRONT YARD SETBACK	10 FT.
MIN. SIDE YARD SETBACK	5 FT.
MIN. REAR YARD SETBACK	10 FT.
MIN. FRONT PORCH DEPTH	5 FT.
MIN. SIDE PORCH DEPTH	5 FT.
MIN. REAR PORCH DEPTH	5 FT.
MIN. FRONT PORCH SETBACK	5 FT.
MIN. SIDE PORCH SETBACK	5 FT.
MIN. REAR PORCH SETBACK	5 FT.
MIN. FRONT PORCH WIDTH	5 FT.
MIN. SIDE PORCH WIDTH	5 FT.
MIN. REAR PORCH WIDTH	5 FT.
MIN. FRONT PORCH HEIGHT	8 FT.
MIN. SIDE PORCH HEIGHT	8 FT.
MIN. REAR PORCH HEIGHT	8 FT.
MIN. FRONT PORCH FLOOR FINISH	FINISH FLOOR
MIN. SIDE PORCH FLOOR FINISH	FINISH FLOOR
MIN. REAR PORCH FLOOR FINISH	FINISH FLOOR
MIN. FRONT PORCH RAILING	4" DIA. RAILING
MIN. SIDE PORCH RAILING	4" DIA. RAILING
MIN. REAR PORCH RAILING	4" DIA. RAILING
MIN. FRONT PORCH SCREENING	SCREENING
MIN. SIDE PORCH SCREENING	SCREENING
MIN. REAR PORCH SCREENING	SCREENING
MIN. FRONT PORCH LIGHTING	LIGHTING
MIN. SIDE PORCH LIGHTING	LIGHTING
MIN. REAR PORCH LIGHTING	LIGHTING
MIN. FRONT PORCH FURNITURE	FURNITURE
MIN. SIDE PORCH FURNITURE	FURNITURE
MIN. REAR PORCH FURNITURE	FURNITURE
MIN. FRONT PORCH PLANTING	PLANTING
MIN. SIDE PORCH PLANTING	PLANTING
MIN. REAR PORCH PLANTING	PLANTING

LAND USE / ZONING INFORMATION & NOTES

1. THE ZONING REGULATIONS APPLY TO THE ENTIRE LOT.
2. THE ZONING REGULATIONS APPLY TO THE ENTIRE LOT.
3. THE ZONING REGULATIONS APPLY TO THE ENTIRE LOT.
4. THE ZONING REGULATIONS APPLY TO THE ENTIRE LOT.
5. THE ZONING REGULATIONS APPLY TO THE ENTIRE LOT.

RELO
 STORE NUMBER: 706
 MASSACHUSETTS AVENUE
 ACTON, MA
 PROJECT TYPE: RELO
 DEAL TYPE: IK
 CS PROJECT NUMBER: 0315

ARCHITECT OF RECORD:
ba
 BKA Architects, Inc.
 ARCHITECTS & INTERIORS
 102 Chestnut Hill Street
 Boston, MA 02111
 TEL: 1.800.859.8888
 WWW.BKAARCHITECTS.COM

CIVIL CONSULTANT:
BOHLER ENGINEERS
 100 WASHINGTON STREET
 BOSTON, MA 02111
 TEL: 1.800.451.4511
 WWW.BOHLERENGINEERS.COM

DEVELOPER:
TRBS
 TRB DEVELOPMENT GROUP, INC.
 311 LONGFELLOW AVENUE
 WASHINGTON, MA 01888
 TEL: 903.888.8800

W.D. GOEBEL
 100 WASHINGTON STREET
 BOSTON, MA 02111
 TEL: 1.800.451.4511
 WWW.WDGOEBEL.COM

REVISIONS

REV. DATE	COMMENT	BY
1 07/20/13	REV. PER TOWN STAFF COMMENTS	CRD
2 08/01/13	STAFF COMMENTS	CRD
3 11/20/13	REV. FOR COMMENTS	CRD
4 01/24/14	REV. FOR CLIENT SUBMITTAL	CRD
5 04/25/14	REV. FOR CLIENT SUBMITTAL	CRD

CHECKED BY: JRS
 DRAWN BY: JRS
 DATE: 01/25/14
 JOB NUMBER: 012513
 TITLE: SITE PLAN
 SHEET NUMBER: 4
 COMMENT: NOT FOR CONSTRUCTION

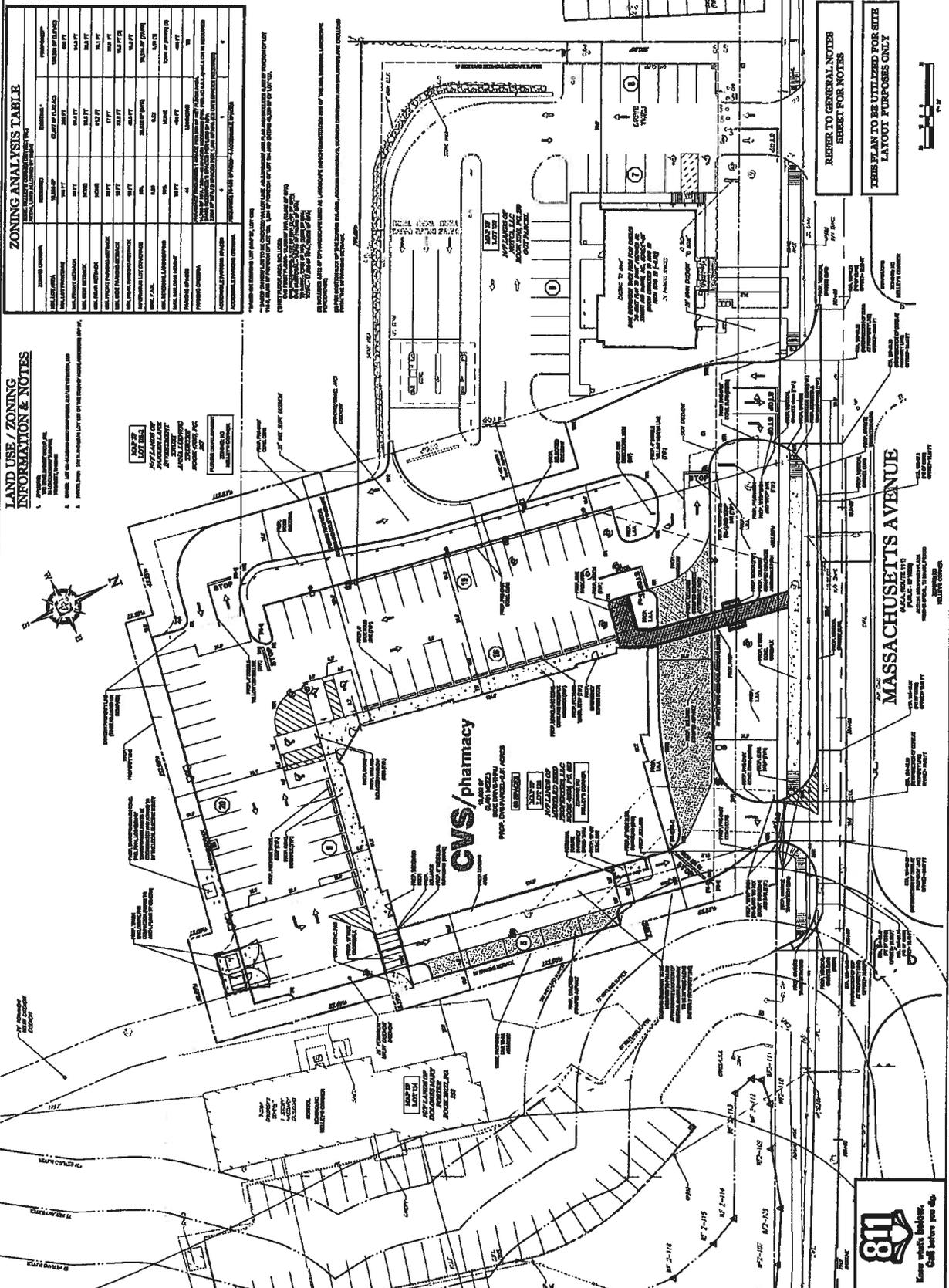


Exhibit D

Suggested Resolution to Plaintiffs' Challenges to Conditions in Decision

§	Provision	TRB Proposal	Suggested Resolution
3.1.3	<p>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.</p>	<p>Delete 3.1.3 on the understanding that the landscape plan is submitted and approved. Although not previously requested, the Town has indicated in recent discussions that substantial and significant additional tree planting will be necessary on the TD Bank site. Not only is this request beyond the Site which is the subject of the present Decision, but the Applicant has no right to make such plantings on the TD site. Hopefully in further discussions this issue can be resolved.</p>	<p>Keep condition as is.</p> <p>Explanation: Zoning requires certain minimum landscaping standards, including shade trees (ZBL section 6.7.8), and the Site Plan is being revised.</p>
3.1.5	<p>The Applicant shall remove 19 parking spaces which are currently proposed to the rear (south side) of the building and all associated pavement and infrastructure. The total number of newly created parking spaces shall not exceed 54, and shall be configured in two (2) rows of 90° parking separated by a 24' -0" wide two-way maneuvering aisle as currently depicted on the Flexible Parking Plan. The trash enclosure shall be moved approximately 66' -0" closer to the rear of the building, and shall be out of the area where the 19 parking spaces are being removed. The landscape plan shall be adjusted accordingly and shall be in compliance with Section 6.7.8 of the Zoning Bylaw.</p>	<p>This condition would be revised to conform to the new layout shown on Settlement Agreement Exhibit C.</p>	<p>This condition would be revised to conform to the new layout shown on Settlement Agreement Exhibit C.</p>
3.1.6	<p>The Applicant shall revise the Plan as necessary to address, to the satisfaction of the Engineering Department, all comments</p>	<p>Delete on the assumption that these issues have been addressed or will be addressed prior to the revision of the Site Plan.</p>	<p>Keep condition as is.</p> <p>Explanation: The decision is the Town's</p>

§	Provision	TRB Proposal	Suggested Resolution
	and concerns identified in correspondence dated August 23, 2013.		reference checklist until the plans are final.
3.1.7	The Applicant shall revise the Plan as necessary to address, to the satisfaction of the Health Department, all comments and concerns identified by the Acton Health Director in an email memo dated September 3, 2013.	Delete on the assumption that these issues have been addressed or will be addressed prior to the revision of the Site Plan.	Keep condition as is. Explanation: Same
3.1.8	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.	Delete on the assumption that these issues have been addressed or will be addressed prior to the revision of the Site Plan.	Keep condition as is. Explanation: Same.
3.1.9	The Applicant shall modify the Plan as needed, to comply in all respects with the Bylaw. Unless directed otherwise by this 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.	Delete 3.1.9 – it may be boilerplate, but it makes no sense	Keep condition as is. Explanation: This condition is standard in the Board’s Site Plan Special Permit decisions and clarifies that the granted permit is not an approval of a zoning violation.
3.2.1	Prior to the issuance of any demolition or building permit approved hereunder, the Applicant and the Site-owners shall agree in writing, individually or jointly, for themselves and their successors in title or tenancy 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	Delete “or tenancy” as this term is unnecessary and confusing	Change “successors in title or tenancy” to “affiliates, successors, and/or assigns”.

§	Provision	TRB Proposal	Suggested Resolution
3.2.1.a	<p>or their successors in title or tenancy, pursuant to a special permit or a comprehensive permit application or otherwise, filed with the Town:</p> <p>The Board may re-evaluate and require changes in Site traffic circulation and the three access driveways approved hereunder, as the Board may determine is reasonably necessary in light of the proposed development on the Abutting Properties;</p>	<p>Redraft as follows, as the discussion has always been with respect only to the eastern most driveway in connection with its potential use for the Abutting Properties:</p> <p>“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.”</p>	<p>Revise condition as proposed.</p>
3.2.1.b	<p>The applicant(s) 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 necessary to accommodate traffic and vehicular movements and improve safety at the “No-Name Street” intersection with Massachusetts Avenue and in the surrounding area;</p>	<p>Redraft as follows, as the Applicant has no control over “No-Name Street”:</p> <p>“The Applicant 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 necessary and reasonable to accommodate traffic and vehicular movements.”</p>	<p>Reword condition as follows:</p> <p>“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);”</p> <p>Reword condition as follows:</p> <p>“At the reasonable expense of the Applicant, the Site-owners, and their</p>
3.2.1.c	<p>At the expense of the applicant(s) seeking the permit(s) or special permit(s) for proposed development on the Abutting Properties, the Town of Acton may retain</p>	<p>Redraft as follows, similarly as the Applicant has no control over “No-Name Street”:</p> <p>“At the reasonable expense of the applicant(s)</p>	<p>Reword condition as follows:</p> <p>“At the reasonable expense of the Applicant, the Site-owners, and their</p>

§	Provision	TRB Proposal	Suggested Resolution
	<p>a traffic engineering consultant to assist the Town in evaluating traffic patterns and recommending improvements, including on the Site, on the Abutting Properties and at the "No Name Street" intersection with Massachusetts Avenue.</p>	<p>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 on the Site and on the Abutting Properties."</p>	<p>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)."</p>
3.2.16	<p>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. Additional traffic mitigation measures may be required as necessary, or as directed by the Zoning Enforcement Officer or Building Commissioner.</p>	<p>Redraft as follows as the present language can be read to relate to other than construction activity: "The Applicant shall ensure safe and convenient vehicular access into and around the site during the entire duration of construction. Any traffic problems that occur as a result of construction shall be mitigated immediately, at the expense of the Applicant."</p>	<p>Reword condition as follows: "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."</p>
3.2.17	<p>All construction vehicles shall be parked on the Site and off of Massachusetts Avenue (Route 111) and abutting and adjoining properties.</p>	<p>Redraft as follows so as to allow construction vehicles to be parked with permission on abutting and adjoining properties: "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 (Rt. 111)."</p>	<p>Revise condition as proposed.</p>

§	Provision	TRB Proposal	Suggested Resolution
11.4.5	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, its designees or assigns, or upon its own motion.	Delete "or upon its own motion". This reservation leaves the Site Plan Decision subject to unilateral changes by the Board.	Not determined yet.

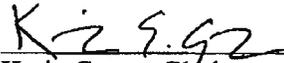
RECORD OF OPEN SESSION MOTION
TO APPROVE SETTLEMENT AGREEMENT

At a duly called open session on April 8, 2014, the Board of Selectmen of the Town of Acton, adopted the following Motion by a roll call vote:

Moved:

1. To approve the proposed Settlement Agreement (with Exhibits A-D) of the litigation entitled *TRB Development Group, Inc., et al. v. Board of Selectmen of the Town of Acton*, Middlesex Superior Court Civil Action Number 2014-0012, concerning the Board's Site Plan Special Permit Decision dated December 16, 2013 for property located at 400-408 Massachusetts Avenue to be developed and used as a CVS Store;
2. To authorize the Board's Chair, the Town Manager and Town Counsel (as necessary) to execute and deliver the Settlement Agreement and any required documents in furtherance thereof on behalf of the Board; and

So Certified:



Katie Green, Clérk

April 8, 2014

RECORD OF EXECUTIVE SESSION MOTION
TO APPROVE SETTLEMENT AGREEMENT

At a duly called executive session on April 8, 2014, the Board of Selectmen of the Town of Acton, adopted the following Motion by a roll call vote:

Moved:

1. To approve the proposed Settlement Agreement (with Exhibits A-D) of the litigation entitled *TRB Development Group, Inc., et al. v. Board of Selectmen of the Town of Acton*, Middlesex Superior Court Civil Action Number 2014-0012, concerning the Board's Site Plan Special Permit Decision dated December 16, 2013 for property located at 400-408 Massachusetts Avenue to be developed and used as a CVS Store;
2. To authorize the Board's Chair, the Town Manager and Town Counsel (as necessary) to execute and deliver the Settlement Agreement and any required documents in furtherance thereof on behalf of the Board; and
3. To return to open session to ratify this motion.

Roll Call:

Janet K. Adachi	<u>Y</u>
Michael Gowing	<u>Y</u>
David Clough	<u>Y</u>
John Sonner	<u>Y</u>
Katie Green	<u>Y</u>

So Certified:

K. Green
Katie Green, Clerk

April 8, 2014

Town of Acton

APPLICATION FOR SITE PLAN SPECIAL PERMIT

To The

Board Of Selectmen

APR 17 2014

TOWN CLERK
ACTON

Refer to the "Rules and Regulations for Site Plan Special Permits" available from the Office of the Board or the Site Plan Coordinator for details on the information and fees required for this application. Contact the Site Plan Coordinator at 264-9632 with any questions concerning the Rules. Incomplete applications may be denied.

Please type or print your application.

APPLICANT'S

Name & Address

TRB Development Group, Inc.
36 Londonderry Turnpike
Hooksett, NH 03106
Telephone (603) 669-8500

Location and Street Address of Site

408 Massachusetts Avenue (Route 111)
Acton, MA

Tax Map & Parcel Number

Map 3F--Lots 127, 128, 118-2, & 134

Area of Site ac.

+/- 109,268 SF or (2.51 acres)

Zoning District

Kelley's Corner District (KC)

OWNER'S

Name & Address

Daniel & Carl Silverstrone (Mgrs)
Mustard Seed Properties, LLC
c/o Page Road, Bedford, MA 01730-1333
Telephone (781) 276-0718

any site plans have been filed previously for this site give file numbers:

The undersigned hereby apply to the Board of Selectmen for a public hearing and a site plan special permit under Section 10.4 of the Zoning Bylaw approving the attached site plan.

The undersigned hereby certify that the information on this application and plans submitted herewith is correct, and that all applicable provisions of Statutes, Regulations, and Bylaws will be complied with.

The above is subscribed to and executed by the undersigned under the penalties of perjury in accordance with Section 1-A of Chapter 268, General Laws of the Commonwealth of Massachusetts.

04.17.14

Date

Signature of Petitioner

OWNER'S KNOWLEDGE AND CONSENT

I hereby assert that I have knowledge of and give my consent to the application presented above.

(See Attached)

Date

Signature of Owner

MEMORANDUM

TO: Town of Acton Board of Selectmen

FROM: TRB Development Group, Inc.
Developer for CVS Pharmacy

RE: 408 Massachusetts Avenue – Application for Site Plan Special Permit
for CVS Pharmacy

DATE: April 16, 2014

I. SITE AND PROJECT BACKGROUND

This memorandum is submitted in support of the application of TRB Development Group, Inc. (“TRB”) for a Site Plan Special Permit for the construction and operation of a CVS Pharmacy store at 400 Massachusetts Avenue Acton, Massachusetts (the “Site”). The site has been combined with the abutting TD Bank site at 408 Massachusetts Avenue and contains +/- 109,268 (2.51Ac) sq. ft of land. The site includes the area shown on the Acton Assessors Tax Map 3F lot 127 and a portion of Lots 118-2 & 134 (see Zoning Analysis Table for details). A more detailed description is included on the civil engineering drawing prepared by Bohler Engineering (Appendix 8).

This proposed project would involve the relocation to the site of the existing CVS, which is currently located across the street from the Site at 393 Massachusetts Avenue, Acton, MA. The Site is located within Kelley’s Corner District established by Section 5.6 of the Acton Zoning Bylaw. TRB Development Group, Inc., has spent considerable time and effort, as outlined below, to demonstrate proposed project’s commitment to uphold the vision and future development goals outlined in Acton’s bylaws for Kelley’s Corner District. Specifically, significant effort has been made to integrate feedback to TRB’s proposed CVS building and site design from Acton’s Design Review Committee (“ADRC”) to adjust the building’s size by 602 square feet (5%) and to improve the proposed design’s streetscape and façade. Moreover, provisions have been made for future development connections of both walkways and driveways to contiguous properties (both pedestrian and vehicular) to ensure the cohesive and orderly future development of Kelley’s Corner.

Requirements:**A. Existing Conditions**

The site contains approximately 400 feet of frontage on Massachusetts Avenue (Route 111) and situated in the Kelley’s Corner Business District. Presently at the Site is Goodyear Tire, a vehicle service center providing automotive tires and automobile repair services. Currently the Site is improved with a ±7,056 square foot building. One curb cut onto Massachusetts Avenue provides access to the Site. The Site is subject to a 20-foot wide drainage easement that runs in favor of the Town of Acton in the front of the Site and a 20-foot wide permanent utility easement along the eastern property line. Copies of the easements are attached as Tab 3.

B. Proposed Project

The existing Goodyear Tire Center and parking field will be demolished and removed as part of the CVS development. In its place on lots 128 (containing 57,677sf of land) and a portion of lot 118-2 (containing +/- 6,552 sf of land), TRB proposes to construct a one (1) story 13,602 sf CVS with a 35-space side parking lot and 29-space rear parking lot. In addition, 5-parallel spaces are located on the eastern side of the building. The building shall also include a 2,461sf mezzanine for mechanical and product storage. The building has been designed to allow for a potential future pharmacy drive-thru. Several unique customized features have been incorporated into the design, including without limitation the addition of 602 sf bump onto the front of the building with full windows to address a request by the ADRC. CVS also agreed to relocate the stockroom and interior mezzanine to the rear and eastern section of the building as also requested by the ADRC. (The demolition, removal and construction will be collectively referred to as the "Project".)

II. COMPLIANCE WITH SUBMISSION REQUIREMENTS**A. Application Form**

TRB Development Group, Inc. submitted the completed Application for a Site Plan Special Permit executed by representatives of the developer and the owner of the site.

B. Certified Abutters List

TRB Development Group, Inc. obtained certified abutters lists for the Site (400 Massachusetts Avenue) from the Town of Acton Board of Assessors, copies of which are attached at Tab 2. We have chosen to provide notice to the abutters of the parcel abutting the Site to the north (408 Massachusetts Avenue, also known as "408 Massachusetts Avenue Behind," Parcel ID F3-118-2) to the east 394 Massachusetts Avenue (Map 3F Lot 134) to the west 408 Massachusetts Avenue Map 3F, Lot 127), Small portions of these lots are being added to the site in addition, due to grading, common access, and traffic circulation that will occur on that property in preparation for future development.

C. Existing and Proposed Use Description

As mentioned above, the site is currently used a Goodyear Tire and Automotive Service Center located in a ±7,050 square-foot building, with seven service bays and 2,150 square-foot sales floor and office area. The "tire service center" use is permitted with a Special Permit from the Board in the Kelley's Corner Business District, subject pursuant to Bylaw § 3.5.20 and the Table of Principal Uses.

TRB Development Group, Inc. purposes to construct a one-story 13,602 square foot CVS Pharmacy with a 69-space parking lot. The proposed "retail" use is permitted as of right in the Kelley's Corner Business District, subject to approval of a Site Plan Permit from the Board, pursuant by Bylaw § 3.5.1 and the Table of Principal Uses.

The proposed CVS Pharmacy will not generate, store, use, or dispose of Hazardous Materials or Waste as that term is defined Town of Acton General Bylaw Chapter I (Hazardous Materials Control) § 1.3.8

D. Other Permits and Variances

CVS requires a 24-hour Operating Permit, consistent with CVS's existing store at 393 Massachusetts Avenue in Acton. Our request for such 24-hour permit is to transfer the current CVS 24-Hour Operating Permit for the 393 location to the new CVS store planned for the Site effective upon opening the new store, thus assuring that at no point will there be a gap in the continuance of this 24-Hour Operating Permit (Please see Appendix 7).

E. Recorded Permits & Plans

1. Application for permit to build, dated 06/17/1974 for Acme Associates to building a 141'x50' Goodyear Service Store.
2. Building Permit dated 06/17/1974 to Dalton Industries, Inc. to build a 50'x141' commercial building on 400 Massachusetts Avenue.
3. Application for Permit of Occupancy dated 11/21/1974 and signed by Department on 12/09/1974.
4. Building Permit Application dated 10/24/1984 issued to David Santo to construct a enclosed ATM Machine for Leader Federal Savings. **NOTE: Permit issued but Never constructed**
5. Drawing #1 - Site grading plans and details proposed Goodyear Service Store dated 03/05/74 by ACME Associates.
6. Drawing #2 - Proposed underground water drain system.
7. Drawing #3 – Leader Federal Savings, Alton Branch ATM Enclosure

F. Drainage Calculations

Bohler Engineering, has provided drainage calculations in accordance with the requirements of Site Plan Permit Rules and Regulations §3.6. Please refer to the Storm Water Drainage Report included as part of the applications.

G. Water Balance Calculations

The site is located within a Groundwater Protection District Zone 4. The Storm Water Drainage Report includes a yearly hydrologic water balance calculation for pre and post development conditions based on the annual prescription that quantifies evapotranspiration, runoff, and recharge, which demonstrates that the proposed development will meet or exceed the existing volumes of storm water infiltration on site.

H. Earth Removal Calculations

Calculations showing the amount of earth to be removed from, as well as the amount of fill to be brought to, the Site are included within the Storm Water Drainage Report.

I. Plans

TRB Development Group, Inc. filed plans titled "Site Development Plans for CVS Pharmacy, 400 Massachusetts Avenue, Town of Acton, Middlesex County" consisting of 16 sheets meeting the requirements of Site Plan Special Permit Rules and Regulations § 3.9. The plans were prepared by Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772 and the table below provides a list of the drawings included with the application.

Drawing Title	Drawing Number	Revision Date
Cover Sheet	1	07/08/13
General Notes Sheet	2	07/08/13
Demolition Plan	3	07/08/13
Site Plan	4B	04/03/14
Grading & Drainage Plan	5	07/08/13
Grading & Drainage Plan B	6	07/08/13
Utility Plan	7	07/08/13
Soil Erosion & Sediment Control Plan	8	07/08/13
Soil Erosion Control Notes & Details Sheet	9	07/08/13
Landscape Plan	10	07/08/13
Landscape Notes & Details Sheet	11	07/08/13
Lighting Plan	12	07/08/13
Paving Detail Sheet	13	07/08/13
Construction Detail Sheet	14	07/08/13
Construction Detail Sheet	15	07/08/13
Boundary & Topographic Survey	16	10/03/12

III. COMPLIANCE WITH SITE DESIGN STANDARDS FOR SITE PLAN SPECIAL PERMIT

TRB Development Group, Inc. seeks a Site Plan Special Permit pursuant to Table of Principal Uses and Bylaw § 3.5.1 to have a retail use in the Kelley’s Corner District and pursuant to Bylaw §10.4.1.2(3) to expand ground area by 1,200 square feet or more of impervious material. Bylaw § 10.4.3 establishes the Site Design Standards for Site Plan Special Permits to “ensure that adequate consideration will be given to the natural resources and characteristics of a site, to its topographic, hydrologic and geologic conditions, to public convenience and safety and to the suitability of a proposed USE on a site.” As demonstrated below, the Project meets each of the Site Design Standards of Bylaw § 10.4.3.

A. Storm Water Runoff (Bylaw § 10.4.3.1)

As demonstrated in the Storm Water Drainage Report submitted with the application, the peak rate of storm water runoff in the post-development condition will not exceed the pre-development rate based on the 10-year design. Also, based on discussion with the Town Engineer, the Site’s storm water runoff will be collected and discharged in a controlled manner to the existing 24” pipe located within the drainage easement at the front of the property. The peak rates of runoff for all storm events have been decreased in the post-development condition and as a result, there will be no negative impacts to the existing drainage infrastructure or receiving waters.

B. Outdoor Lighting (Bylaw § 10.4.3.1)

Bylaw § 10.4.3.1 requires that the Project comply with the standards for outdoor lighting of Bylaw § 10.6. As discussed below, the Project meets these requirements.

1. Lighting Plan (Bylaw § 10.6.4)

The Lighting Plan included with the Site Development Plans (sheet 12) meets the requirements of Bylaw § 10.6

2. Luminaire Design and Shielding (Bylaw § 10.6.2.1)

The light fixtures utilized on the site will all be shielded.

3. Control of Light Trespass and Glare (Bylaw § 10.6.2.2)

The site's lighting design will comply with the regulations related to the control of light trespass and glare.

4. Hours of Operation (Bylaw § 10.6.2.3)

Consistent with the existing permit for the CVS currently located on Massachusetts Avenue, the store will operate 24-hours a day.

5. Total Site Power Limits (Bylaw § 10.6.3)

As demonstrated on the Lighting Plan, the total proposed lighting power is not greater than the total allowed lighting power. As a result, the Lighting Plan complies with Bylaw § 10.6.3

C. Common Driveway (Bylaw § 10.4.3.3)

As demonstrated by the Traffic Operations Study submitted with the Application, a common driveway is being proposed as part of this project which will provide safe vehicular and pedestrian movement on the Site.

D. Sidewalks (Bylaw § 10.4.3.4)

The project proposes a sidewalk along the entire frontage of the site, as required by Bylaw § 10.4.3.4.

E. Open Space Landscaping Standards (Bylaw § 10.4.3.5)

As depicted on the Landscape Plan (sheet 10), open spaces have been adequately landscaped in accordance with Bylaw § 10.4.3.5.

F. Developable Site Area (Bylaw § 10.4.3.7)

In accordance with Bylaw § 10.4.3.7, the developable site area is 109,268sf, which includes 57,677sf associated with the CVS lot (Map 3F, Lot 128) plus 45,734sf associated with the adjacent TD Bank lot (Map 3F, Lot 127). In addition, the new lot to be created via lot line adjustment/ANR Plan and included 6, 552sf portion of Lot 118-2 and 1,094sf port of lot 134.

G. Maximum Net Floor Area (Bylaw § 10.4.3.8)

In accordance with Bylaw § 10.4.3.8, the maximum net floor area 0.16. Please refer to the Zoning Analysis Table located on the Site Plan for a breakdown of this calculation.

H. Special Provisions Applicable to the Kelley's Corner District (Bylaw § 10.4.3.10)

Section 10.4.10 of the Bylaw required all developments in the Kelley's Corner District to comply with Bylaw § 5.6

1. Sidewalks and Walkways (Bylaw § 5.6.2.1)

In compliance with Bylaw § 5.6.2.1, the Project provides sidewalks along the Site's frontage and a walkway between the CVS building entrance and the street with minimal interruption. When they walkway does cross the driveways, stop signs with stop bars have been proposed for pedestrian safety.

2. Connections to Abutting Lots (Bylaw § 5.6.2.2)

The Project proposes cross-connection with the adjacent Bank development to the west of the Site with proper stop signs and stop bars to promote vehicle safety. The project proposed cross-connection to the east of the site with a sidewalk and crosshatched striped pavement. In addition, future cross-connection with the parcel to the rear is anticipated.

3. Connections to Abutting Neighborhoods and Facilities Outside the Kelley's Corner District (Bylaw § 5.6.2.3)

The Project provides pedestrian connections to abutting parcels by including the sidewalk running along the front of the site. Future pedestrian connections to the abutting parcels to the rear are anticipated.

IV. THE SITE PLAN MEETS THE REQUIREMENTS OF BYLAW § 10.4.5

In considering a site plan, the Board "shall ensure a USE of the site consistent with the USES permitted in the district in which the site is located and shall give due consideration to the reports received under Section 10.3.3." Bylaw § 10.4.5 requires the Board to find that, to the degree reasonable, the site plan meets seven (7) criteria.

The proposed retail use is consistent with the uses permitted in the Kelley's Corner Business District in Bylaw § 3.5.1. The immediate surrounding area contains several retail uses including several within the Acton Shopping Plaza across Massachusetts Avenue from the Site.

As demonstrated below, to the degree reasonable, the site plan meets the seven (7) criteria established in Bylaw § 10.4.5.

A. Consistency with the Master Plan

The Project is consistent with Acton's Master Plan (1991), Acton's Master Plan Update (1998), Kelley's Corner Specific Area Plan (1995), and Kelley's Corner Business District – Final Circulation Plan (1997), to the degree reasonable. When inconsistencies arose between the town's bylaws referenced above, and the Kelley's Corner bylaws, were more closely followed guidance governed by the Kelley's Corner bylaws. The Site is the redevelopment of an existing automotive service center. The existing auto service center use is unattractive with poor vehicular and pedestrian circulation. The proposed Project creates safer and more efficient vehicular circulation, provides a pedestrian connection to the CVS building from the sidewalk along the frontage, and accommodates future development of the parcel to the rear. The site has also been designed such that the peak rate of storm water runoff discharged from the site will be reduced, and water quality improved.

The various Master Plan documents encourage the use of alternative methods of transportation, including walking between uses and more extensive utilization of bicycles. In order to encourage the use of bicycles, the Project includes a bicycle rack on the stamped concrete area near the northwest corner of the site. See Kelley's Corner Circulation Plan, p. 3; Kelley's Corner Specific Area Plan, p. 4. Bike racks assist in encouraging the use of bicycles in the Kelley's Corner Business District and provide infrastructure for eventual development of bikeways.

B. Protection Against Seriously Detrimental or Offensive Users

The proposed CVS is a safe, clean, and quiet use of the Site. As demonstrated by the numerous CVS's operating without issue in the region, it would not be a seriously detrimental or offensive use. The CVS will not handle or generate hazardous wastes and is not a manufacturing operation. As a result, it will also not have an adverse effect on the natural environment and will provide significant improvement over the existing automotive service center.

C. Safe and Convenient Vehicular and Pedestrian Movement

As demonstrated by the Traffic Operations Study submitted with the Application, the vehicular and pedestrian movement on the Site will be both safe and convenient and a considerable improvement over the existing conditions. The Project will modify the existing driveway opening onto Massachusetts Avenue, which will require the approval of the Massachusetts Department of Transportation.

D. Parking and Loading Spaces

The parking and loading spaces provided as part of the project are adequate in amount and arrangement for the proposed retail use of the Site. CVS is proposing a 73-space parking lot, which, based on its extensive experience with other stores of this size, is necessary to allow convenient parking for customers and its employees. The arrangement of the parking areas also provides safe circulation through the Site while providing adequate parking.

E. Adequate Methods of Disposal of Refuse or other Wastes

CVS will not handle or generate hazardous wastes. Standard waste from the CVS will be hauled by employees to the trash enclosure and compactor located within the southeast corner of the site. Waste will then be picked up by the CVS's licensed waste hauler on a regularly scheduled basis.

F. No Adverse Effect on Surface and Groundwater Resources

As demonstrated in the drainage calculations, water balance calculations, and grading plans submitted with the Application, the CVS will have no adverse effect on surface or groundwater resources in the Town of Acton.

G. Compliance with Applicable Requirements of this Bylaw

1. The Proposed Bank Use is Permitted

The proposed retail use is permitted as and allowed use in the Kelley's Corner District with a Site Plan Special Permit from the Board. Accordingly, the Project complies with the applicable use provisions of the Bylaw with the grant of this permit

2. The Project Meets All Dimensional Requirements

The Zoning Analysis Table depicted on the Site Plan summarizes the required dimensional limitations of the Site and the Project's compliance with the required dimensional requirements pursuant to the Table of Standard Dimensional Requirements.

3. Parking Requirements are Satisfied

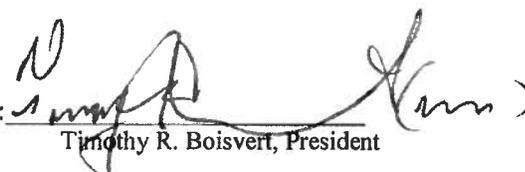
Section 6.3.1.6 of the Bylaw sets forth required parking for the proposed retail use as one (1) parking space per 300 square feet of Net Floor Area. The proposed CVS contains 13,602 square feet of Net Floor Area, requiring 46 parking spaces. CVS's proposed 69-space parking lot meets the Bylaw's minimum requirement.

V. **CONCLUSION**

TRB Development Group, Inc., believes that it has demonstrated through this memorandum, attachments, and submitted drawings, its commitment to upgrade Kelley's Corner by ensuring the aesthetic and orderly development goals desired by the Town of Acton have been achieved. Therefore, we respectfully request that this proposed CVS project receive a Site Plan Special Permit to advance its development.

Respectfully Submitted,

TRB DEVELOPMENT GROUP, INC.

By: 
Timothy R. Boisvert, President

TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9628
Fax (978) 264-9630

Engineering Department

INTERDEPARTMENTAL COMMUNICATION

To: Planning Department

Date: May 8, 2014

From: Engineering Department

**Subject: Site Plan Special Permit #08/01/13-444 – CVS - 400 Massachusetts Avenue –
Remanded Site Plan Application**

We have reviewed the site plan for 400 Mass Ave dated January 25, 2013 with a revision date of April 3, 2014. According to the application the only plan that has been revised is the plan titled "Site Plan – Sheet 4B". The following comments are from our memo dated August 23, 2013 which have been left unaddressed:

1. There is an errant note on the detail sheet for the outlet control structure that reads "Top of Weir, Inv = 159.00". This appears to be a typo.
2. The profile view of the underground detention system has 6-inches of separation between the bottom of the system and the bottom of the outlet control structure however the drainage calculations and details call for the bottom of the detention system and the invert of the outlet pipe (12" HDPE) to match at 181.75'. The outlet pipe is located at the bottom of the outlet structure. Either there isn't a 6-inch separation or the outlet pipe is located 6-inches above the bottom of the outlet structure.
3. We would request to obtain a copy of the MassDOT permit for the work shown within the road layout for Massachusetts Avenue for our records.
4. There should be an erosion & sedimentation control note that states the contractor is responsible to clean-up any sand, dirt or debris which erodes from the site onto Massachusetts Avenue or private property, and to remove silt or debris that enters any existing drainage system immediately upon discovery.
5. The engineer needs to show two temporary benchmarks and the starting benchmark on the plans. The temporary benchmarks should be located on fixed objects that will not be disturbed during construction.
6. An as-built plan certified by a Massachusetts Licensed Surveyor showing the buildings, pavement, drainage, utilities, etc. should be required at the conclusion of construction. A Professional Engineer should also stamp the as-built plan to certify that the site has been completed in accordance with the approved site plan and that all features required on the



Planning Department

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
Fax (978) 929-6340
www.acton-ma.gov
planning@acton-ma.gov
www.acton-ma.gov

INTERDEPARTMENTAL COMMUNICATION

To: Steven Ledoux, Town Manager **Date:** May 7, 2014
From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner
Subject: Site Plan Special Permit Application #08/01/13 – 444
Remand Hearing – May 19, 2014

Location: 400 – 408 Massachusetts Avenue
Applicant: TRB Development Group, Inc., 36 Londonderry Turnpike, Hooksett, NH 03106
Engineer: Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772
Architect: BKA Architects, Inc., Architecture and Interiors, 142 Crescent Street, Brockton, MA 02302
Zoning: Kelley's Corner (KC)
Groundwater Protection District Zone 4
Proposed FAR: 0.16 (Includes proposed CVS and existing TD Bank)
Base FAR – 0.20
Maximum FAR – 0.40 (Based upon requirements set forth in Section 5.6)
Proposed Uses: CVS Pharmacy (with potential for future drive-up facility) & TD Bank Branch
Map/Parcel: F-3/Lots 118-2, 127, 128 & 134
Remand Hearing Date: May 19, 2014
Decision Due: June 14, 2014

This memorandum is respectfully submitted as a brief overview to summarize the modifications of the new Site Plan design which has resulted from mediation of the Board's previous Site Plan Special Permit Decision, dated December 16, 2013.

Plan Modifications:

- The property lines of the Project have been revised to create a new single lot which includes 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;
- The overall lot area has been reduced to 109,268 ft² (2.51 ac) from 117,177 ft² (2.69 ac);
- The location and size of the building has not significantly changed;
- Total number of parking spaces has been reduced to 69 (from 73) for the CVS development. The total number of parking spaces on the Site is 93 (24 were constructed as part of the TD Bank development);
 - The previous row of 19 parking spaces (15 across the southern property line and 4 perpendicular running up western boundary) and the associated two-way maneuvering aisle have been removed;

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
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6611
Fax (978) 929-6340
bos@acton-ma.gov
www.acton-ma.gov

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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

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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).

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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

Deleted: The Board opened and held a duly noticed public hearing on September 9, 2013, and continued said hearing to dates of October 7, 2013, October 21, 2013 and November 4, 2013 at which time the public hearing was closed. The October 7, 2013 and October 21, 2013 dates were procedural continuance hearings only and no discussion took place.

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 Gowling (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.

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(Vice Chair), Katherine Green (Clerk), David Clough and John Sonner were present throughout the hearing. Joshua Swerling, P.E. of Bohler Engineering and Richard Mattocks of TRB Development Group, Inc. represented the Applicant

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

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- 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:

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- 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.

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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:

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- 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.

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1.6 Additional plans submitted:

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- 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:

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- 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.

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1.8 Interdepartmental communication received from:

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- 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;

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- 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.

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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.

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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 summaries the KC Plan goals and design objectives.

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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.

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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,

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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.

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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.

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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.

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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

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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.

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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.

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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.

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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

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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.

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- 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.

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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).

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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.

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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.

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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.

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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.~~

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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,

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The Town of Acton Board of Selectmen

Mike Gowing, Chair

Deleted: Janet Adachi

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.

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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

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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
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6611
Fax (978) 929-6340
bos@acton-ma.gov
www.acton-ma.gov

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