

Lisa Tomyl

From: Kristen Domurad-Guichard
Sent: Friday, June 13, 2014 12:27 PM
To: Lisa Tomyl
Cc: Roland Bartl
Subject: Consent Agenda Item for 6/23/14 BOS Meeting

Hi Lisa,

Could we please request a consent item be added to the next BOS meeting on June 23rd? "Amendment to Site Plan Special Permit 04/28/82 – 0220"

Thank you,
Kristen

Kristen Guichard
Assistant Town Planner
Town of Acton
472 Main Street
Acton, MA 01720
P: 978-929-6631



Planning Department

TOWN OF ACTON
472 Main Street
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MEMORANDUM

To: Board of Selectmen **Date:** June 18, 2014

From: Kristen Guichard, Assistant Planner *KGG*

Subject: **Application for Site Plan Special Permit Minor Amendment – Gould’s Plaza
04/28/82 - 0220**

Overview

Attached for your consideration is a draft decision for a Site Plan Special Permit amendment request for the Gould’s Plaza property located at 254 Great Road for purposes of advancing the Bruce Freeman Rail Trail. One of the last steps prior to construction bids going out this July is to finalize easement acquisitions. The Bruce Freeman Rail Trail requires access and parking locations along the trail. The Town is currently working with the property owners of Gould’s Plaza at 254 Great Road who have agreed to work with the Town towards a permanent easement located behind the Donelan’s Supermarket and adjacent to Brook Street for this purpose (please see attached plan). This easement would allow for the construction and use of a 12 foot wide paved path from the existing parking lot to the trail. The easement would also include rights to use a portion of the existing parking lot. The total easement area is approximately 12,225 square feet.

The attached draft decision includes the following amendments:

- Allows for additional development of the land by adding 450 square feet of impervious pavement;
- Allows the non-exclusive use of 13 existing parking spaces for rail trail visitors. The existing 13 parking spaces will be reconfigured to 12 parking spaces in order to create one handicap space;
- Acknowledges Section 10.4.3.4 (e) of the Zoning Bylaw (site plan) which includes a subsection that declares all walkways, sidewalks and paths approved under site plan special permit are to be considered open space.

Floor Area Ratio (FAR) and Open Space Requirements The Planning Department sees no change in the status of the existing property in respect to FAR and Open Space Requirements as all additional development is entirely with the easement area.

Zoning Bylaw Section 8.8 states:

“If the area, FRONTAGE, width or other dimensions of a LOT, parcel or TRACT OF LAND is decreased by a taking or acquisition of part of such land by the Town of Acton or the Water Supply District of Acton for public purposes, no existing USE, BUILDING or STRUCTURE located on, or dependent upon the existing area or other dimensions of such LOT, parcel or TRACT OF LAND for

compliance with the requirements of this Zoning Bylaw, shall be rendered non-complying solely by reason of such taking or acquisition.”

Parking

Although the Planning Department does not deem the use of 13 non-exclusive parking spaces as reducing the overall parking spaces required for the plaza, a review of existing parking spaces was conducted. The plaza consists of approximately 62,900 square feet, requiring a minimum of 189 parking spaces in order to comply with zoning. A total of 262 parking spaces were counted using GIS imagery; there more spaces than that – the count was not completed. Therefore, even if the Board were to consider the non-exclusive use of the 13-space parking easement as a reduction in the number of parking spaces available to the plaza, the plaza would remain in compliance with the parking requirements of the zoning bylaw by a wide margin. Conversely, the site is nonconforming with respect to Section 5.4.6.2, which limits the number of parking spaces for this retail property to 120. If the requested parking easement were deemed to reduce the overall parking count available for the plaza, then it would bring the site more into conformity with Section 5.4.6.2.

Recommendation

The Planning Department believes this amendment is minor in nature and does not trigger a new Special Permit as the modifications do not expand the impervious material by 1,200 square feet or more (ZBL Section 10.4.1.2.3). Although it does not trigger a new special permit, Section 5 of Site Plan Special Permit #04/28/82 – 0220 specifically states, “There shall be no further subdivision or development of the site without further site plan approval”, and therefore requires formal approval by the Board of Selectmen. Typically minor amendments of this nature can be handled as a consent agenda item at a regular Board of Selectmen meeting. The Planning Department recommends approval of the attached draft decision.

DRAFT

Gould's Plaza
Amendment #1 Site Plan Special Permit #04/28/82 - 0220
260 Great Road
June 23, 2014



Board of Selectmen

TOWN OF ACTON
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AMENDMENT OF DECISION
#04/28/82 - 0220 – Site Plan Special Permit

Gould's Shopping Plaza

June 23, 2014

GRANTED

Decision of the Acton Board of Selectmen (hereinafter the Board) on the request of Nagog Knoll Realty Trust (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Nagog Knoll Realty Trust of 260 Great Road, Acton Massachusetts. The subject property is located at 260 Great Road and shown on the Acton Town Atlas Map E4 Parcels 15-1, 26, 27 and 36 (hereinafter the Site).

The Board considered the request at a duly noticed public meeting on June 23, 2014. Board members Janet Adachi, Peter Berry, Mike Gowing (Chair), Katie Green (Clerk), and Franny Osman were present. The minutes of the hearing and submissions upon which this Amendment Decision is based on may be found in the Town Clerk's office or the Board's office at the Acton Town Hall.

1. EXHIBITS

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

- 1.1 Letter dated, June 18, 2014, by Marvin Gould;
- 1.2 Plan titled, "Westford, Carlisle & Acton Bruce Freeman Rail Trail Phase 2A, Preliminary Right of Way Property Plan", Sheet 16 of 22, dated May 13, 2014.
- 1.3 Interdepartmental and other communication:
 - Memo from Planning Department, dated June 16, 2014.
- 1.4 The Original Decision of July 14, 1982.

Exhibits 1.1 through 1.2 are referred to herein as the Plan.

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 Applicant, Nagog Knoll Realty Trust LLC, has offered the Town of Acton a permanent access easement on the Site for purpose of advancing the Bruce Freeman Rail Trail, which include:
 - a. Additional development of the land by adding 450+/- square feet of impervious coverage for a 12 foot wide paved path extending from the existing parking lot to the trail;
 - b. The non-exclusive use of 12 parking spaces with driveway and maneuvering aisle for rail trail users;
- 2.3 The 12 foot-wide paved path will be constructed under the direction of the Massachusetts Department of Transportation as part of the Bruce Freeman Rail Trail.
- 2.4 The plaza has parking in excess of the minimum requirements of the zoning bylaw (hereinafter the Bylaw). The 12 non-exclusive parking spaces for the easement do not reduce the overall parking spaces below the minimum required for the plaza.
- 2.5 The 12 foot-wide paved path, non-exclusive use parking spaces and maneuver islands are entirely within the proposed easement to be granted to the Town of Acton.
- 2.6 In accordance with Bylaw Section 8.8, the proposed amendments within the easement do not affect current zoning compliance status of the property.
- 2.7 In accordance to Bylaw Section 10.4.3.4 (e), the proposed 12 foot-wide path and all existing or future sidewalks, walkways and paths shall be considered open space and shall not require further Site Plan Special Permit approval.
- 2.8 The proposed Plan changes and the requested amendments of the special permit granted in the Original Decision have been determined to be minor in nature and do not trigger a new Special Permit as they do not expand the ground area or impervious materials by 1,200 square feet or more.

3 BOARD ACTION

Therefore, the Board voted unanimously on June 23, 2014 in favor of GRANTING the special permit amendments as the Applicant had requested and as delineated in the Exhibits listed herein, subject to the following conditions.

4 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render the special permit amendment granted with this decision null and void, and shall constitute grounds for the revocation of any or all building or occupancy permits issued hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

- 4.1 All work on the Site approved hereunder shall be performed in substantial compliance with the scope and details of improvements shown on the Plan.
- 4.2 The Applicant shall contact the Acton Planning Department for Town plan review and approval prior to commencing construction of any additional sidewalks, walkways and paths not currently identified on the Plan.
- 4.3 The Applicant or the Town of Acton shall record this Decision at the Middlesex South District Registry of Deeds.

5 EFFECT AND SCOPE OF THIS AMENDMENT DECISION

This Amendment Decision only responds and decides on the limited matters before the Board as outlined herein. Except as herein specified, the Original Decision shall remain in full force and effect.

The Town of Acton Board of Selectmen

Mike Gowing, Chair

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Town Engineer	Municipal Properties Director
Town Clerk	Natural Resources Director	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Historical Commission	Assistant Assessor

NAGOG KNOLL. LLC
260 GREAT ROAD
ACTON, MA 01720
978-263-0374

Mike Gowing, Chair
Town of Acton Board of Selectmen
472 Main Street
Acton, MA 01772

June 16, 2014

RE: Site Plan Special Permit Amendment #04/28/82-0220

Dear Mr. Gowing,

I am writing to the Board of Selectmen to respectfully request an amendment to site plan special permit #04/28/82-0220, for the Gould's Plaza site located at 260 Great Road. In early May we were approached by the Town asking for a permanent easement on our property for public parking and access to the future Bruce Freeman Rail Trail. We agreed to grant the easement and are working out final arrangements, but must first amend the existing Site Plan Special Permit prior to proceeding. We have been informed by the Planning Department that Section 5 of Site Plan Special Permit #04/28/82 - 0220 specifically states, "There shall be no further subdivision or development of the site without further site plan approval", and therefore requires formal approval by the Board of Selectmen.

This easement would allow for the construction and use of a 12 foot-wide paved path from our existing parking lot to the Bruce Freeman Rail Trail which would require an additional 450+/- square feet of impervious pavement on our site. The construction of the proposed path would be managed by Massachusetts Department of Transportation. The easement also includes rights to use 13 existing parking spaces located behind the Donelan's Supermarket - all proposed changes and parking use rights are within the 12,225 square foot easement. Attached is the easement and proposed plan for the 12 foot-wide path.

We greatly appreciate your consideration as we understand this access path and easement is essential for the advancement of the Bruce Freeman Rail Trail. We are excited for the trail and believe it will be an asset to the community.

Sincerely,


Marvin Gould



TOWN OF ACTON
 TOWN HALL
 472 MAIN STREET
 ACTON, MASSACHUSETTS 01720
 TELEPHONE (617) 263-2761

BOARD OF SELECTMEN
 OFFICE OF THE TOWN CLERK, COMMONS
 PHOENIX BLDG. 1ST FLOOR
 100 STATE ST.
 ACTON, MASS. 01720

RECEIVED & FILED

July 14, 1982 DATE 7-3-82

Laura P. Miller
 TOWN CLERK, ACTON

Nagog Knoll Realty Trust
 260 Great Road
 Acton, Massachusetts 01720

RE: Site Plan #4/28/82-220 - Nagog Knoll Realty Trust
 260 Great Road, Acton, Mass.

Gentlemen:

Under the provisions of Section VIII of the Zoning Bylaw of the Town of Acton, the Board of Selectmen at its regular meeting held on September 7, 1982, voted to approve Site Development Plan #4/28/82-220 for Nagog Knoll Realty Trust, 260 Great Road, Acton, Mass. as shown on (1) Site Plan of Land in Acton, Mass for Nagog Knoll Realty Trust by Acton Survey & Engineering, 277 Central Street, Acton, Mass., (2) Proposed Rear Elevations, by Cybulski, Ohnemus & Associates, Marlborough, Mass., (3) Plan of Lane in Acton, Mass. showing total site by Acton Survey & Engineering, 277 Central Street, Acton, Mass., (4) Floor Plan for Stores 1, 2, 3 & 4, (5) Floor Plans for Stores 5, 6, 7 & 8 by Cybulski, Ohnemus & Associates, Marlborough, Mass., all submitted to this office on April 28, 1982 by Acton Survey & Engineering, 277 Central Street, Acton, Mass. and all known as Site Development Plan #4/28/82-220, subject to the following conditions:

1. Prior to the issuance of a building permit or the start of any work associated with the proposed expansion petitioner shall submit a revised site plan to the Building Commissioner for written approval. Said revised site plan shall include the following corrections, revisions, and/or additional information:
 - a) The Board finds (a) that there is an overlap of approximately (10,000 square feet) between site plan application #220 of 1982 and a previously approved site plan, #113 of 1978, (b) that both plans propose to use the overlapping parcel for drainage, (c) that the (10,000 square foot) parcel has apparently been deeded to the present applicant by the previous applicant and (d) that a condition in the prior

approval required that no further subdivision of the site be made. In these circumstances, the holder of site plan permit 1117 of 1976 shall be required to come before the Board of Selection to obtain an amendment to (its) site plan approval whereby the (10,000 square foot) overlapping parcel be validly deeded to the present applicant. In the event said amendment is denied, the present applicant shall be required to submit such additional modifications, amendments and drainage calculations to the Board as are sufficient to demonstrate that the drainage requirements of the present site can be satisfied.

DONE
10/6/82

b) Proposed new driveway entrance onto Brook Street shall be relocated at least 200' from existing driveway in compliance with Section VII.C.2. of the zoning bylaw. In the alternative, driveway may be located as shown if petitioner seeks and receives the necessary variance(s) from the Zoning Board of Appeals.

DONE
11/4/82

c) Employee parking, for the entire shopping complex, shall be restricted to the new parking area at the rear of the property. Petitioner shall be responsible for the enforcement of this restriction. As part of his responsibility, petitioner shall include an appropriate restrictive clause in each tenant lease as said leases are renewed or otherwise initiated. A copy of said clause shall be submitted for approval.

DONE
9/30/83

d) Add nine (9) parking spaces to provide required parking for full I.U. gross floor area being added. Revise lot coverage computations accordingly and submit for review and approval.

DONE
11/24/82

e) Submit a properly endorsed ASB plan of the entire property.

DONE
12/24/82

f) Revise recharge basin to provide a stable and clearly defined overflow area, install crushed stone bottom vs. "gravel" base and specify intended method of stabilizing sideslopes.

g) Submit schedule of proposed maintenance of drainage system (cleaning catchbasins, cleaning recharge basin, sweeping paved areas, etc.) and copies of any maintenance contracts in this regard.

DONE
12/24/82

h) Provide rip-rap at the drainage pipe outfalls.

DONE
12/24/82

i) Remove existing residential driveways at Brook Street and replace bituminous curbing at those locations.

✓ Done
 12/24/02
 ✓ Done
 12/24/02
 ✓ Done
 12/24/02
 ✓ OK
 12/24/02

- j) Revise exterior lighting layout to provide fixture orientation that directs light away from residential properties or uses. Incorporate shielding that eliminates view of any new exterior lighting elements (bulbs) at property line. ~~Submit plan indicating location of all exterior lighting and intended method of compliance with these conditions.~~
- k) Provide pedestrian walkways across loaned and seeded traffic islands to allow convenient crossing without damaging landscaping.
- l) Position relocated fire hydrant on the traveled side of the driveway rather than in the loading area.
- m) Replace field-grown red pine landscape screening at rear (westerly) property line with minimum 6' high red pine nursery stock. Trees shall be planted 7' on center along the rear property line, beginning approximately 220' to the proposed stockade fence. Submit point of origin certificate(s) for nursery stock prior to approval of finished landscaping.
- n) Obtain all necessary permits/approvals under the Wetlands Protection Act.

- 2. Petitioner is encouraged to provide a bicycle rack(s) conveniently located on the site.
- 3. All abandoned wells shall be covered.
- 4. All development of the site must be in accordance with plans as approved by this decision and with the Bylaws of the Town of Acton.
- 5. Any changes in this plan shall be approved in writing by the Board of Selectmen prior to actual construction. Upon completion of the project, an as-built plan shall be submitted to the Board of Selectmen for written approval. A copy of the plan shall be submitted to the Building Commissioner.
- 6. There shall be no further subdivision or development of the site without further site plan approval.
- 7. No approval of any indicated signs or advertising devices is implied.
- 8. No building or structure authorized by this site plan shall be occupied or used and no activity authorized to be constructed upon the land which is the concern of this site plan approval shall be commenced until a Certificate of Compliance as specified in Section XII.A.3. of the zoning Bylaw has been issued.

9. There shall be no storage of chemicals anywhere on the site unless they are registered with the Board of Health (in a form suitable to the Board of Health) and confined within a controlled area(s) acceptable to the Board of Health. Said area(s) shall be designed to prevent penetration of chemicals into the groundwater in the event of an accident or spill. Any registration of chemicals with the Board of Health shall include a plan by the petitioner, acceptable to the Board of Health which clearly specifies (1) how and when the Board of Health will be notified if any accidents or spills occur, and (2) proposed method of clean up and disposal.
10. Petitioner shall annually submit (on the anniversary of this decision) an affidavit to the Board of Selectmen that the applicable conditions of paragraph 9 above are being met or that no chemical storage is taking place at the site. Failure of the petitioner to comply with requirement shall constitute an immediate and complete revocation of this Site Plan Special Permit.
11. With the exception of Condition #10 the conditions of this site development plan approval shall be carried into effect and completed by the applicant one year following date of approval and prior to the occupancy permit.

Very truly yours,
BOARD OF SELECTMEN:

by:

Gregory N. Jarboe
Gregory N. Jarboe
Chairman

GNJ/acc
cc: Building Inspector
Engineering
Conservation Commission
Fire Department
Planning Board
Town Clerk
Board of Assessors
Board of Health
Acton Survey & Engineering

Lisa Tomyl

From: Sherrill Gould [sherryesq@yahoo.com]
Sent: Wednesday, June 18, 2014 3:11 PM
To: Kristen Domurad-Guichard; Roland Barti; Manager Department
Subject: Fw: Easement and site plan revisions for Nagog Knoll, LLC for BFRT easement
Attachments: SCAN2706(1)_000.pdf

To the recipient:

I am attaching a letter requesting site plan revisions for Nagog Knoll, LLC to accommodate the BFRT parking easement, which is self explanatory. If you need anything further, please do not hesitate to contact me.

Sherry Gould
Sherrill R. Gould
Gould Law Offices
P. O. Box 752 - 311 Great Road
Littleton, Ma 01460
Ph: 978-486-9566
Fax: 978-486-9434
Private: 978-501-2744