

6/9/08
13**Christine Joyce**

From: Roland Bartl
Sent: Friday, May 23, 2008 6:02 PM
To: Steve Ledoux
Cc: Manager Department
Subject: Site Plan #409 - Recommended amendment

Steve:

Attached is site plan special permit #409 for a four-unit housing development at Kelley's Corner, address - 288 Main Street, issued on March 26, 2007. We have now building permit applications before us, and in checking for zoning compliance I have reviewed permit decision #409. Condition 3.4 of the permit requires that "prior to any blasting the Petitioner shall certify in writing to the Board of Selectmen that no perchlorates will be used in either blasting material or blasting caps".

The Town had been dragged into blasting perchlorate issues during the previous calendar year (2006), after the Planning Board with good intentions had put a similar condition on one of its development special permits. When perchlorates showed up during construction, even though the source could never be clearly identified the Town was pulled into the dispute between the builder and the affected neighbors, nearly got sued, and had difficulty extricating itself from the situation. I think there was a cost to that, also - we paid for additional testing, but I don't recall the details. So, I was surprised to see this condition. There is no departmental recommendation to this effect in the file. The problem with this condition is that Perchlorate is a Federally and State regulated substance but neither State nor Federal law or regulation back up this the special permit condition. They set standards for maximum concentration in well or drinking water. But they don't prohibit, restrict, or regulate their use in blasting. If something should go wrong again, the Town may be once again be blamed for not knowing the fine print caveats on the Material Safety Data Sheets (MSDS) submitted by the blaster to the Fire Department, or about obscure documents posted on the DEP website that alert to false or incomplete statements on the MSDS sheet.

I recommend that the Board consider replacing it with the following more generic condition:

3.4 Prior to any blasting the Petitioner shall obtain a blasting permit from the Acton Fire Department.

It is long standing practice in Acton, that the Board can amend its special permits on its own initiative, or if requested by the developer/applicant, and that minor amendments can be handled without a public hearing. This is set forth in paragraph 4.7 of the decision. I think this change would fall into this category, and cannot see that the developer would object to it.

Please put this on the next Selectmen's meeting agenda, so that this may get addressed in a reasonably timely manner.

Thank you

5/27/2008

Site Plan Special Permit # 07/11/06-409
Edward Bravo
288 Main Street (Foster)
Acton Massachusetts 01720

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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Edward Bravo (hereinafter the Petitioner) for the property located at 288 Main Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map F-3 Parcel 88.

This Decision is in response to an application submitted to the Board on July 11, 2006 by the Petitioner for a Site Plan Special Permit under 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) to raze the existing single family and construct a new 4 unit multi-family.

After causing notice of the time and place of the public hearing and of 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 September 11, 2006 at 7:30 PM, in the Francis Faulkner Room located at 472 Main Street. The hearing was continued to October 2, October 16, October 30, November 13, December 11 January 8, January 22. Because January 22, 2007 was not a meeting night the Board notified all abutters by certified mail and placed notice in the Beacon the new hearing date of February 26, 2007 at 7:20. On February 26 the hearing was continued to March 12 at 7:50 when the hearing was closed. All continuances were made at the request of the Petitioner. Board members Walter Foster, Peter Ashton, F. Dore` Hunter, Lauren Rosenzweig and Andrew D. Magee were present throughout the hearings.

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

Exhibit I

A properly executed application for Site Plan Special Permit approval received July 11, 2006; Letters from Acton Survey & Engineering dated 12/5/06, 12/27/06, 1/2/07, (3)3/6/07 and 3/12/07; Extension request from Acton Survey & Engineering dated 9/8/06, 9/20/06, 10/13/06, 10/26/06, 11/8/06, 2/20/07; four-sheet set of engineered plans dated July 10, 2006 revised 12/6/06, 12/28/06, and 3/6/07. Historical Society letter dated 1/8/07

Exhibit II

Interdepartmental Communication (IDC) from the Town Manager to the Town Staff requesting comments. The following IDC's were received:

1. Building Commissioner dated 9/21/06, 10/13/06, 10/25/06, 11/8/06, 12/8/06, 1/5/07, 2/20/07 and 3/7/07
2. Town Planner dated 8/10/06 and 1/4/07
3. Fire Chief dated 8/16/06
4. Municipal Properties Director dated 7/26/06
5. Engineering Department dated 7/20/06, 12/8/06, 1/2/07 and 3/7/07
6. Health Department dated 7/11/06
7. Acton Community Housing Corporation dated 8/8/06

Exhibit I is hereinafter referred to as the Plan:

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1.0 Findings and Conclusions

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

- 1.1 The site is located in Residence AA Zoning District and Zone 4 of the Groundwater Protection District and the USE is allowed by right in the Residence AA Zoning District and by right in Zone 4.
- 1.2 The property is located in the Sewer District. Based on the Sewer Assessment Bylaw the increased development will result in the need for three more betterment units. There will be a privilege fee accessed. The privilege fee shall be paid prior to the building permit being issued.
- 1.3 The Plan provides for the use of small catch basins. The Engineering Department is concerned the small catch basins will have a tendency to fail if not maintained. The smaller basin will not hold as much debris and must be cleaned more often and by a pumper. The Board finds the catch basins are located on private property however if they fail the runoff may impact town streets. The basins shall be constructed and maintained so as to catch all site runoff. If the catch basin fails it shall be corrected by the owner.
- 1.4 The existing house has a sump pump, if a sump pump is needed for the new building it shall not be discharged to either the street or the new drainage system.
- 1.5 The detail sheet shows a 6 inch perforated drip line pipe to be embedded 10 feet in both sides at the bottom of the recharge patio stone. The Board is concerned about freezing. The Plan shall be revised to show the 6 inch perforated pipes interconnected with a minimum 2 foot depth (by 2 foot wide) of stone underneath.
- 1.6 The 2 proposed leaching areas at the front of the proposed building are 2 feet above the roadway elevation with only 4 feet of breakout distance provided. The Board finds that a breakout barrier similar to what is used for a septic system be installed.
- 1.7 The Acton Historical Society is concerned about the impact blasting might have on the Hosmer House and Jenks library. Because of the age of the house any blasting may have an adverse impact. It is recognized the Hosmer House and Jenks library may be outside the distance normally used to do a pre-blast survey. The Board finds because of the age of the Hosmer House and Jenks library it is appropriate to require a pre-blast survey. If the Historical Society denies access to the property the Petitioners obligation is satisfied. The petitioner shall notify the Acton Historical Society of when blasting will occur.
- 1.8 The Board is concerned about the use of perchlorates in blasting compounds. The Petitioner shall certify to the Board that perchlorates are not used in either blasting material or blasting caps.
- 1.9 The plan provides for the existing sidewalk to remain. The Board finds that in the Kelley's Corner Specific Area Plan a six-foot wide with vertical granite curb is recommended. The Board finds that because of the reconstruction now would be the appropriate time to have the sidewalk reconstructed. It shall be constructed at the Petitioner's expense.

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288 Main Street (Foster)
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1.10 The Plan as herein modified:

- Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
- Will provide for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation including emergency vehicles, on or adjoining the site.
- Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
- Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
- Is consistent with the Master Plan.
- Is in harmony with the purpose and intent of this Bylaw.
- Will not be detrimental or injurious to the neighborhood in which it is to take place.
- Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted 5-0 to **GRANT** the requested Special Permit and Site Plan Special Permit subject to and with the benefit of the following Plan modifications, conditions and limitations.

2.0 Plan Modifications

Prior to the issuance of a Building Permit or the start of any construction on the site, the Petitioner shall cause the Plan to be revised to show the following additional, corrected or modified information. The Building Commissioner shall not permit any construction activity to begin on the site until and unless he finds that the Plan is revised to include the following additional, corrected or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Commissioner. Where approvals are required from persons other than the Building Commissioner, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Commissioner before the Commissioner shall issue any Building Permit or permit any construction on the site. The Petitioner shall submit five copies of the final plans as approved for construction by the Building Commissioner to the Building Commissioner prior to the issuance of a Building Permit.

- 2.1 The Plan shall be revised to show a 40 mil polyethylene barrier installed and extended horizontally the full length of each chamber and vertically from the top of the chamber to a foot below the sidewalk.
- 2.2 The Plan shall be revised to show a 6 inch perforated drip line pipe embedded 10 feet in both sides at the bottom of the recharge patio stone. The 6 inch perforated pipes shall be interconnected with a minimum 2 foot depth (by 2 foot wide) of stone underneath.
- 2.3 The Plan shall be revised so as to provide for a 6-foot wide concrete sidewalk along with vertical curbing. The design of the sidewalk shall meet the approval of the Town Engineer.

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3.0 Conditions

- 3.1 The Plan does not include a lighting plan as per Bylaw § 10.6. If the Petitioner proposes exterior lighting he shall provide a plan for Board approval.
- 3.2 Prior to the issuance of the Building Permit the final betterment units shall be determined. The privilege fee shall be paid prior to the Building Permit is issued.
- 3.3 The Petitioner shall conduct a pre-blast survey on the Hosmer House and Jenks library unless denied access. They shall also provide a 24 hour notice of any blasting to the Historical Society.
- 3.4 Prior to any blasting the Petitioner shall certify in writing to the Board of Selectmen that no perchlorates will be used in either blasting material or blasting caps.
- 3.5 Prior to occupancy or use of any new building constituting a part of the project, an as-built plan shall be supplied by the engineer of record certifying that the project was built according to the approved documents. The as-built plan shall show all pavement, building and drainage structure locations above and below grade in their true relationship to lot lines, and include appropriate grades and elevations. In addition to the engineer of record, said plan shall be certified by a Mass. Registered Land Surveyor.

4.0 Limitations

The Authority granted to the Petitioner by this permit is limited as follows:

- 4.1 This permit applies only to the site, which is the subject of this petition. All construction shall be conducted in accordance with the terms of this permit and shall be limited to the improvements shown on the Plan.
- 4.2 There shall be no further development of this site without written consent of the Board of Selectmen as outlined within the Acton Zoning Bylaw.
- 4.3 This Decision applies only to the requested Special Permit. Other permits or approvals required by the Acton Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.5 The hauling of earth to and from the site shall be restricted to the hours between 9:00 AM and 4:00 PM Monday through Saturday.
- 4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the Acton Zoning Bylaw.
- 4.7 This Site Plan Special Permit shall lapse on March 26, 2009 unless work approved by this permit has commenced except for good cause. Any request for extensions shall be made at least thirty (30) days prior to expiration. The Board reserves the right to amend the permit by its own or at the request of the Petitioner with or without a new hearing.

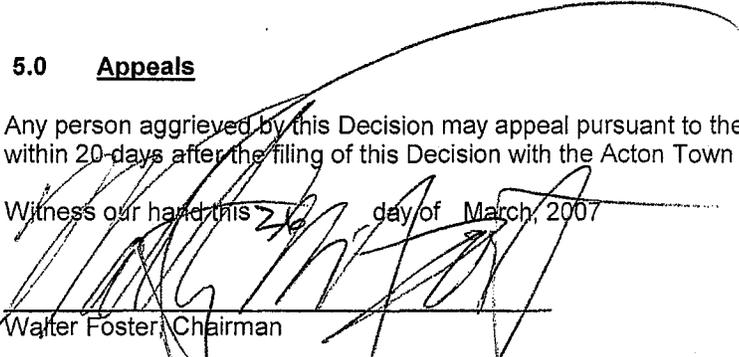
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5.0 Appeals

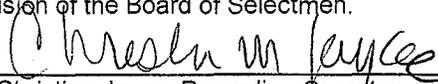
Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20-days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this 26 day of March, 2007



Walter Foster, Chairman

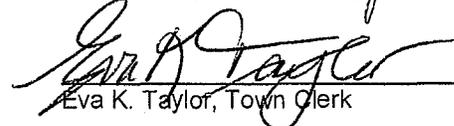
I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.



Christine Joyce, Recording Secretary

March 28 2007

Date filed with Town Clerk



Eva K. Taylor, Town Clerk

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

Date

Eva K. Taylor, Town Clerk

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