RECEIVED
AUG 23 2010
TOWN CLERK, ACTON

MINUTES OF THE HEARING FOR A FLOOD PLAIN SPECIAL PERMIT, 50 POWDERMILL ROAD **HEARING # 10-04**

(SESSION 4)

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, August 2, 2010 at 6:30 pm on the petition of Powder Mill Properties, LLC for a **Special Permit** under Section 4.1.8 of the Zoning Bylaw to allow the **USE** with the Limits of the Floodway fringe. The petitioner is proposing to re-grade a portion of the parking lot at 50 Powder Mill Road resulting in a loss of an estimated 1,305 cubic feet (1.6% of available) Flood Storage. The property is located at 50 Powder Mill Road.
Map J3-Parcel 49.

Present at the hearing was Ken Kozik, Chairman; Jon Wagner, Member; Adam Hoffman, Alternate; Scott Mutch, Zoning Enforcement Officer, and Cheryl Frazier, Board of Appeals Secretary. Also present at the hearing was petitioner, Leo Bertolami and his Attorney Richard A. Nylen, Jr. of Lynch, DeSimone & Nylen, LLP.

Ken Kozik reopened hearing #10-04. Ken recalled that the last time they met Mr. Bertolami was going to meet with the Selectmen. The petitioner reported he did not have the meeting.

Ken asked attorney for the petitioner Richard Nylen to begin. Mr. Nylen stated that he is here his evening representing Autoplex Realty, LLC. They are here to formally withdraw the request for a Special Permit without prejudice in order to go forward with a building permit to effect renovations at the existing building at 50 Powder Mill Road, Acton MA.

He continued stating that previously, Autoplex Realty applied for a Special Permit based upon work proposed in the flood plain. Following Mr. Nylen's review of the Zoning Bylaw he wrote a letter to the Board with an opinion that the work proposed in connection with the handicapped sidewalk in the flood plain does not trigger a Special Permit requirement under Section 8.6 of the Bylaw. The work is exempt as it is for a handicapped facility.

Mr. Nylen said the second question was raised as to whether the project is considered to be a Substantial Improvement as defined by Section 4.1.1.7 in the Flood Plain Overlay District of the Bylaw. In their opinion the work proposed is not a Substantial Improvement because the project is an improvement of the structure in order to correct structural deficiencies to meet the safety code. Further, there is a question as to whether the repair, reconstruction or improvement will equal or exceed fifty (50%) percent of the

fair market value of the structure. Withdrawal of the application without prejudice is more expedient than requesting continuances and not advancing the petition.

Ken asked for opinion and comments from the Board members. Jon Wagner and Adam Hoffman agreed with the petitioner withdrawing without prejudice.

Ken made a motion to withdraw the petition for the Special Permit without prejudice. Jon moved to respect the petitioner's request. Adam seconded the motion.

The Board voted 3-0 to grant the withdrawal without prejudice.

Respectfully submitted,

Cheryl Frazier
Secretary to the Board of Appeals

Ken Kozik
Chairman of the Board of Appeals