



Planning Department

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MEMORANDUM

To: Board of Selectmen **Date:** February 3, 2016

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

Subject: **Special Permit Application #12/14/15 – 460 for**
1. Site Plan (ZBL 10.4)
2. Transfer of Development Rights (TDR – Zoning Bylaw (ZBL) 5.4)
3. Variable Density Options in EAV District (ZBL 5.5B.2.2)

Development Location &

TDR Receiving Site: 7-29 Great Road
Map/Parcels: G5-78,80,81,84
Zoning: East Acton Village (EAV), Groundwater Protection District Zone 3
Lot Area & Developable
Site Area (same): +/- 106,486 square feet (2.44 acres)
Proposed Net Floor Area: +/- 43,835 square feet
Proposed Floor Area
Ratio (FAR): +/- 0.412
Applicant: AHC, Inc.
Owner: AHC, Inc.
Previous Site Plans: Site Plan #326 (Now & Then) for 19-29 Great Road
Proposed Uses: Mixed Use – retail, business, residential

TDR Sending Site 356-358 Great Road
Map/Parcel: D4-18
Zoning: Limited Business (LB), Groundwater Protection Districts Zone 2 and 3
Owner: Benson & Evan Real Estate LLC (per GIS/Assessors' info)
Proposed Development: None (no new development)

Engineer: William Hall, E.I.T. & George Dimakarakos, P.E.
Stamski and McNary, Inc.

Hearing Date: 02/08/16
Decision Due: 05/08/16

The following are the Planning Department comments. Please review comments from other departments, boards and agencies – they are not repeated here.

Overview

The application is for

- I. A site plan special permit at 7-29 Great Road in East Acton Village (EAV zoning district) under ZBL section **10.4**.

The applicant proposes a mixed-use redevelopment with over 8,000 sq. ft. of commercial space (retail & office) and 14 dwelling units. The proposed uses are allowed by right.

- II. A combined special permit for:

- a. The Transfer of Developments (TDR) to the EAV site from an off-site location at 358 Great Road near Skyline Drive (LB zoning district) under ZBL section **5.4**.

The off-site location will not see any development or change.

- b. Variable/additional density at the EAV site under ZBL section **5.5B.2.2** with the TDR bonus from above (5.5B.2.2 subsection a) i.) and with an Historic Preservation bonus (5.5B.2.2 subsection b)).

The plan shows the preservation and reuse of historic buildings at 19 and 29 Great Road.

They are on the Acton cultural resources list. Another historic building on the cultural resources list at 7 Great Road would be moved to another location on the development site and reused there.

The proposed development site is in the Groundwater Protection Overlay District Zone 3 – certain design standards apply to drainage and recharge of storm water. The site is unconstrained by flood plain or wetlands.

The site development plan shows:

1. Existing and new buildings, residential and commercial, at and near the Great Road frontage with parking in the rear and side of these buildings.
2. Behind that, a small residential neighborhood with ten single-family homes.
3. Two driveways; reduce from three existing.
4. Various non-historic buildings to be razed.
5. The existing sidewalk integrated with on-site pedestrian amenities and pedestrian plaza.
6. 43 vehicle parking spaces, including garage spaces.
7. Landscaping that appears to be richly appointed with shade, street, and ornamental trees, shrubs and ground covers, and hardscape as walkways, pocket park, and pedestrian plaza.

Transfer of Development Rights (TDR)

ZBL Section 5.4 provides for the TDR from certain areas along Great Road (sending district) into East Acton and North Acton Villages (receiving district).¹ Section 5.4 specifically describes sending and receiving districts, units of transfer, commercial/residential unit conversion formulas, procedural details and special permit requirements for TDR transactions. TDR and section 5.4 were adopted as part of the zoning bylaw in 1990. 26 years later, this is the first proposed development with TDR under section 5.4.

The 12,000 sq. ft. Net Floor Area TDR as proposed in the application is eligible for special permit consideration. The application contains a table that tallies the developments rights for each property and the transfers. The development rights on the sending district property at 358 Great Road would be reduced by 12,000 sq. ft. of Net Floor Area; After the TDR, the property in the sending district would retain 2,826 sq. ft. of surplus developable Net Floor Area subject to the Sending district standards of ZBL subsection 5.4.6.2. The property must be deed restricted accordingly. After the TDR, the development rights on the receiving district property would be increased by the same 12,000 sq. ft. to a maximum Net Floor Area of 33,297 sq. ft. and a Floor Area Ratio (FAR) of 0.31.

¹ TDR is one of the more complex forms of land use regulation. In Acton, as in most other US municipalities, property development rights are defined in a zoning ordinance or bylaw through use and dimensional regulations and relate to the location, size and shape of the property in a general manner. Development rights constitute value that finds its expression in property appraisals, valuations for property tax assessment purposes, and in the prices at which properties are bought and sold. The worth of a certain amount of development rights, as may be expressed, for instance, in building square footage, varies between more desirable and less desirable locations, or between locations where certain higher value land uses are allowed and other locations where they are not allowed.

Development rights are unique and separable from a property under a TDR program, and may be traded as commodities from one defined geographic area to another. The typical community goals of a TDR regulation are to restrict or eliminate development in one area where development may not be desirable, which is called the “sending district,” and to transfer the development rights to another place where development is desired, which is called the “receiving district”. The idea is that the transfer of development in some form will meet the goals for development in both the sending district and the receiving district.

TDR works best in a community where the goals of restricting development on one area and encouraging development in another area may be accomplished simultaneously *and* the private real estate market supports the transactions with sellers and buyers ready to trade development rights. When the development rights are purchased from property in the sending district a deed restriction against further use of the sold development rights is placed on that property, and a commensurate increase in density or intensity of development is then permitted on a corresponding property in the receiving district. The designation of TDR sending and receiving districts, TDR definitions, units, and formulas, and procedural details for TDR transactions are typically enshrined in a municipality’s zoning bylaw or ordinance.

Some TDR programs use a ‘bank’ to buy development rights, hold them for a period of time, and then sell them as development credits. The TDR bank thus fulfills the role of a development rights trader and clearinghouse eliminating the need for a seller and buyer to meet and come to terms on each individual transaction at the same point in time. The TDR bank can pay out funds for purchases of development rights from a sending district, and receive funds when development rights are sold to and exercised in a receiving district, but the two transactions can be handled separately and at different times.

With or without a TDR bank, TDR requires (1) that there is a receiving district with the physical and practical space, the suitable regulatory framework, and the economic opportunity as defined by the market place to absorb additional development rights, and (2) that the transaction is profitable on both ends of the transfer. In other words, the opportunity to use the acquired development rights in the receiving district must be real, tangible, and profitable. And, without a public subsidy, a TDR program can only succeed where the difference in development value provides enough incentive for the private market; that is where the value of the development rights sold from the sending district is low enough compared to their value in the receiving district to ensure a profitable return on the corresponding investment in the receiving district.

Comments:

1. The owner of the sending district property must appear and sign the application as a co-applicant.
2. The proposed mix of uses on the receiving district parcel narrowly fails the test of ZBL section 5.4.7. It requires that the resulting mix of uses on the receiving district parcel after the transfer is characterized by at least 25% Net Floor Area in residential use and at least 25% of Net Floor Area in non-residential use. The percentage based on a total of 33,297 sq. ft. Net Floor Area is only 24.4% after the TDR is applied and before the Historic Preservation bonus is credited.
3. To grant the proposed TDR special permit, the Board of Selectmen should, in addition to the standard required special permit and site plan special permit findings, consider the following TDR objectives:
 - a. Increased density on a LOT in the Receiving District should support a sense of community, through a concentration of a variety of USES;
 - b. Density increases in the Receiving Districts should be granted only where such concentrations are compatible with surrounding USES;
 - c. The implementation of the TDR provision should tend to facilitate the development of a viable village center, that provides convenient and attractive commercial and personal services for its residents and for the residents of Acton's neighborhoods;
 - d. TDR should encourage compact development within defined village centers, reinforcing Acton's traditional pattern of development and providing convenient and attractive commercial and personal service centers for residents of Acton's neighborhoods;
 - e. TDR is aimed at discouraging excessive development in the Great Road corridor (*outside of EAV*), so as to reduce traffic congestion and minimize the need for public spending on infrastructure expansion;
 - f. TDR should help conserve public funds by concentrating development in areas where public infrastructure and services may be most efficiently provided;
 - g. TDR is intended to balance long-term tax revenue reductions in areas planned for limited development with long-term revenue increases in areas planned for concentrated development; and
 - h. The above objectives should be accomplished in a manner in which landowners are compensated for reductions in long-term development potential, through transfers with other landowners who benefit from increases in development potential.

Historic Preservation Bonus

ZBL section 5.5B.2.2.b) provides for a density increase on a lot in the EAV zoning district with a Net Floor Area bonus up to an equivalent of a Floor Area Ratio (FAR) 0.10. This may be added to the Net Floor Area on the property in addition to the TDR transfer. Based on the property's Developable Site Area the maximum bonus results in 10,648 sq. ft. of additional Net Floor Area. The applicant proposes to nearly maximize the bonus, using 10,538 sq. ft. Three buildings are listed on the cultural resources index. Two historic buildings would be preserved and reused as residential in their present location. One other house would be relocated and preserved in a different location on the same property and continue to be used for residential purposes.

Comments:

1. The ZBL (section 5.5B.2.2.b)) sets certain eligibility prerequisites for applying the Historic Preservation bonus. The following are missing from the application:
 - a. Detailed historic preservation plans with architectural drawings (provided), building materials, cost estimates, and feasibility/risk analysis.
 - b. Historical Commission certification that the subject structures are included on the Acton Cultural Resources Index (they are listed but the HC must certify) or that inclusion is pending.
 - c. Historical Commission's favorable recommendation for the proposed work.

The Site Plan

The applicant proposes a mixed-use redevelopment with over 8,000 sq. ft. of commercial space (retail & office) and 14 dwelling units. The proposed uses are allowed by right. The site development plan shows existing and new buildings, residential and commercial, at and near the Great Road frontage with parking in the rear and side of these buildings; behind that ten single-family homes; two driveways off Great Road; the existing sidewalk integrated with on-site pedestrian amenities and a pedestrian plaza; 43 vehicle parking spaces; 3 bicycle parking spaces; and ample landscaping.

Comments:

1. All plans and certifications should bear the appropriate professional designer stamps. The architectural plans, the landscaping plan, and lighting plan are not stamped.
2. Lighting plan -
 - a. I will have to rely on the professional certification that the plan fully complies with ZBL 10.6 requirements; therefore it must be definitive and executable. The plan submitted is only conceptual and values shown are approximations.
 - b. Values shown for lumens on the ground indicate adequate light trespass control.
 - c. The lighting plan is difficult to read; it is not possible to match the tables with symbols and graphics on the plan. It is unclear what the total site power usage is and how it is divided into activity areas.
 - d. As a strong caution, the ZBL, section 10.6 power limits for the site and the individual luminaires are intended to limit the overall site illumination and specific areas within the site to reasonable levels that comport with dark sky principles and cause no blinding or light trespass. However, the section 10.6 standards are obsolete for the much brighter outdoor LED lighting that is available today while using much less power.
I recommend that the applicant deduce appropriate LED power levels by matching, or rather not exceeding, the site illumination levels that would be achieved under the ZBL standards using older lighting types that the ZBL has standards for (incandescent, halogen, metal halide, high pressure sodium, etc.).
3. The common driveway with the abutting "Simms" lot would be maintained.
4. Driveways to residential portions show a width of 18 feet, 20 feet with curbs. I assume that this meets the new fire code access standard. I defer to the Fire Dept.
5. The Engineering Dept. offers observations and suggestions about the provision of sidewalk.

6. The existing historic buildings with their connector, identified on the architectural plan as the “Coral House” are pre-existing non-conforming relative to the required maximum 20’ front setback. The proposed addition in the connector makes them a bit less non-conforming. This non-conformity also translates into non-conformity of the site with respect to building and plaza occupancy within 20 feet of the front lot line. The offered design solution makes sense in that the pedestrian plaza is immediately adjacent to a proposed commercial building, driveways are on the property sides with one less driveway than there currently exists, landscaping to accent the historic buildings, and street trees on a 10-12’ wide strip between sidewalk and Great Road vehicle lanes.
7. ZBL sections 5.5B.1.2 c) and d) require that an effort be made to improve and facilitate connections to adjacent land within and outside of the EAV zoning district. Has the applicant attempted any conversations with abutters on this subject? These sections also require that, where unsuccessful, the site plan shall make provisions that facilitate future connections.
8. The site plan should certify compliance with the ZBL open space requirements (25% minimum).
9. The site plan should include a bicycle parking detail to show the proposed racks in compliance with ZBL section 6.3.7.3.
10. Except as noted, the plan as presented appears to meet the site and building design requirements of the EAV zoning district.

Recommendations

The applicant has some work to do in order to fully comply with the zoning bylaw. Other departments also have comments. If there are no questions at the public hearing that require public answers at a later continued hearing session, I would recommend closing the hearing and writing a decision with the appropriate conditions and safeguards.

cc: Fire Department
Engineering Department