

March 2, 2016

BY HAND

Town of Acton  
Board of Selectmen  
c/o Katie Green, Chair  
472 Main Street  
Acton, Massachusetts 01720

*Re: Acton Plaza Shopping Center, Massachusetts Avenue at Main Street:  
Request for Minor Amendments to Restaurant Special Use Permit;  
Request for Minor Amendment to Site Plan Special Permit #04/30/71-15;  
Request to Admit Two Lots to the Middle Fort Pond Brook Sewer Betterment Area*

Dear Board Members:

On behalf of E&A Northeast Limited Partnership (“Edens”), kindly allow this letter to serve as Edens’ request that the Board of Selectmen (“Board”), acting in its capacity as special permit-granting authority, approve Minor Amendments to (1) a Restaurant Special Use Permit and (2) the Site Plan Special Permit for the Acton Plaza Shopping Center in order to allow the relocation of the Dunkin Donuts within Acton Plaza. Edens also requests that the Board, acting in its capacity as Sewer Commissioners, approve Edens’ request to include Lots 81 and 89-1 of Assessor’s Map F3 in the Middle Fort Pond Brook Sewer Betterment Area.<sup>1</sup>

A check payable to the Town of Acton in the amount of three hundred fifty dollars (\$350.00) is enclosed for the Special Use Permit (\$100.00) and Site Plan Special Permit (\$250.00) minor amendment filing fees.

#### Background

Acton Plaza Shopping Center is located off Massachusetts Avenue and Main Street in Acton, Massachusetts (Map F3, Lots 81, 89, 89-1, 97, 97-1, 98 and 115) (the “Plaza” and the “Site”). The Site consists of approximately 13.1 acres and is located within the Kelley’s Corner Business Zoning District and a Groundwater Protection District Zone 4. The Plaza includes an

---

<sup>1</sup> An original application was filed directly with the Town Clerk. Six (6) copies were provided to the Board.

assortment of retail and restaurant uses, amenities and a parking supply well in excess of zoning requirements.

The Plaza was originally developed by the prior owner in the 1970s pursuant to the Board's approval of Site Development Plan #4/30/71-15 for then-owner Acton Enterprises, Inc. ("AEI"). After the development of the Plaza under this initial permit, the Site was rezoned to Kelley's Corner Business District. Thereafter, Acton Plaza underwent the following changes germane to these applications:

- In 1994, the prior owner secured the Board's approval of minor modifications to the site plan without a public hearing.
- In 1998, Edens purchased Acton Plaza.
- In September, 2011, Edens purchased 315 Main Street (Map F3, Lot 81), a 16,648 square foot parcel of land with a 1925 square foot building and striped parking spaces in the northerly section of Acton Plaza. Prior to purchasing the property the building was occupied by Casa Stone. After the purchase the building was occupied by Village Cleaners, but it is now vacant. 315 Main is shown on the plan entitled, "Site Plan, Sheet 4" last revised February 4, 2016 (the "Site Plan") and attached at Tab 1.
- A second round of minor site plan changes were approved in 2013, after a public hearing,<sup>2</sup> allowing various maintenance and modernization enhancements.
- In 2014, the Board, after a public meeting, approved, among other things, an amendment to the site plan for a permanent parking easement for the benefit of an abutter as depicted on a plan entitled "Site Development Plans for Edens, Site Plan, Sheet 4" prepared by Bohler Engineering and dated 10/22/12 and last revised 5/28/13.
- In September, 2015, Edens purchased 313 Main Street (Map F3, Lot 89-1), a 22,433 square foot undeveloped parcel of land with striped parking spaces also in the northerly section of Acton Plaza. 313 Main is shown on Tab 1.
- Also, in September, 2015, the Board, after a public meeting, approved as a minor change the relocation of the abutter's parking easement as shown on the plan entitled "Relocated Parking Easement Area 7/29/15."
- In 2013, in preparation for the re-letting of 315 Main, and while completing the parking lot improvements associated with bullet point #4 above, Edens sought and received an

---

<sup>2</sup> Although no public hearing was required, Edens acquiesced to the Board's desire for a hearing since the work involved night-time paving and other construction work with potential adverse impacts on the neighborhood. There are no such impacts associated with the current application.

approval from the Director of Public Health, Doug Halley, to extend a sewer line from within Acton Plaza to an area adjacent to the southwest corner of the building at 315 Main for a future sewer connection which Edens now proposes. The location of the sewer extension is shown on the plan entitled "Sewer Connection Plan, Sheet 1" dated February 17, 2016 (the "Sewer Plan") and attached at Tab 2.

Criteria for Minor Amendments

Section 5.13 of the Board's Rules and Regulations for Special Permits (the "SP Rules"), provides as follows:

A previously granted PERMIT may be amended by written request to the BOARD or on the BOARD'S own motion. The BOARD shall determine whether any request for changes to the SPECIAL PERMIT constitutes a minor amendment or if such request should be considered a new APPLICATION requiring a public hearing. The BOARD may amend a PERMIT without a new public hearing provided it finds that the amendment is not significant to the public interest and is consistent with the purpose and intent of the BYLAW. Consultation with the Planning Department is recommended prior to the filing of any request to amend a PERMIT.

As this matter concerns a tenant relocation within Acton Plaza "not significant to the public interest and is consistent with the purpose and intent of the Zoning Bylaw."

Under Section 5.12 of the Board's Rules and Regulations for Site Plan Special Permits (the "SPSP Rules"), the Board "determine[s] whether any request for further alterations to a site constitutes a minor amendment or if such request should be considered a new application requiring a public hearing." Further, "[t]he Board may amend a permit without a new public hearing provided it finds that the amendment is not significant to the public interest and is consistent with the purpose and intent of the [Zoning] Bylaw." Since this request concerns neither "initial development," "increas[ing]...net floor area," nor any "expan[sion] in ground area," no new Site Plan Special Permit is required. (See, Zoning Bylaw, § 10.4.1.2.)

• Proposed Minor Amendments for Special Use Permit and Site Plan Special Permit for Relocation of Dunkin Donuts

Edens proposes to relocate its tenant, Dunkin Donuts, within Acton Plaza. Specifically, Dunkin Donuts would move from 299 Main Street, part of Acton Plaza I, to 315 Main Street, a freestanding building. The changes are consistent with the purpose and intent of both the Acton Zoning Bylaw, § 1.2 and the Kelley's Corner Business District in § 5.6.1 of the Zoning Bylaw. This change should be considered a minor amendment to the existing Special Use Permit (attached at Tab 3) and the latest Amended Site Plan Special Permit (attached at Tab 4).

The relocation would result in the closure of a 1500 square foot Dunkin Donuts with 14 seats and 15 required parking spaces and the removal of an 8' X 14' walk-in cooler in the rear of

299 Main. In its place, a 1925 square foot Dunkin Donuts with 25 seats and 19 required parking spaces and an 8' X 14' walk-in cooler in the rear of 315 Main would occupy currently vacant space. Acton Plaza would still enjoy an abundant oversupply of parking under the Zoning Bylaw. (See, Tab 1.) Pursuant to Zoning Bylaw, §§ 10.3.5.1 - 10.3.5.5, the minor changes to this fast food restaurant use meet the criteria for a "use" special permit since the Dunkin Donuts relocated within Acton Plaza is "consistent with the Master Plan," "in harmony with the purpose and intent of th[e] Bylaw," "not detrimental or injurious to the neighborhood in which it is to take place," "appropriate for the site in question" and "compli[ant] with all applicable requirements of the Bylaw."

#### Inclusion in Betterment Area

Neither 313 nor 315 Main is part of the Middle Fort Pond Brook Sewer Betterment Area which exists adjacent to these properties. Having constructed the sewer extension at its own cost, Edens now seeks the Board's permission to connect to the Town sewer and to admit these lots to the Betterment Area. Edens understands that this admission, if granted, would bind it to applicable state statutes and local bylaws, rules and regulations including payment, to the extent applicable, of a Betterment Fee and Sewer Privilege Fee with respect to these lots.

Based on discussion with the Town Engineer, Edens understands and agrees to the following conditions on the admission of 313 and 315 Main Street to the Betterment Area:

1. Grease Trap. The Board of Health recommends and Edens agrees that a grease trap will be installed. See, attached Tab 2.

2. Sewer Fee – Applicable FAR. Given the pending zoning amendment which would reduce the FAR for Kelley's Corner from 0.40 to 0.20, the Town Engineer recommends and Edens agrees to use a FAR of 0.20 for the Betterment calculation.

3. Sewer Fee – Betterment Fee Calculation, SBUs and GPD at 0.20 FAR. Edens understands that the Betterment Fee is calculated as follows:

$$313 \text{ Main St} = [22,433 \text{ SF} \times 0.20 \text{ FAR}] / 4000 = 1.1216 \text{ SBU} \times \$12,311.52 = \$13,808.60.$$

$$315 \text{ Main St} = [16,648 \text{ SF} \times 0.20 \text{ FAR}] / 4000 = 0.8324 \text{ SBU} \times \$12,311.52 = \$10,248.11.$$

And, as a result, for 313 and 315 Main, the total SBUs are 1.954 and total GPD is 586.2. Further, Edens need not pay any Privilege Fee at this time since the required GPD for the proposed use is less than the permitted GPD.<sup>3</sup>

---

<sup>3</sup> Assuming an FAR of 0.20, the Betterment Fee calculation above yields a total of 1.95 SBUs. At 300 GPD per SBU, this totals 585 GPD. Under 310 CMR 15.203, the Donut Donuts is a Fast Food Restaurant requiring a design flow of 20 GPD/seat. Therefore, the total GPD required is 500. Since the design flow of 500 GPD is less than the 585 GPD to which Edens would be entitled upon payment of the Betterment Fee, there is no Privilege Fee at this time.

5. Sewer Fee – Payment. Edens proposes to pay the Betterment Fee (based on 0.20 FAR) prior to the issuance of a building permit for the Dunkin Donuts and, should the Town Meeting later not adopt the 0.20 FAR, Edens would pay the additional portion of the Betterment Fee based on a 0.40 FAR within ten (10) business days of that Town Meeting vote or risk the withholding of or loss of the Certificate of Occupancy for the Dunkin Donuts.

Conclusion

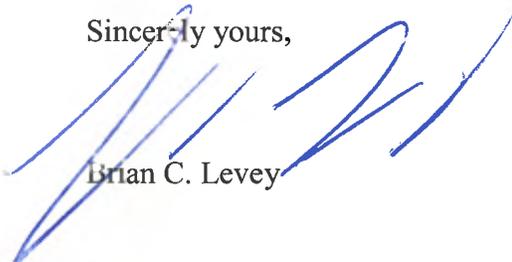
Edens respectfully requests that the Board take the following action at its public meeting:

- Approve Minor Amendments to the Special Use Permit (Tab 3) to allow the Dunkin Donuts' relocation within Acton Plaza in accordance with the attached Site Plan and Sewer Connection Plan subject to modifying Condition 12 to reflect the change in the number of seats by stating that, "The restaurant shall be limited to twenty-five (25) seats unless otherwise approved by the Board of Health and the Building Commissioner."
- Approve Minor Amendments to latest Amended Site Plan Special Permit (Tab 4) to allow the Dunkin Donuts' relocation within Acton Plaza in accordance with the attached Site Plan and Sewer Connection Plan; and
- Approve the request for admission of 313 and 315 Main Street to the Middle Fort Pond Brook Sewer Betterment Area subject to Conditions 1 through 5 set forth above.

We respectfully request that the Board of Selectmen place this matter on its consent agenda for its meeting on March 21, 2016.

Thank you for your attention to this matter.

Sincerely yours,

  
Brian C. Levey

cc: Eva Szkaradek, Town Clerk (w/enc.) (By Hand)  
Roland Bartl, Planning Director (w/enc.) (Via Electronic Mail and Federal Express)  
Paul Campbell, Town Engineer (w/enc.) (Via Electronic Mail and Federal Express)  
Keith Hague, Senior Project Manager (w/enc.) (Via Electronic Mail and Federal Express)

# TAB 1



# **TAB 2**



# TAB 3

RESTAURANT SPECIAL USE PERMIT #1/14/94-343  
 COSTA DONUTS TWO  
 299 MAIN STREET (LAKE)

PAGE 1

Decision of the Board of Selectmen (hereinafter the Board) on the Petition of Costa Donuts Two (hereinafter the Petitioner) for the property located at 299 Main Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map F3, parcel 89.97.

This Decision is in response to an application submitted to the Board on January 14, 1994 by the Petitioner for a Special Permit under Section 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw) to establish a restaurant.

After causing notice of the time and place of the public hearing and the subject matter thereof to be published, posted, and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order on March 15, 1994 at 8:15 p.m. in the Acton Town Hall, Acton, Massachusetts. Board members F. Dore' Hunter, Nancy Tavernier, Anne Fanton, Norman Lake and William Mullin were present through the hearing.

The record of the proceedings and submissions on which this permit is based may be referred to in the office of the Town Clerk or the office of the Board.

Submitted for the Board's deliberation, prior to the close of the hearing, were the following exhibits:

Exhibit I

A properly executed application for a Restaurant Special Permit; a plan showing the layout of the restaurant.

Exhibit II

Interdepartmental Communication (IDC) from the Building Commissioner to the Board dated March 8, 1994; IDC from the Health Officer to the Town Manager dated March 1 1994; IDC from the Town Planner to the Town Manager dated January 27, 1994; IDC from the Engineering Department to the Town Manager dated February 2, 1994; IDC from the Fire Chief to the Town Manager dated March 10, 1994.

1.0 Findings and Conclusions

Based upon its review of the exhibits and record of the proceedings, the Board found that:

- 1.1 The restaurant use is appropriate for the site in question.
- 1.2 The restaurant shall be limited to nineteen (19) seats unless otherwise approved by the Board of Health and the Building Commissioner.
- 1.3 The parking is adequate for the intended use.
- 1.4 The use, as proposed, is consistent with the Master Plan, is in harmony with the purpose and intent of this Bylaw, and will not be detrimental or injurious to the neighborhood.

21460-43

MSD 05/04/94 01:17:38 691 10.00

RESTAURANT SPECIAL USE PERMIT # 1/14/94-343  
COSTA DONUTS TWO  
299 Main Street (LAKE)

PAGE 2

- 1.5 Unless authorized by the Board, the applicant can not sell any food between the hours of 12 midnight and six in the morning.
- 1.6 The traffic generated by the restaurant use will be different than produced by the present retail store. The Board understands that the owner of the site intends to revamp the entire site, at which time a traffic study will be necessary.
- 1.7 The sprinkler system shall be connected to the fire station by a master fire alarm box. The deli is required to install a local alarm system with pull stations and audible horn lights connected into the building fire alarm panel which would be connected into the building fire alarm panel. A lock box is also required. These items will help ensure public safety.

Therefore the Board voted to **GRANT** the requested Special Permit with the benefit of the following limitations:

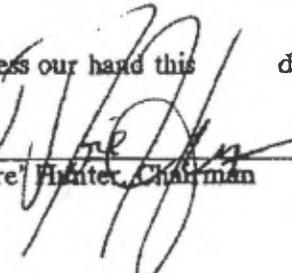
2.0 Limitations

- 2.1 The restaurant shall be run according to the submitted documents.
- 2.2 This decision applies only to the requested Special Permit, other permits or approvals required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 2.3 Effective Date of Special Permit - No special permit or any modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in the Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that 20 days has elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such an appeal has been filed, it has been dismissed or denied.

Appeals

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

  
\_\_\_\_\_  
F Dore, Firetec, Chairman

RESTAURANT SPECIAL USE PERMIT #1/14/94/343  
COSTA DONUTS TWO  
299 MAIN STREET (LAKE)

PAGE 3

I, Christine Joyce, hereby certify that this is a true copy of the decision of the Board of Selectmen.

Christine Joyce  
Christine Joyce  
Recording Secretary

March 30, 1994 2:35 P.M.  
Date filed with Town Clerk

Catherine Belbin  
Catherine Belbin, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the decision of Costa Donuts Two has passed and there have been no appeals made to this office.

April 21, 1994  
Date

Catherine Belbin  
Catherine Belbin, Town Clerk

cc: Petitioner - Certified Mail #  
Building Commissioner  
Planning Board  
Engineering  
Conservation  
Board of Health  
Town Clerk  
Planning Boards - Littleton, Westford, Maynard, Carlisle, Concord,  
Boxboro, Stow, Sudbury

(630)

**A TRUE COPY. ATTEST:**

Catherine Belbin  
**TOWN CLERK ACTON, MASS.**

# TAB 4



TOWN CLERK

TOWN OF ACTON  
472 MAIN STREET  
ACTON, MASSACHUSETTS, 01720  
TELEPHONE (978) 929-6620  
FAX (978) 264-9630  
clerk@acton-ma.gov

September 30, 2015

TO WHOM IT MAY CONCERN:

**Certification of No Appeals**

The attached Board of Selectmen Decision #04/30/71-15, fourth amendment on the request of David C. Levey of Beveridge & Diamond on behalf of E & A Northeast LP of 21 Custom House Street, Suite 450, Boston Ma (hereinafter the Applicant), for the property located at 291, 295, 313, and 315 Main Street and 401 Massachusetts Ave., Acton, Ma 01720, was filed with the Town Clerk's Office on September 9, 2015, 2015.

This is to certify pursuant to M.G.L. c. 40A, § 11, that twenty days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal with respect to this decision (Site Plan Special Permit #04/30/74-15 - Amendment 4) has been filed under M.G.L. c. 40A, § 17, with this office.

**Open Meeting Law Notice**

The above certification concerns only potential appeals filed pursuant to the Massachusetts Zoning Act. Please be advised that the Massachusetts Open Meeting Law, M.G.L. c. 30A, §§ 18-25, enacted effective July 1, 2010 (the "New OML"), authorizes certain complaints to be made concerning alleged open meeting law violations which, if proven, may result among other remedies in an order of the Attorney General's Office or of a Court to "nullify in whole or in part any action taken at the meeting" at which the alleged violation occurred. M.G.L. c. 30A, § 23(c)(3). The time frames for bringing and resolving such complaints and any court action relating thereto differs from the time frame for zoning appeals. Accordingly, please consult your counsel for advice as to any risks which any such complaints or court actions under the New OML may pose for your project.

Without limitation, at this time, the records of the Town Clerk's Office indicate that:

- The Town Clerk's Office has not received a complaint under the New OML concerning the above-described matter.
- The Town Clerk's Office has received a complaint under the New OML concerning the above-described matter and it is pending before the above public body.
- The Town Clerk's Office has received both a complaint under the New OML concerning the above-described matter and the public body's transmittal to the Attorney General's office, which office may or may not take further action pertaining thereto.

  
Eva K. Szkaradek  
Town Clerk

A TRUE COPY, ATTEST:

*Jan K. Szkaradek*

TOWN CLERK, ACTON, MA

RECEIVED

SEP - 9 2015

TOWN CLERK  
ACTON

Acton Plaza Shopping Center  
Amendment #4 Site Plan Special Permit #04/30/71-15  
291, 295, 313 and 315 Main Street and 381 and 401 Massachusetts Avenue  
September 8, 2015

---



Board of Selectman

TOWN OF ACTON  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 929-6611  
Fax (978) 929-6350  
[BOS@acton-ma.gov](mailto:BOS@acton-ma.gov)  
[www.acton-ma.gov](http://www.acton-ma.gov)

---

**FOURTH AMEDEMMENT OF DECISION**

#04/30/71-15

**Acton Plaza Shopping Center**

September 8, 2015

GRANTED

Decision of the Acton Board of Selectmen (hereinafter the Board) on the request of Brian C. Levey of Beveridge & Diamond on behalf of E&A Northeast LP of 21 Custom House Street, Suite 450 Boston, MA 0211 (hereinafter the Applicant), dated July 29, 2015 for an amendment of a Site Plan Special Permit dated April 30, 1971, previously amended on May 17, 1994, June 23, 2013, and August 11, 2014 (together the Original Decision). The subject property is located at 291, 295, 313, and 315 Main Street and 381 and 401 Massachusetts Avenue (hereinafter the Site). The board considered the request at a duly noticed public meeting on September 8, 2015. Board members Katherine Green (Chair), Janet K. Adachi, Frances J. Osman, Chingsung Chang, and Peter J. Berry were present. The minutes of the hearing and submissions on which this decision is based on may be found in the Planning Department or in the Town Clerk's office at the Acton Town Hall.

**1 EXHIBITS**

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

- 1.1 Cover letter by Brian C. Levey, dated July 29, 2015

1.2 Supplemental information as follows:

- Tab 1: Site Plan Special Permit #4/30/71-15 Decision;
- Tab 2: Amendment to Site Plan Special Permit #4/30/71-15 Decision and Site Plan;
- Tab 3: Second Amendment to Site Plan Special Permit #4/30/71-15 Decision;
- Tab 4: Third Amendment to Site Plan Special Permit #4/30/71-15 Decision;
- Tab 5: Site Plan revision dated 5/28/2013;
- Tab 6: Relocation Parking Easement dated 7/29/2015

Exhibit 1.1 through 1.2 is 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 Amendment request is for approval of relocating the existing and previously approved 20-space parking easement for an abutting property owner (Acton Crossroads Inc.) as shown in the Exhibits. The existing and proposed easement locations are in the rear of the lower plaza (Acton II).
- 2.2 The subject parking spaces are in excess of the Acton Zoning Bylaw's minimum.
- 2.3 The proposed Plan change and the requested amendment of the special permit granted in the Original Decision are minor in nature, do not trigger a new Special Permit, and do not warrant a public hearing as they do not expand or change the ground area, impervious materials, or building floor areas.

**3 BOARD ACTION**

Therefore, the Board voted unanimously on September 8, 2015 in favor of GRANTING the special permit amendment as the applicant had requested and as delineated in the Exhibits listed herein, subjected to the following conditions.

**4 CONDITIONS**

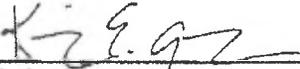
The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render the special permit amendment granted with this decision null or void, and shall constitute grounds for the revocation of any or all building or occupancy permits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

- 4.1 The applicant shall record this decision at the Middlesex South District Registry of Deeds.
- 4.2 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvement shown on the Plan as conditioned, modified, and approved herein.

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

  
\_\_\_\_\_  
Katherine Green, Chair

Copies furnished:

Applicant	Building Commissioner	Health Director	Acton Water District
Owner	Fire Chief	Police Chief	Historical Commission
Town Engineer	Municipal Properties Director	Assistant Assessor	Town Clerk
Town Manager	Natural Resource Director		

**BEVERIDGE & DIAMOND PC**

15 WALNUT STREET

SUITE 400

WELLESLEY, MA 02481-2133

2628

15-120/540 DC  
0025

DATE 3/01/2016

PAY TO THE ORDER OF Town of Acton

\$ 350.00

Three Hundred Fifty and 00/100

DOLLARS

**Bank of America**



ACH R/T 054001204



Security  
Deposit on  
Back

FOR Application Filing Fees

#03632-015440 ⑈002628⑈ ⑈054001204⑈ 001920552718⑈

MP