



Planning Department

TOWN OF ACTON
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**Draft Zoning Articles
for**

**Public Hearing
Planning Board
February 12, 2008
7:45 PM
Acton Memorial Library**



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January 11, 2008

Notice of Public Hearing on Proposed Zoning Changes

Please publish the following as a LEGAL NOTICE on *January 24, 2008* and *January 31, 2008*.

Acton Planning Board public hearing - 2/12/08, 7:45 PM, Acton Memorial Library, on proposed zoning map and bylaw changes: (1) Cultural overlay district at 484 & 485 Great Rd. and 524 Main St. (2) Municipal exemption by special permit. (3) Outdoor restaurant seating. (4) FAR increase to 0.20 in the LI-1 district at Post Office Square. (5) Off-site or monetary affordable housing contributions in senior residence developments. (6) Wireless Service Facilities regulations and standards. (7) Corrections, clarifications & minor amendments regarding description of zoning maps; allow 2-family dwellings in the North Acton Village District; zoning enforcement in the absence of Building Commissioner; re-lettering of signs. Agricultural operations will not be impacted. Proposals are available at the Planning Dept. and Town Clerk.

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DRAFT ARTICLE A
(Two-thirds vote)

AMEND ZONING BYLAW
CULTURAL OVERLAY DISTRICT

To see if the Town will vote to amend the zoning map and bylaw as follows:

A. In the zoning bylaw, section 4 – Overlay Districts, insert a new section 4.5 as follows:

4.5 Cultural District

4.5.1 Purpose – Non-profit performing arts institutions enrich the culture and life of residents in Acton and surrounding communities through entertainment, engagement, artistic expression, interaction, and participation. The purpose of this section is to provide such institutions with potential opportunities to locate their facilities in areas and zoning districts where they would not otherwise be allowed under the more general use definition 3.5.16 – Commercial Entertainment of this Bylaw.

4.5.2 Overlay District – The Cultural District is an overlay district whose boundaries are superimposed on the underlying zoning districts. Its presence does not prevent or alter development of land in accordance with the regulations of the underlying zoning districts.

4.5.3 Permitted Uses: Performing Arts Facilities – Facilities for and activities of the performing arts owned and operated by non-profit institutions or organizations, or public governmental agencies. Performing arts shall mean the creating and staging of live public performances of drama, comedy, music, dance, mime, and circus arts, or similar acts in a theater, concert hall, or similar facility, including related activities such as but not limited to practice, publicity, sale of promotional materials, and education; provided, however, that for purposes of the Cultural District, performing arts shall not include Adult USES or adult entertainment as defined and regulated under sections 3.5.25 and 5.3.10 of this Bylaw.

4.5.4 Dimensional and Other Regulations – The regulations of the underlying district and of other overlay districts, if present, shall apply in the Cultural District.

4.5.5 Parking Regulations – The parking requirements of Section 6 of this bylaw shall apply.

4.5.6 Use Special Permit – The establishment of a Performing Arts Facility in the Cultural District shall only be allowed with a special permit granted by the Board of Selectmen in accordance with section 10.3 of this bylaw.

4.5.7 Site Plan Special Permit – A Site Plan Special Permit shall be required in accordance with section 10.4 of this bylaw.

B. In the zoning bylaw, section 2.1 – Classification of Districts, insert at the end, below “Overlay Districts” a new line as follows:

CULTURAL DISTRICT

CD

C. On the zoning map Number 1, identify the CD (Cultural District) in the legend and show the Cultural District to comprise the following parcel of land identified by its 2007 Town Atlas Map and Parcel number [*Underlying zoning and street addresses are not part of the article but are shown for reference purposes only*]:

map	parcel	underlying zoning	street address
E-4	24	LI-1	524 Main Street

, or take any other action relative thereto.

SUMMARY

The Open Door Theater is an Acton non-profit volunteer institution that has produced annual shows since its inception in 1980. In its productions, this community theater works with adults, children, and people with special needs who live in Acton and in surrounding communities. Productions are staged in the High School auditorium. The effort to build its own facility, The Dragonfly Theater, is in memory of Jennifer Doran Haan, who had been a central figure for the Open Door Theater for many years until her death in April 2007. This article would allow the creation of a home for the theater at 524 Main Street, a location near Post Office Square that the theater's supporters are currently investigating. The article creates an overlay district for this site, where a performing arts facility may be located by special permit from the Board of Selectmen. An overlay district is superimposed on the underlying district. It leaves the regulations of the underlying district intact. Development of a performing arts facility as allowed in the overlay district of this article is an added option for the site. The site is uniquely suited for a performing arts facility. It is located within a commercial/industrial district within walking distance from the Town Center where Town Hall and the library are located, it offers sufficient space for the facility with vehicle parking, it allows for the facility to be set back from Main Street, and it is sufficiently isolated from residences in the area. By adopting this article, the Town recognizes the important and valuable contribution that cultural institutions such as the Open Door Theater make to the enrichment and diversity of life and community in Acton.

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 Selectman assigned:

Board of Selectmen:

Finance Committee:

Planning Board:

Note: At a meeting on February 4th, the Board of Selectmen and members of the Planning Board agreed to withdraw the municipal exemption article from further consideration this year.

DRAFT ARTICLE B
(Two-thirds vote)

**AMEND ZONING BYLAW
MUNICIPAL EXEMPTION**

To see if the Town will vote to amend the zoning bylaw by inserting under Section 8 (Nonconforming Lots, Uses, Structures and Parking; Exemptions), the following new subsection 8.10 as follows:

- 8.10 Municipal Exemption** – The Board of Appeals may by special permit authorize exemptions from the requirements of this Bylaw for Municipal USES, BUILDINGS, and STRUCTURES. When granting such a special permit the Board of Appeals shall find, in addition to the required special permit findings set forth in section 10.3.5, that:
- 8.10.1 The proposed USE, BUILDING, or STRUCTURE serves to provide a needed municipal service as identified by the Board of Selectmen.
 - 8.10.2 The applicant has explored and evaluated alternative locations or designs that would not require an exemption, and has provided evidence that such alternatives are impractical for or cannot accommodate the needed municipal service.
 - 8.10.3 An exemption is appropriate and necessary for the delivery of such needed municipal service in a practical and cost efficient manner; or to facilitate the unique functions or operations of the particular municipal service; or to better protect or conserve resources; or to allow better layout and design.
 - 8.10.4 An exemption serves and advances a general public interest.
- , or take any other action relative thereto.

SUMMARY

The zoning bylaw allows municipal uses, buildings, and structures in all zoning districts of the Town. This article sets forth an adjudicatory hearing process before the Board of Appeals by which exemptions could be allowed for municipal uses, buildings, and structures from dimensional and other requirements of the zoning bylaw. Municipal services fulfill critical and growing needs and services that the Town's residents demand. The supply of land with potential or suitability for municipal service facilities is rapidly shrinking. Many land parcels already in municipal ownership have significant limitations for instance due to their size; the presence wetlands or flood plains; historic resource protections; or deed restrictions. Municipal services such as fire protection, police protection, senior center services, recycling center, cemetery, or the maintenance and plowing of public ways are unique public functions that have unique building needs and requirements.

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DRAFT ARTICLE C
(Two-thirds vote)

AMEND ZONING BYLAW
OUTDOOR RESTAURANT SEATING

To see if the Town will vote to amend the zoning bylaw, Section 3, Use Definitions, by deleting section 3.5.5, Restaurant, and replacing it with a new section 3.5.5, Restaurant, as follows:

3.5.5 Restaurant – Establishment where food and beverages are sold within a BUILDING to customers for consumption 1) at a table or counter, or 2) in an adjacent outdoor space that does not obstruct a public way, sidewalk, walkway, vehicular parking, or a driveway, or 3) off the premises as carry-out orders, except that drive-up service shall not be allowed, or 4) any combination of the above. In the OP-2 and the TD District, the minimum square footage for an individual restaurant shall be 5,000 square feet measured in NET FLOOR AREA.

[Note – Section 3.5.5 currently reads as follows:

3.5.5 Restaurant – Establishment where food and beverages are sold within a BUILDING to customers for consumption 1) at a table or counter, or 2) on a patio closed on all sides with entrance to the patio normally available only from the BUILDING, or 3) off the premises as carry-out orders, except that drive-up service shall not be allowed, or 4) any combination of the above. In the OP-2 and the TD District, the minimum square footage for an individual restaurant shall be 5,000 square feet measured in NET FLOOR AREA. In the EAV District, service through walk-up windows may be allowed, and patios may be open and accessible from the outside.]

, or take any other action relative thereto.

SUMMARY

This article changes the definition of a restaurant to allow more flexibility in outdoor seating throughout the town with the provision that such arrangements not obstruct public ways, sidewalks, parking lots, and similar facilities. This makes the zoning provisions for outdoor seating uniform town-wide where previously such flexible outdoor seating was only allowed in the East Acton Village District, and otherwise only in an enclosed patio that can be accessed only from the inside of the restaurant.

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Finance Committee:

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DRAFT ARTICLE D
(Two-thirds vote)

AMEND ZONING BYLAW
LI-1 DISTRICT; INCREASE FLOOR AREA RATIO TO 0.20

To see if the Town will vote to amend the zoning bylaw, Section 5, Table of Standard Dimensional Regulations, by changing the entry in column "MAXIMUM FLOOR AREA RATIO" and line "LI-1" from 0.10 to 0.20.

, or take any other action relative thereto.

SUMMARY

This article doubles the maximum Floor Area Ratio (FAR) in the Light Industrial – 1 (LI-1) zoning district from 0.10 to 0.20. The LI-1 district is located on approximately 60 acres north and south of Main Street at Post Office Square and consists of nine properties of varying sizes.

The district is largely built out under the current 0.10 FAR limit allowing only about 43,000 additional square feet to the 281,000 square feet of total existing floor area in the district. The existing net floor area is spread among the nine properties. One is built out in excess of the existing and proposed FAR limit, another is very near the proposed limit, four are between the existing and proposed FAR limits, two are below the existing limit, and one property is still vacant. The proposed FAR increase would accommodate an additional 201,000 square feet above the existing floor area in the district, or 158,000 square feet more than under the current FAR limit.

The proposed zoning change results from work of the Town's Economic Development Committee. The committee reviewed the LI-1 zoning district and its current zoning limitations after a meeting that some property owners in the district had requested.

The proposed change brings most of the district properties into zoning conformance, and allows for additional growth on key parcels where additional building floor area, if permitted, would help retain longstanding Acton companies. The LI-1 district is currently the most restricted industrial zoning district. No other district has a FAR limit below 0.20. This change would bring the district up to par with most other industrial and commercial district, and provide growth opportunity for Acton's commercial/industrial tax base. The 50% open space requirement in the district would remain intact, which is the most stringent in all industrial districts – usually 35%. Except for two residential areas, which have adequate buffers to the district, the land surrounding the district is vacant.

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Board of Selectmen:

Finance Committee:

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To see if the Town will vote to amend the zoning bylaw by inserting a new subsection 9B.12.9 under section 9B – Senior Residence as follows:

3B.12.9 Affordable Housing Alternatives - The Planning Board in its special permit may authorize or require the substitution of required AFFORDABLE SENIOR RESIDENCES with:

3B.12.9.1 Off-site AFFORDABLE DWELLING UNITS, which shall be in suitable condition for family or individual persons' housing as the Planning Board may determine, and eligible for inclusion in Acton's subsidized housing inventory under M.G.L. Chapter 40B.

3B.12.9.2 Monetary contributions for affordable housing programs made to the Acton Community Housing Program Fund in an amount sufficient for the Town or its designee to create off-site affordable family or individual persons' housing, as the Planning Board may determine, and eligible for inclusion in Acton's subsidized housing inventory under M.G.L. Chapter 40B.

, or take any other action relative thereto.

SUMMARY

The Acton zoning bylaw includes a section that regulates the construction of senior residence developments. One provision requires the inclusion of affordable dwelling units for seniors. Another provides for increases in density of a project in exchange for additional affordable units for seniors. There is a very limited number of potentially qualifying seniors to purchase such affordable units while keeping the units eligible for inclusion in Acton's subsidized housing inventory under M.G.L. Chapter 40B. In addition, the State's regulations for inclusion of units in the 40B subsidized housing inventory have grown increasingly hostile to senior housing. This article, if adopted, will authorize the Planning Board, when granting a special permit for Senior Residence housing, to arrange for the substitute provision of off-site affordable dwelling units that are not restricted to seniors, or for a monetary contribution to the Acton Community Housing Fund.

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Selectman assigned:

Board of Selectmen:
Finance Committee:
Planning Board:

To see if the Town will vote to amend the zoning bylaw by deleting sections 3.10 (Special Requirements for Wireless Communication Facilities), and 3.11 (Temporary Moratorium on Wireless Communication Facilities ...), and replacing them with a new section 3.10 as follows:

3.10 Special Requirements for Personal Wireless Facilities

3.10.1 Purposes

- 3.10.1.1 To allow Personal Wireless Facilities in accordance with and as required by the Federal Telecommunications Act of 1996 and in acknowledgment of M.G.L. Chapter 40A, Section 3.
- 3.10.1.2 To minimize their adverse impacts on adjacent properties, local historic districts, residential neighborhoods, and scenic vistas.
- 3.10.1.3 To establish requirements for their approval, and standards for their design, placement, safety, monitoring, modification, and removal.
- 3.10.1.4 To limit the overall number and height of Personal Wireless Towers to what is essential to serve the public convenience and necessity.
- 3.10.1.5 To promote shared USE of Facilities to reduce the need for new Facilities.

3.10.2 Applicability

- 3.10.2.1 This Section 3.10 shall apply to all reception and transmission Facilities that aid, facilitate, and assist with the provision of Personal Wireless Services.
- 3.10.2.2 No such Facility shall be erected or installed except in compliance with the provisions of this Section 3.10.
- 3.10.2.3 Nothing in this Bylaw shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations.
- 3.10.2.4 Nothing in this Bylaw shall be construed to regulate or prohibit a tower or antenna installed solely for use by a federally licensed amateur radio operator. For regulations on amateur radio towers see Section 3.8.3.6 of this Bylaw.

3.10.3 Definitions

- 3.10.3.1 Adequate Capacity – In a specific geographic area where a Carrier has existing, or proposes to provide new, coverage for the Carrier’s Personal Wireless Services (a “Coverage Area”), the capacity of such Carrier’s Personal Wireless Services Coverage Area served or proposed to be served by the Carrier’s Facility in question shall be considered “Adequate Capacity” if, during the busiest hour of the day on at least fifty percent (50%) of the days during any calendar month occurring within six-months of the date of the Carrier’s application for any special permit under this Section 3.10, ninety-five percent (95%) of the attempts by Personal Wireless Service Devices are able, or are predicted to be able, to connect to such Carrier’s Personal Wireless Services network through such Facility on their first attempt, as predicted for, or measured by using direct measurement of, the Coverage Area and Facility in question, and considering failed attempts to connect only where the call/connection blocking is due to frequency contention at the Facility’s Antennae.

- 3.10.3.2 Adequate Coverage – Coverage is considered to be “Adequate Coverage” within the Coverage Area served by a particular Facility where the predicted (by radial plots) or measured (by actual field measurements) median field strength of the signal transmitted by such Facility is such that the signal strength enables, or would be predicted to enable, a properly installed and operated Personal Wireless Service Device compatible with such Carrier’s Personal Wireless Services network to communicate with the Facility without objectionable noise (for analog signals) or excessive bit-error rate (for digital signals) and without calls/connections being dropped. Coverage shall be deemed Adequate Coverage even if there are small holes (so-called “dead spots”) within the Coverage Area where calls/connections to the Facility by Personal Wireless Service Devices compatible with such Carrier’s network are dropped or are unable to connect on their first attempt, so long as the signal strength increases at the boundaries of such holes so as to provide Adequate Coverage, and so long as such holes do not constitute “Significant Gaps”. The outer boundaries of an area of Adequate Coverage are those locations within the Coverage Area beyond which the radio frequency signals emitted by the Facility in question do not regain the signal strength level required to provide Adequate Coverage. For purposes of this Section 3.10, there shall be the presumption that coverage shall be deemed to be Adequate Coverage if the predicted or measured field strength for Personal Wireless Service Devices is -90 dBm or greater, unless the Carrier in question demonstrates, by clear and convincing evidence prepared by qualified radio frequency engineer or other qualified professional, that higher signal strengths are required to enable such Carrier to provide Adequate Coverage (as defined in the first sentence of this Section 3.10.3.2) within the Coverage Area in question due to the radio-frequency engineering characteristics of the particular Personal Wireless Services (or particular generation of such Services) being provided by Facility and the engineering characteristics of the particular types and/or generation of Personal Wireless Service Devices reasonably expected and likely to communicate with such Facility. If a Carrier seeks to demonstrate that signal strengths higher than -90dBm are necessary to enable such Carrier to provide Adequate Coverage, the Planning Board may engage the services of an independent radio frequency engineer or other qualified professional to analyze and comment on the technical merits of such Carrier’s request that the Planning Board allow higher signal strengths; all reasonable costs of any such independent radio frequency engineer or other qualified professional engaged by the Planning Board shall be paid for by such Carrier upon demand.
- 3.10.3.3 Antenna – A transducer device designed to transmit or receive radio frequency signals for the purpose and function to aid, facilitate, and assist with the provision of Personal Wireless Services to and from a particular Facility.
- 3.10.3.4 Co-locator – One of two or more Carriers who occupy space on a Facility to locate Antennae and other equipment for the provision of Personal Wireless Services.
- 3.10.3.5 Equipment Compound – A BUILDING or fenced compound at the base of a Tower that encloses necessary equipment and installations to support Personal Wireless Services.
- 3.10.3.6 FCC – The Federal Communications Commission.

- 3.10.3.7 Flush Mounted Antennae – Antennae that are mounted directly on the outside surface of a Monopole without braces or mounting brackets that extend horizontally from the Monopole.
- 3.10.3.8 Monopole – A single self-supporting tower or pole, with below grade foundation, designed so it does not require braces or guy wires for support and stability.
- 3.10.3.9 Personal Wireless Services – Commercial mobile communication services and common carrier wireless exchange access services as identified and defined in the Federal Telecommunications Act of 1996 and pertinent FCC regulations, and which require an FCC license to operate.
- 3.10.3.10 Personal Wireless Service Device – A portable Personal Wireless Service communications device, such as, without limitation, a car phone, cell phone, personal digital assistant, or smart phone remote used by a user to connect to a Facility.
- 3.10.3.11 Personal Wireless Service Provider or Personal Wireless Service Carrier (Provider or Carrier) – An entity, licensed by the FCC to provide Personal Wireless Services.
- 3.10.3.12 Personal Wireless Facility (Facility) – A facility, installation, appurtenance, and equipment, including a Tower, having the purpose and function to aid, facilitate, and assist with the provision of Personal Wireless Services.
- 3.10.3.13 Personal Wireless Facility Site (Site) – A LOT as defined in this Bylaw; or one or more contiguous LOTS in single ownership; or one or more contiguous LOTS whose individual owners have entered into a partnership, corporation, trust, or other legal entity with the purpose of jointly hosting a Facility.
- 3.10.3.14 Personal Wireless Tower (Tower) – A tower or pole erected with the purpose of providing Personal Wireless Services and bearing one or more antennae.
- 3.10.3.15 Significant Gap – Within any existing or proposed Coverage Area, there shall be deemed to be a “Significant Gap” in the coverage provided by a particular Carrier if within such Coverage Area there exists (a) an identified geographic area in which the predicted or measured field strength of the Facility’s radio signals is less than the level required to provide Adequate Coverage to Personal Wireless Service Devices compatible with such Carrier’s Personal Wireless Services network and (b) such identified geographic area is so large in physical size and/or affects or is predicted to affect such a large number of remote users of Personal Wireless Service Device as compatible with such Carrier’s Personal Wireless Services network to fairly and reasonably be considered “significant” as opposed to merely being a small “dead spot.” In determining whether or not a particular gap in a Carrier’s coverage is significant, a relatively small or modest geographic area will be considered a “Significant Gap” if such geographic area is densely populated or used by a large number of persons for active recreational or similar purposes and predicted to be remote users of Personal Wireless Services Devices compatible with such Carrier’s Personal Wireless Services network, and/or such geographic area straddles one or more public highways or commuter rail lines regularly traveled, or predicted to be traveled, by remote users of Personal Wireless Service Devices compatible with such Carrier’s Personal Wireless Services network, while a larger geographic area will be considered not to be a “Significant Gap” if such geographic area does not straddle any public highways or rail lines and/or is sparsely populated. Whether or not a Significant Gap exists is to be determined separately for each Carrier’s Personal

Wireless Services network, regardless of whether or not any other Carrier(s) have Adequate Coverage in such geographic area.

3.10.3.16 Stealth Tower – A Monopole with internally mounted Antennae that are not visible from the outside of the Monopole.

3.10.4 General Prohibitions and Requirements

3.10.4.1 Lattice style towers and similar facilities requiring more than one leg or guy wires for support are prohibited. However, additional equipment may be mounted on an existing lattice tower.

3.10.4.2 A Personal Wireless Tower shall not be erected in a Local Historic District or within 500 feet of the boundary of a Local Historic District measured from the center point of a Tower at its base.

3.10.4.3 All STRUCTURES, equipment, utilities and other improvements associated with Personal Wireless Facilities shall be removed within one year after cessation of USE.

3.10.4.4 Night lighting of Personal Wireless Facilities is prohibited except for low intensity lights installed at or near ground level in or on the Equipment Compound and in compliance with the Outdoor Lighting Regulations of this Bylaw, section 10.6.

3.10.4.5 At least one sign shall be installed in a visible location at the Equipment Compound that provides the telephone number where the operator in charge can be reached at all times.

3.10.4.6 Section 6 (Parking Standards) of the Acton Zoning Bylaw shall not apply to Wireless Communication Facilities.

3.10.4.7 Nothing in this Bylaw shall be construed to regulate or prohibit a Personal Wireless Facility on the basis of the environmental effects of radio frequency radiation (RFR) emissions, provided the Facility complies with regulations of the Federal Communications Commission concerning such emissions.

3.10.5 Personal Wireless Facilities Allowed by Right

3.10.5.1 In all zoning districts, a Personal Wireless Facility shall be allowed and no special permit shall be required,

a) if the Facility does not exceed 3 feet in diameter and 12 feet in height and is otherwise in compliance with applicable dimensional requirements of this Bylaw as they relate to the Personal Wireless Facility Site, or

b) if the Facility is located entirely within, or mounted on, a BUILDING or STRUCTURE that is occupied or used primarily for other purposes, provided that the BUILDING or STRUCTURE, including the Facility, meets all dimensional requirements of this Bylaw for the zoning district in which the Site is located.

3.10.5.2 In the Office Districts (OP-1, OP-2), the Industrial Districts (LI, GI, LI-1, IP, SM), the Powder Mill District (PM), and the Limited Business District (LB), a Monopole Tower shall be allowed and no special permit shall be required, if its height does not exceed applicable height limitations for STRUCTURES and BUILDINGS in the zoning district in which it is located, and if its set back, measured from its center point at its base to all Site boundary lines, is at least the distance equal to its height, but not less than the otherwise applicable minimum yard requirement for BUILDINGS and STRUCTURES in the zoning district.

- 3.10.5.3 Any new Antennae or other equipment owned by a Personal Wireless Service Provider may be mounted on a previously approved Tower without a special permit, if there is no increase in height above the maximum height specified in the special permit for the Tower.
- 3.10.6 Special Permit for Facilities
- 3.10.6.1 Any Personal Wireless Facility, and any increase in height or size, or reconstruction or replacement of an existing Facility that does not meet the criteria under section 3.10.5 above, may only be allowed by special permit from the Planning Board in accordance with M.G.L. ch. 40A, s.9, subject to the following statements, regulations, requirements, conditions and limitations.
- 3.10.6.2 For the purpose of a public hearing under this section, Parties in Interest shall mean: The applicant; abutters, which shall include owners of land directly opposite on any private or public STREET or way; and abutters to the abutters within one thousand feet of the property line of the SITE as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town; the Acton Planning Board; and the Planning Board of every abutting city or town.
- 3.10.6.3 A Personal Wireless Tower shall not exceed a height of 175 feet from ground level, or a height that is allowed without illumination at night under Federal Aviation Administration or Massachusetts Aeronautics Commission regulations, whichever is less. For purposes of determining the height of a Tower, the height shall be the higher of the two vertical distances measured as follows:
- a) The elevation of the top of the pole structure above the mean ground elevation directly at the base of the pole; or
 - b) The elevation of the top of the pole structure above the mean ground elevation within 500 feet of the base of the pole.
- 3.10.6.4 Personal Wireless Towers shall be Stealth Towers. On a case by case basis, generally when aesthetic considerations are less important, the Planning Board may allow Monopoles with external flush mounted Antennae, or external standard Antennae that extend laterally from the Monopole.
- 3.10.6.5 Personal Wireless Towers shall be located, designed, and constructed as Monopoles that are extended to or structurally extendable to the maximum height allowed under Section 3.10.6.2 above, capable of accommodating the maximum number of technically feasible Co-locator Antennae in the portion of the Monopole above the tree line, as well as an Equipment Compound physically able to, or capable of being enlarged to, fully accommodate the maximum number of Personal Wireless Service Carriers and other equipment necessary for the maximum number of technically feasible Co-locators at the Site.
- 3.10.6.6 In all Residential Districts, the setback of a Tower, measured from the center point of the Tower at its base to the boundary lines of the Site, shall be at least the distance equal to the maximum permissible height of the Tower.
- 3.10.6.7 The center point of any Personal Wireless Tower at its base shall be separated from any existing residential BUILDING by a horizontal distance that is at least twice the maximum permissible height of the Tower, unless the residential BUILDING and the Facility are located on the same LOT.

- 3.10.6.8 The Equipment Compound shall be located in the immediate vicinity of the base of the Tower.
- 3.10.6.9 Any Tower shall be designed to accommodate the maximum feasible number of Carriers.
- a) The Planning Board may require the employment of all available technologies and Antenna arrangements to minimize vertical space consumption, and require sufficient room and structural capacity for all necessary cables and Antennae.
 - b) The Planning Board may require the owner of such Tower to permit other Providers to Co-locate equipment on such Facility upon payment of a reasonable charge, which shall be determined by the Planning Board if the parties cannot agree.
 - c) The Planning Board may require that the equipment of all users of a Tower shall be subject to rearrangement on the Tower or in the Equipment Compound if so directed by the Planning Board at a later time in its effort to maximize Co-location of Carriers. This may result in different vertical Antennae locations, reduced vertical separation of Antennae, and changes of Antenna arrangements, to the extent feasible without causing technically unacceptable radio frequency signal interference between the Antennae of the Co-locators.
 - d) The Planning Board may require that the equipment of all Carriers on a Tower shall be subject to relocation to another nearby Tower predicted to provide comparable levels of Adequate Capacity and Adequate Coverage for such Carrier if so directed by the Planning Board at a later time in its effort to maximize Co-location of Carriers. It may then order the removal of a Tower after the relocation is completed.
 - e) The Planning Board may require long-term easements, leases, licenses, or other enforceable legal instruments that fully support a Facility at its maximum potential technical capacity, including sufficient space on the Tower and for Facility base equipment to accommodate the maximum number of technically feasible Co-locators at the Site, adequate access and utility easements to the Facility from a public STREET, and the right for the maximum number of technically feasible Co-locators to Co-locate on the Tower and to upgrade the utilities and equipment as needed for maintaining and improving service and capacity.
- 3.10.6.10 Fencing shall be provided to control unauthorized entry into the Equipment Compound and to the Tower. The Planning Board shall require suitable fencing and landscape screening to shield the installation from the view of nearby residences or ways.
- 3.10.6.11 In the alternative, the Planning Board may require that all ground equipment must be placed inside a BUILDING where the Planning Board finds that a screened fenced-in compound does not adequately address reasonable and legitimate aesthetic concerns. In such cases, the Planning Board shall have the power under the special permit to regulate the size, shape, and exterior appearance of the BUILDING.
- 3.10.6.12 A Tower approved hereunder shall be used only for the transmission of signals for Personal Wireless Services, except with the specific authorization of the Planning Board.

- a) The Planning Board may approve or require the installation of transmission devices owned, operated, or used by the Town of Acton or any of its agencies.
 - b) The Planning Board may also approve the installation of communication devices by entities other than Personal Wireless Service Carriers, provided that they do not interfere with the Personal Wireless Services and that the intent of this Bylaw to maximize Co-location of Personal Wireless Service Providers is not compromised.
- 3.10.6.13 The Planning Board shall in its special permit make adequate provisions for the removal of the Tower and Equipment Compound after its USE for Personal Wireless Services has ended. It shall require that the Facility location shall be restored to pre-existing conditions as much as is reasonably possible so that no traces of the Facility, including foundation, gravel pads, and driveways, remain visible above ground, and that the location be otherwise stabilized and naturalized as appropriate for the particular Site.
- 3.10.6.14 The Planning Board may, as a condition of any special permit, require the Carrier and any other Co-locator on such Carrier's Facility, upon the written request of the Planning Board from time to time, to file with the Planning Board and the Town Clerk a report, prepared and stamped by a Massachusetts Registered Professional Engineer, that certifies that such Carrier's Facility is, and such Co-locators, Facilities are, in compliance with the terms and conditions of the special permit and with all applicable FCC regulations and other State and Federal laws. The Planning Board may make such requests not more frequently than once every two years, unless the Planning Board has reasonable grounds to believe that the Facility is not in compliance in any substantial or material respect with the terms and conditions of the special permit or any applicable FCC or other State or Federal laws.
- 3.10.6.15 The Planning Board may limit the number of Towers on a Site to one, or to any other number it deems necessary and appropriate for the Site. Multiple Towers on a single Site shall be separate from one another by at least 40 feet measured between the center points at the Towers' respective bases.
- 3.10.6.16 The Special Permit application for a Personal Wireless Facility shall be accompanied by a plan showing the Facility location in relation to the boundary lines of the Facility Site and all BUILDINGS within 500 feet, and plans for the installation or construction of the Facility adequate to show compliance with the provisions of this Bylaw, and such supplemental information as may be required by the Planning Board in the Rules and Regulations for a Special Permit for Personal Wireless Facilities. The application shall also include maps showing areas where the proposed top of the Facility will be visible when there is foliage and when there is not.
- 3.10.6.17 **Mandatory Findings** – The Planning Board shall not issue a special permit for a Wireless Communication Facility unless it finds that the Facility:
- a) is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. c. 40A, s.11;
 - b) is designed, in the least intrusive method practicable, and is necessary, to provide Adequate Coverage and Adequate Capacity to the applicant's Coverage Area identified in the application. The applicant shall bear the burden of demonstrating that such Facility is the least intrusive method practicable for providing such Adequate Coverage with Adequate Capacity;

- c) (if applicable) is designed to provide, in the least intrusive method practicable, Adequate Coverage and Adequate Capacity for the applicant's Personal Wireless Services network, to a Significant Gap in the applicant's coverage within the Town. The applicant shall bear the burden of demonstrating the existence of such Significant Gap;
- d) cannot for technical or physical reasons be located on an existing Wireless Communication Facility or Tower that would be expected to provide a comparable level of Adequate Capacity within a substantial area of the proposed Coverage Area;
- e) cannot be located at any other practicably available site that is less visible to the general public due to technical requirements, topography, or other unique circumstances. The applicant shall have the burden of showing what alternative sites it considered and why such sites are not practicably available;
- f) is sited in such a manner that it is suitably screened;
- g) is colored so that it will as much as possible blend in with its surroundings;
- h) is designed to accommodate the maximum number of users technologically feasible;
- i) is necessary because there is no other Facility with available space or capacity within the proposed Coverage Area;
- j) is in compliance with applicable Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health regulations; and
- k) complies with all applicable requirements of this Bylaw, including Section 10.3.

In making any of the mandatory findings above that involve determinations of radio frequency or similar technical matters, the Planning Board may engage the services of an independent radio frequency engineer or other qualified professional to advise the Planning Board with regard to such technical matters; all reasonable costs of any such independent radio frequency engineer or other qualified professional engaged by the Planning Board shall be paid for by the applicant upon demand.

3.10.6.18 The Planning Board under its special permit authority may waive one or more requirements of this Section 3.10.6 and its subsections, and it may grant a waiver from the use restrictions contained in Section 3.4.10 of the Table of Principal Uses, where the Board finds that the relief is necessary to avoid an effective prohibition of Personal Wireless Services in the Town, including effective prohibition of meeting reasonable customer demand for service and effective prohibition of competition between Carriers.

- a) Any request for such waivers shall be supported by the submittal of a study prepared by a qualified radio frequency engineer or other qualified professional consultant demonstrating that there exists a Significant Gap in coverage within the Coverage Area or proposed Coverage Area in question, and clear and convincing evidence that no land or Site is available that meets the otherwise applicable requirements. The Planning Board may engage the services of an independent radio frequency engineer or other qualified professional to analyze and comment on the technical merits of such applicant provided study; all reasonable costs of any such independent radio frequency engineer or other

qualified professional engaged by the Planning Board shall be paid for by the applicant upon demand.

- b) In granting such a waiver or waivers, the Planning Board must find that the extent of the granted relief is mitigated by a showing that the project provides a minimally intrusive viable means of reducing or eliminating such Significant Gap in coverage, and that the desired relief may be granted without substantial detriment to the neighborhood and without denigrating from the intent and purpose of this Bylaw.
- c) However, the Board shall not grant relief from the maximum height limitation in Subsection 3.10.6.2.
- d) The Board shall be empowered hereunder to grant relief from any setback requirements in Subsections 3.10.6.5 or 3.10.6.6 provided that the Site proposed is demonstrated to be necessary to achieve Adequate Coverage or Adequate Capacity and to be minimally intrusive upon the interests of the Town, consistent with Sections 3.10.1 – Purpose, and its subsections.
- e) The applicant shall provide the Board with a written statement describing why the requested relief is in the best interest of the Town with reference to Section 3.10.1 – Purpose, and its subsections.

, or take any other action relative thereto.

SUMMARY

The one-year moratorium on new wireless communication facilities ends on April 15, 2008. This article, if adopted, would replace the currently suspended section 3.10 (Special Requirements for Wireless Communication Facilities) and section 3.11 (the moratorium). The proposed replacement section 3.10 was developed by the Wireless Communication Facilities Bylaw Study Committee, which the Board of Selectmen appointed after the moratorium was adopted. The committee reviewed bylaws in other municipalities, “model bylaws”, some recent and relevant case law, and FCC rulings, and sought and used the advice of legal and technical counsel. It also reviewed the Town of Acton zoning regulations for wireless service facilities in section 3.10 as most recently amended at the Annual Town Meeting of 2007 before the adoption of the moratorium, and plotted maps of the Town that show the required setbacks for wireless facility towers and areas where they are not allowed. The resulting map validates that the Town is very well protected. To ensure that there is no violation of Federal Law by an inadvertent “effective prohibition”, the proposed new section 3.10 would include a process for granting waivers. Overall, the proposed new section 10.3 takes into account newer technology, is better organized, has more precise definitions of terms, allows for the assembly of lots to create a facility site, and adds stronger language for facility screening and removal after use has ceased.

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Selectman assigned:

Board of Selectmen:

Finance Committee:

Planning Board:

To see if the Town will vote to amend the zoning bylaw as follows:

A. Delete section 2.2 – Zoning Map, and replace it with a new section 2.2 as follows:

2.2 Zoning Map – The zoning maps listed below are part of this Bylaw, and are collectively referred to as “The Zoning Map”. The location and boundaries of the zoning districts are shown on the Zoning Maps. The Zoning Maps are amended from time to time by action of Town Meeting. The last amendment dates are noted on the Zoning Maps.

- “Zoning Map of the Town of Acton” as last amended, consisting of a single sheet designated Map Number 1, and showing the Residential, Village, Office, Business, Industrial, and Special Districts, and the Cultural Overlay District.
- “Flood Insurance Rate Map”, dated January 6, 1988 (Scale 1" = 400' consisting of 8 sheets designated Map Number 2, Sheet 1 of 8 through 7 of 8 plus the map index and street index) and the associated data in the “Flood Insurance Study, Town of Acton, January 6, 1988.”
- “Groundwater Protection District Map of the Town of Acton” as last amended; Map Number 3A, consisting of a single sheet at a scale of 1" = 1200', and Map Number 3B, consisting of sheets 3B-1 through 3B-18 at a scale of 1" = 200'. See Section 4.3.2 of this Bylaw for a more detailed description of the Groundwater Protection District and the use of these maps.
- “Affordable Housing Overlay District Map of the Town of Acton” as last amended, consisting of Map Number 4 and shown on the same sheet as Map Number 1.

[Note: Section 2.2 currently reads:

2.2 Zoning Map – The zoning maps described below are part of this Bylaw. Location and boundaries of the zoning districts are shown on the zoning maps, which may be amended and are collectively referred to as “The Zoning Map.”

- *“Zoning Map of the Town of Acton,” amended to April 2006, consisting of a single sheet designated Map Number 1, as amended.*
- *“Groundwater Protection District Map of the Town of Acton, January 1989”, last amended in 1996, designated Map Number 3A, consisting of a single sheet at a scale of 1" = 1200', and Map Number 3B, consisting of sheets 3B-1 through 3B-18 at a scale of 1" = 200'. See Section 4.3.2 of this Bylaw for a more detailed description of the Groundwater Protection District and the use of these maps.*
- *“Flood Insurance Rate Map,” dated January 6, 1988 (Scale 1" = 400' consisting of 8 sheets designated Map Number 2, Sheet 1 of 8 through 7 of 8 plus the map index and street index) and the associated data in the “Flood Insurance Study, Town of Acton, January 6, 1988.”*
- *“Affordable Housing Overlay District Map of the Town of Acton” last amended in April 2006, consisting of a single sheet designated Map Number 4, shown together with the same sheet Map Number 1.]*

B. In section 3, Table of Principal Uses, change the entry in column “NAV”, and line “3.3.3 - Two-Family Dwelling” from N to Y.

C. In section 11, Enforcement, delete the head paragraph of subsection 11.1 and replace with a new paragraph as follows:

11.1 Enforcement – The Zoning Enforcement Officer of the Town of Acton, as appointed by the Town Manager, is hereby designated as the officer charged with the enforcement of this Bylaw. During any period of temporary absence or disability of the Zoning Enforcement Officer, the town manager may appoint an inspector of buildings, building commissioner, local inspector, town planner or assistant town planner as the officer charged with the enforcement of this Bylaw. All zoning enforcement actions initiated and decisions made by the officer charged with the enforcement of this Bylaw prior to the appointment of the Zoning Enforcement Officer or during any temporary absence or disability of the Zoning Enforcement Officer shall continue unabated in the name of the Zoning Enforcement Officer

[Note: The lead paragraph of section 11.1 currently reads:

11.1 The Building Commissioner of the Town of Acton is hereby designated as the officer charged with the enforcement of this Bylaw.]

And:

Replace the title “Building Commissioner” and “Commissioner” with “Zoning Enforcement Officer” wherever they occur in the following sections of the Zoning Bylaw: 3.8.1.5.p) and q); 3.9.1; 4.1.7.2; 4.1.9.1; 4.2.2.4; 4.3.2.5; 4.3.8.4; 5.4.5; 5.4.5.1; 5.4.5.2; 6.7 (2nd paragraph); 6.7.3; 6.7.6; 6.7.8.1; 6.7.8.4; 6.7.8.8; 6.7.9; 6.7.9.3; 6.7.9.5; 6.9.5.4; 6.9.6.4; 6.10; 7.3.12; 7.4.2; 7.6; 7.6.1; 7.6.2; 8.6; 9.8; 9B.15; 10.1.1; 10.2.1.3); 10.4.4.2; 10.4.4.4; 10.4.6; 10.6.2.4.c)iii; 11.1.1.

D. In section 7, Signs and Advertising Devices, delete section 7.4.4 and renumber section 7.4.5 and its subsections 7.4.5.1 and 7.4.5.2 to become section 7.4.4 and subsections 7.4.4.1 and 7.4.4.2 respectively.

[Note: Section 7.4.4 currently states:

7.4.4 Re-lettering – The re-lettering of a SIGN shall be equivalent to the ERECTING of a SIGN as defined in Section 7.2.5, except in the case of the following SIGNS and under the following conditions:

7.4.4.1 Any SIGN listed under Section 7.5.

7.4.4.2 Indicators of time and temperature.

7.4.4.3 The listing of current shows on SIGNS associated with a cinema or theater.

7.4.4.4 The names of individual businesses located on a FREESTANDING SIGN which identifies a BUSINESS CENTER, and which is ERECTED in conformance with Sections 7.8.5.2 or 7.8.6.3.]

And:

Delete 7.12.2, and replace it with a new section 7.12.2 as follows:

7.12.2 Nothing herein shall be deemed to prevent orderly, regular, and timely maintenance, repair, and repainting with the same original colors of a non-conforming SIGN, or the re-lettering, re-facing, or changing of message of a non-conforming sign.

[Note: Section 7.12.2 currently reads:

Nothing herein shall be deemed to prevent orderly, regular and timely maintenance, repair and repainting with the same original colors of a non-conforming SIGN.]

, or take any other action relative thereto.

SUMMARY

This article makes housekeeping changes to the zoning bylaw.

Part A deals with the reference of various zoning maps, which are part of the zoning bylaw. The change will make the last amendment date that, which is shown on the map, rather than having it noted in the bylaw text. This will eliminate the need to continuously update this section of the zoning bylaw each time a map is changed. The Flood Insurance Rate Map is a Federal map and continues unchanged since its original 1988 date.

Part B changes the use regulations of the zoning bylaw to allow two-family dwelling in the North Acton Village District. This will bring it in line with the other village zoning district where two-family are also allowed.

Part C names a Zoning Enforcement Officer as the Town's agent to enforce the Zoning Bylaw. Up until now the enforcement of the zoning bylaw was the duty of the position of the Building Commissioner. This change will allow the Town Manager flexibility to appoint the Building Commissioner as the Zoning Enforcement Officer or to appoint a different person, and to appoint any interim personnel for this function as needed. The recent departure of the long time Building Commissioner illustrated the need for this change.

Part D changes the sign regulations to ensure that the re-lettering, or re-facing, of existing signs with different words, names, or messages is allowed even if the sign is non-conforming with today's regulations. The sections to be deleted and changes are in conflict with another section of the zoning bylaw (7.2.5) which explicitly allows re-lettering of all existing signs. The change eliminates this inconsistency and brings the zoning bylaw into compliance with case law, which ruled that existing non-conforming signs must be allowed to change messages, and that to do otherwise would unconstitutionally regulate speech and content.

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Selectman assigned:

Board of Selectmen:
Finance Committee:
Planning Board: