



Planning Department

TOWN OF ACTON
 472 Main Street
 Acton, Massachusetts 01720
 Telephone (978) 929-6631
 Fax (978) 929-6340
 planning@acton-ma.gov

MEMORANDUM

To: Steve Ledoux, Town Manager **Date:** April 24, 2014
From: Roland Bartl, AICP, Planning Director *R. B.*
Subject: **Acorn Deck House Company (Trudeau)**
– Application for Site Plan Special Permit #02/20/14-448

The Planning Department offers the following information and comments on this application:

General Information:

Public Hearing as advertised: April 28, 2014; 7:20 PM
Location: 848 Main Street
Town Atlas Map/Parcel: C5-39 (Lot A-2 and Parcel A as shown on the plan in the application)
Related Parcel: C5-39-1 (Lot 2C as shown on the plan in the application), 852 Main St.
Applicant / Owners: Tom Trudeau, Acton Realty LLC
Engineer/Surveyor: Stamski and McNary, Inc.
Zoning: Small Manufacturing (SM), Groundwater Protection Dist.- Zone 3
Project Type: Site improvements; no proposed building additions
Site Area: +/-8.34 acres
Decision Due: No later than July 27, 2014 (unless extended by mutual agreement)

Background:

1. During the latter part of 2012 unauthorized paving activity was noted at the 848 Main Street site on the north and east sides of the large manufacturing building. This was done without a site plan special permit, in non-compliance with a previous site plan special permit, and in violation of several zoning set-back and area requirements. Closer scrutiny of the site also revealed further zoning violations relative to:
 - a. Building floor area, FAR and Frontage that resulted, not from illegal construction of buildings, but from the deed a few years earlier into a separate ownership entity of an adjacent parcel at 852 Main Street, shown on the plan as Lot 2C.
 - b. A common driveway connection between the 848 and 852 Main Street parcels that was nowhere shown on any previously approved plan.
 - c. The apparent expansion over time of gravel surfaces beyond previously approved boundaries.

This site plan special permit application now before the Board is intended to correct the zoning violations. It succeeds only in part as outlined in the following.

Site Improvements

2. The site was the subject of seven (7) previous site plan special permits dating from 1973 through 1987. It is our recollection that these permits addressed improvements at the property which at the time comprised 848 and 852 Main Street in single ownership as one parcel for zoning purposes. All these permits predate the last major zoning revisions of 1990 that affected the site and that are for the most part still in effect today. As a result of these older permitted improvements, some aspects of the site would properly be considered pre-existing non-conforming. These include, subject to recommendations and limitations stated herein, the extent of the existing building floor area, gravel surfaces, the configuration of parking and paved surfaces, and insufficient landscaping.
3. The plan package includes an Existing Conditions Plan (sheet 2 of 5) that shows existing building footprints and delineates existing areas of pavement and gravel surfaces as found at 848 and 852 Main Street after the paving activities cited in par. 1 above. We believe it is a fair reflection of existing conditions on the ground as they currently exist.
4. The other plan sheets show proposed changes and improvements at 848 Main Street intended to return the site into compliance with zoning. I defer to others with respect to proposed grading, drainage controls, septic installation, and construction details. This review focuses on zoning-related matters. No proposed changes are shown for 852 Main Street (except for lot line boundary changes discussed later in this memo).
5. The Layout Plan (sheet 4 of 5) shows in a general manner the proposed allocations on the site for buildings (existing), paved/graveled surfaces, and areas counting as Open Space and Perimeter Landscaping, the latter two items as defined in the zoning bylaw. These delineations appear largely acceptable.
6. The land use table on sheet 3 brings the proposed amount of Open Space in at 35%, the minimum required under current zoning. It includes:
 - a. A substantial area in the northwest part of the site that is rather disturbed - dirt surface that shows marks of prior use from driving on, parking on, and/or materials storage (most recently fire wood storage and processing). This is generally the vicinity of a former railroad spur into the property.
 - b. A 9,189 S.F. area along the north-side of the large industrial building that we recall as appearing substantially disturbed when viewing the unauthorized paving action in 2012.
 - c. A 7,426 S.F. area on the west side of the building that we recall as current storage area.

Recommendation:

These three itemized designated Open Space areas should be restored or re-naturalized to some real resemblance of Open Space. Removal or remaining stored materials, some tilling of the surface, a bit of top soil and compost mixed in, and a hardy grass/wildflower mix can go a long way here. A Landscape Plan sheet should be added to specify how these Open Space area will be re-naturalized.

7. The 40,719 S.F. pavement area identified in the east portion of the site (it wraps around to the north portion also) includes an area of approximately 60' X 80' closest to Main Street that was paved on a former meadow in 2012 in violation of governing zoning permits (the "rectangle" adjacent to lot 2C and the designated Open Space Area beside Main Street). The portion of the 6,090 S.F. Perimeter Landscaping separator shown between this new pavement area and the striped parking spaces at the entrance driveway is therefore insufficient for today's applicable zoning requirements.

Recommendation:

The Perimeter Landscaping separator between the striped parking spaces and the new

pavement added on the former meadow (the “rectangle”) must be widened to 30 feet in order to meet applicable parking lot design requirements (separation of parking lot cells). Another way to describe the location: The Perimeter Landscaping separator adjacent to the first 6-1/2 to 7 striped parking spaces seen when entering 848 Main Street must be widened to 30 feet. The added Landscape Plan sheet should specify landscaping of this area in compliance with the zoning bylaw’s Perimeter Landscaping requirements.

8. The Perimeter Landscaping and Open Space strip along the north and east side of the 848 Main Street site would remain after new pavement was added there in 2012. Just leaving it ‘as is’ would not meet applicable zoning standards for new parking lot/pavement areas.

Recommendation:

The added Landscape Plan sheet should specify landscaping details for the Perimeter Landscaping and Open Space strip along the north and east side of the 848 Main Street site in compliance with the zoning bylaw’s Perimeter Landscaping requirements.

9. The driveway on the north of the large manufacturing building on the 848 Main Street site is new, added in 2012 as part of the unauthorized paving activity. It has insufficient width for two-way travel. The proposed driveway on the west side of the building also does not measure up to two-way traffic.

Recommendation:

These interior driveways must be specified on the plan, and posted on site for use as one-way driveways only.

Frontage

10. 848 Main Street in separate ownership as presently configured does not meet the frontage requirement in the SM zoning district. 200 feet is the minimum requirement; the parcel has +/- 182 feet. This violation is the result of dividing the ownership of 848 and 852 Main Street into separate ownership entities a few years in the past. 852 Main Street has sufficient surplus frontage to give to 848 so as to cure the violation. This can be done with minor dimensional recalculations. The plan as presented makes provision for the transfer of an unspecified frontage triangle from 852 to 848 Main Street. However, it does not help cure the equally fundamental zoning violation of FAR.

Floor Area, Floor Area Ratio, and Divided Ownership

11. The maximum Floor Area Ratio (FAR) in the SM zoning district is 0.20. The FAR is the result of the mathematical division of the Net Floor Area in a Building or Buildings by the Developable Site Area of the property. A Building is defined as “a structure enclosed with exterior walls, built or erected with any combination of materials, ..., having a roof, ... for the shelter of persons, animals, or property”.
12. The special permit application represents for the 848 Main Street site a Net Floor Area of 66,629 S.F. and a Floor Area Ratio (FAR) of 0.184. We disagree.
13. As a matter of long-standing practice, we include as part of a Building any portion that is roofed and enclosed on at least three sides. There are three building additions on the south side of the main building, which unlike the drive-through “roofed storage-area” along the north side of the main building, are fully enclosed, partially enclosed, and/or fully enclosable with ease during inclement weather. These three building sections must be added into the Net Floor Area on the site. The three building areas in question are called out separately on the plan and add in total 25,971 S.F. of Net Floor Area for a total of 92,663 S.F. on the site, and a FAR of 0.255.
14. One solution to correct this zoning violation is to remove parts of the building on the 848 Main Street site, sufficient in quantity to reduce the FAR to 0.20. The other more practical solution is

a return to the pre-existing non-conforming status that the 848 and 852 Main Street parcels had before when their ownership was held in common.

Recommendation:

Re-combine 848 Main Street (Lot A-2 & Parcel A) with 852 Main Street (Lot 2C) to create one parcel under single ownership with +/- 9.26 acres, and combined Net Floor Area of +/- 96,242 S.F. and a FAR of 0.239.

It is understood that the resulting FAR on the re-combine property is still not in compliance with current zoning limits. However, the combining of the parcels restores the pre-existing non-conforming status of the combined properties as it existed before their ownership was separated. Pre-existing non-conforming is a legal status that can continue forward. The current situation is illegal under zoning. It is further note that the proposed cure for frontage violation will then become unnecessary.

Common Driveway connection to lot 2C

15. The common driveway shown between parcels A-2 and 2C can become a non-issue with the granting of this requested site plan special permit. Zoning Bylaw, section 10.4.3.3 provides in part: "If a common driveway is authorized under a Site Plan Special Permit to lead onto an adjacent LOT which is not subject to such Site Plan Special Permit, no separate Site Plan Special Permit shall be required for the adjacent LOT in order to permit the construction of the common driveway." Of course, this matter would also be resolved under a granted permit where the two properties must be recombined to restore zoning compliance for FAR.

School Bus Parking

16. During the hearing the current school bus parking may be raised as a concern. About two years ago, or so, the owner, Mr. Trudeau, and representatives from the Concord – Carlisle Regional Schools met with us to inquire about this. At the time we determined that the proposed temporary parking/storage on the property as it then existed of active school buses owned and operated by a public school system in the Commonwealth is an Educational Use under section 3.4.2 of the zoning bylaw. Section 3.4.2 aims to be consistent with section 3 of the State zoning statute's Dover Amendment (exemptions from zoning for educational and religious uses). This determination was made before the unauthorized paving activity took place.

Firewood Storage and Processing

17. The Site Plan on sheets 3 and 4 shows a proposed 30' X 100' Wood Processing Area in the rear, i.e. west of the large manufacturing building. Axe Brothers, who we believe is the prospective operator of the wood processing activity has a separate special permit application pending before the Board for this specific proposed outdoor use. All matters, related to the Axe Bros. application should be deferred to that hearing and permit consideration. Likewise, it should be clear to all that simply showing the area on a proposed site plan, if approved, would not in any way indicate approval of the use, which requires a separate use special permit. That use special permit has been applied for; it is on a separate track and schedule. If the Board were to grant that other permit, it can impose separate conditions related to it, including specific site improvements and mitigation measures related to that use.

Existing Model Home

18. We remain puzzled why the owner continues to hang on to the decrepit old model home in the northwest corner of the property. Last we saw it, it was crammed full with stuff and appeared to sort of crumble away slowly. A small effort would remove this eyesore.

Enforcement

Typically, site plan special permit compliance is a pre-condition to the granting of building and occupancy permits. Neither applies here. We look forward to working with the applicant towards zoning compliance and compliance with any conditions of the site plan special permit that the Board may grant, provided that the applicant makes a diligent effort towards compliance going forward and further that the a reasonable completion/compliance date is on the horizon – say within 6 months for the parcel re-merger in to combined ownership, and 12 months for all site improvement/modification work (or such other time period that the Board may determine). The Board could also require that the owner post a bond as surety. But, I cannot see how that would add anything to enhance achievement of compliance, unless the Town is prepared to take the highly unusual step of following through on the purpose of a bond, i.e. taking matters in its own hands should the applicant/owner fail to comply. In the end, with or without a bond, we are left appealing to the applicant to do the right thing; or, if that fails, applying standard zoning enforcement procedures using fines and court system.

Cc: George Dimakarakos, Stamski and McNary, Inc. (for the applicant)
Planning Department
Manager Department

p:\roland open files\site plan\448, acorn deck house, 852 main.docx



March 18, 2014

**BY ELECTRONIC MAIL: cjoyce@acton-ma.gov
AND FIRST CLASS MAIL**

Acton Board of Selectmen
Acton Town Hall
472 Main St.
Acton, MA 01720

Re: 848 Main Street, Acton – Special Permit Application

Dear Members of the Board:

As you may recall, this firm represents neighbors and abutters to the proposed wood processing operation located at 848 Main Street in Acton, on land identified as Assessor's Map C5, Parcel 39 (the "Project Site"). An original application for special permit was filed with the Board of Selectmen (the "Board") on October 12, 2013. A hearing on the application was scheduled for November 18, 2013 (after public and abutter notices were made), but was then continued at the request of the applicant, Jacob Abraham (the "Applicant"). We understand that a second submittal was filed on or about February 18, 2014 by Acorn Deck House Company, also covering the Project Site.¹

Based on my conversation with Zoning Enforcement Officer Scott Mutch, it appears that the Board is treating these two submittals as two separate applications – the hearing on the first application is scheduled for March 24, 2014, and the second hearing is scheduled for April 28, 2014. To the extent that the second submittal is being treated as a separate application for a site plan special permit, it remains woefully inadequate, for many of the same reasons the original application was incomplete. However, we question why these submittals are being bifurcated and heard separately.

A. The Zoning Bylaw Provisions

The original application was styled as an "application for special permit" and cited Section 3.6.3 of the Zoning Bylaw. Under that section, "outdoor manufacturing" requires a special permit from the Board of Selectmen. That requirement modifies the Table of Principal Uses (Zoning Bylaw, p. 9), under which "manufacturing" is an allowed use (without the need for

^{1/} Both submittals misidentify the record owner of the Project Site as Acton Realty, Inc. – the actual owner is 848 Main Street Nominee Trust.

a special permit) in the SM zoning district. In the preamble to the Table of Principal Uses (§3.1), if a use is designated “SPS,” meaning that the use requires a special permit from the Board, one must look under the column titled (“Site Plan”) to determine whether the special permit required is a “site plan special permit” under Section 10.4, or merely a “special permit” under Section 10.3. If under the “Site Plan” column, the use is designated “R,” that means that a §10.4 site plan special permit is required. Since Section 3.6.3 states that outdoor manufacturing requires a special permit from the Board, and since special permits under Section 3.6.3 require site plan review under Section 10.4, the special permit for outdoor manufacturing must be a §10.4 site plan special permit.

There is not a separate, independent special permit process for outdoor manufacturing. Special permits in Acton are administered either under Section 10.3 or 10.4. It should be undisputed that Section 10.4 governs the Project Site. Therefore, we don’t understand why there would be separate hearings for the first special permit application and the second submittal dated February 18th. In any event, the original application should be heard either together with, or after the second submittal, since that submittal at least contains a scaled site plan.

B. The Site Plan Special Permit Application is Still Incomplete.

As we noted in our letter of November 12, 2013, an applicant for a site plan special permit must put forth evidence to enable the Board to make a number of findings relative to the use of the property. For example, the site plan must “protect[] the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.” §10.4.5.2. The original application was devoid, and the February 18th submittal is still devoid, of any explanation of the nature and extent of the firewood operation, including how wood will be delivered to and from the Site, where raw and finished wood would be stockpiled, how wood waste would be removed, and how environmental impacts such as noise and dust will be controlled.

We recognize that the February 18th submittal does not appear to be limited to the firewood operation component, and contains open space calculation for the entire Project Site. According to Mr. Mutch, the property owner was asked to submit a site plan special permit application to address other work done on the Project Site that was not pre-approved under Section 10.4. Unfortunately, the submittal doesn’t even address those concerns. There is no discussion anywhere in the submittal concerning any of the uses of the Project Site. This obstructs the Board from making any of the findings relative to *uses* under Section 10.4.

C. The Commercial Parking of School Buses on the Project Site is Not Exempt from Regulation under the Zoning Bylaw.

Notably, the February 18th submittal still contains no information of the commercial school bus parking operation on the Project Site. It would be incorrect to assume that the Town cannot regulate the parking of school buses due to provisions of G.L. c. 40A, §3. First, there is a substantial question as to whether the provisions of Section 3 of the Zoning Act, which protects

educational uses from overly-restrictive zoning requirements, even applies here – the property owner has a lease with the Concord Carlisle School District to allow school bus parking on the Project Site, which is clearly not on the same property as any school in Concord or Carlisle.

This question was addressed in a slightly different context by the Land Court in 2010. In *Skydell v. Tobin*, 18 LCR 174 (Land Ct. No. 04 MISC 303324) (Apr. 6, 2010), the Court ruled that the storage of commercial landscaping materials and the parking of equipment and vehicles for a business providing off-site landscaping services is not protected by Section 3, which provides the same level of protection for horticulture, silviculture and floriculture activities as it does for educational activities. The Court (Long, J.) reasoned that Section 3's protections are "based on the primary activity at issue taking place *on that land* ... and *not* the use of the land as a location for a business whose services are provided *elsewhere*, even if that business uses nursery products grown on site." The Court noted that the situation would be different for an on-site nursery operation, and in doing so imputed an implied requirement that uses accessory to a protected use must be on the same land as a principal protected use.

It would reasonably follow that the parking of school buses, which serve off-site schools, would not be protected under Section 3. This is consistent with the established law under conventional zoning, requiring accessory uses to be on the same land as the principal use in order to be treated the same under a zoning bylaw. *Town of Harvard v. Maxant*, 360 Mass. 432, 436 (1971).

Importantly, while Section 3, commonly referred to as "the Dover Amendment," prohibits zoning bylaws that prohibit or unreasonably restrict the use of land for educational and other protected uses, it also authorizes municipalities to apply "reasonable regulations" concerning bulk, dimensions, open space, and parking to educational uses, and in doing so, "seeks to strike a balance between preventing local discrimination against [an educational] use ... and honoring legitimate municipal concerns that typically find expression in local zoning laws." *Trustees of Tufts College v. Medford*, 415 Mass. 753, 757 (1993).

The Appeals Court and the Land Court have recognized the right of municipalities to regulate Section 3 protected uses through a site plan review process. See, e.g., *Jewish Cemetery Assoc. of Mass., Inc. v. Bd. of Appeals of Wayland*, 2014 Mass. App. Unpub. LEXIS 287 (March 7, 2014) (application of site plan review bylaw to religious use "is consistent with a reasonable reading of the Dover Amendment."); *Wildstar Farm, LLC v. Westwood Planning Bd.*, 18 LCR 433 (Land Ct. No. 09 PS 40754) (Aug. 13, 2010) (overturned on other grounds) (site plan review bylaw limited in scope consistent with Section 3 may be applied to protected agricultural use). Thus, even if the commercial parking of school buses is protected by Section 3 (which we deny), the Town of Acton can, and should, review these parking arrangements under Section 10.4, and apply its bulk, density, open space and parking requirements to the extent they are reasonable and do not prohibit the use. The parking of school buses generates noise and air pollution, and could realistically interfere with the other manufacturing uses on the Site.

In summary, we respectfully suggest that most of the concerns raised in our November 12, 2013 letter remain, and therefore we request that the Board require the Applicant to provide a complete application, review all of the uses (existing and proposed) on the Site under one application and one public hearing, and engage sound and air quality experts to evaluate the site plan special permit application given the nature of the uses and the proximity of residential abutters.

Very truly yours,



Daniel C. Hill

cc: Scott Mutch, Zoning Enforcement Officer
Clients

Acton – 848 Main Street

Review of Feb. 18, 2014 Submittal

1. The Owner/Applicant is identified in some places as “Acorn Deck House Company.” This entity has never appeared before as the applicant, and it is not the record owner of the site. On the application form, the owner is “Acton Realty, LLC.” Please explain.
2. Why was an additional check for \$2500 given to the Town on 2/18/14? (application fee)
3. Sheet 2 provides a table showing how existing conditions fare with the zoning dimensional requirements. The table calculates open space as 35.1%. Sheet 3 shows the open space to be 35% post-development. Sheet 4 delineates the “open space” post-development. The sum of each open space area is 127,163 sf, which is exactly 35% of the total lot area.
4. Sheet 3 shows a rectangle area of 30’ x 100’ (3,000 sf) where wood processing would occur. There is no supporting information indicating how this operation could be confined to such a small area, and experience from the illegal operation tells us that a much greater area is required for stockpiling raw wood and cut wood, not to mention loading and unloading areas.
5. A visual comparison of the existing conditions sheet and the proposed conditions sheet seems to show more area occupied by impervious surfaces under proposed conditions than 438 sf, which is what is represented on the plan. Town engineer should re-run these calcs on Autocad.
6. The plans provide dimensions for Lot 2C, which is a residence. Why is this information relevant?
7. Our comments from Nov. 13th remain: “Specifically, the plan should show the locations of the machinery that will be used, the area where unprocessed and processed wood will be stacked or stored, driveways and parking areas for the equipment that will load wood off of and onto trucks, and employee parking. The site plan should show how this operation would be compatible with the existing businesses on the Project Site, including the school bus parking, with specific attention to internal traffic circulation.” Containing all of the wood operation on a 3,000 sf pad is unrealistic. Existing school bus parking details and other details of current use of site not provided.
8. No information on noise impacts or air quality impacts has been provided.
9. Town engineer should review stormwater calcs.

From: Robert Hart
Sent: Wednesday, April 23, 2014 9:22 PM
To: Scott Mutch
Subject: Re: <http://doc.acton-ma.gov/dsweb/View/Collection-6123>

Hello Scott,

Lt. Smith will be following up with this. I advised him to contact you if he has concerns. Thank you.

Respectfully,
Robert Hart
Deputy Fire Chief
Acton Fire Department

Sent via mobile device

On Apr 23, 2014, at 5:38 PM, "Scott Mutch" <smutch@acton-ma.gov> wrote:

Gentlemen,

I apologize for the late notice, but in reviewing the above noted Site Plan Special Permit Application, I noticed that you were not included on the Staff review distribution list. There is nothing highly glaring for you guys, but the one question I do have is that at the rear of the property there are 2 above ground fuel storage tanks identified and immediately next to these is a wood processing operation. Any issues or concerns regarding this layout from a fire perspective?

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm.
Sincerely,

Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner
Town of Acton
Planning Department
472 Main Street
Acton, MA 01720
Tel: (978) 929-6631
Fax: (978) 929-6340
Email: planning@acton-ma.gov
Website: <http://www.acton-ma.gov/>

From: Cheryl Frazier
Sent: Wednesday, March 05, 2014 3:09 PM
To: Planning Department; Health Department; Tom Tidman; Engineering Department; Brian McMullen; Frank Widmayer
Subject: <http://doc.acton-ma.gov/dsweb/View/Collection-6123>

Good afternoon,

I am in receipt of a SPSP Application for 848-852 Main Street. **(SPSP#02/20/14-448)** The applicant is proposing to pave the existing gravel surface on the northwest part of the site and remove a portion of the existing bituminous concrete pavement to the south to provide compliance with the perimeter landscaping requirement in the Town of Acton Zoning Bylaw.

Please send your comment, if any, to Scott Mutch in the Planning Department no later than April 11, 2014.

Respectfully,
Cheryl

Cheryl Frazier
472 Main Street
Acton, MA 01720
978-929-6633 phone
978-264-9632 FAX
cfrazier@acton-ma.gov