



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:** January 7, 2015

From: Roland Bartl, AICP, Planning Director

Subject: **Acton Plaza II - Public Outdoor Seating**

The Board of Selectmen in their role as Site Plan Special Permit Granting Authority on June 23, 2013 approved an amendment of site plan #04/30/71-15 for the Acton Plaza, located in Kelley's Corner at 291 -307 Main Street (Acton I or Upper Plaza) and 371-395 Massachusetts Avenue (Acton II or Lower Plaza). The overview site plan sheet that shows the approved amendments is located at <http://doc.acton-ma.gov/dsweb/Get/Document-38434/W111028SS6-04-Site.pdf>. The Plan shows a reconfiguration of the parking lot in front of the Upper Plaza which makes room for a pedestrian area with public outdoor seating and tables in front of the building. This public amenity was memorialized as "public outdoor seating" in the Board's decision of approval.

The owner of the property, E&A Northeast LP, is now requesting that the Board of Selectmen, in its role as Sewer Commissioners, determine that this public outdoor seating is not subject to a sewer privilege fee. I am writing to express the Planning Department's support for the notion that this public outdoor seating does not constitute an intensification of a use within the meaning of the Town of Acton Sewer Assessment Bylaw, and therefore the owner should not be assessed any privilege fees for it. The public outdoor seating has been in place for all or most of 2014 and has been widely accepted in the community, most notably by high school students from the nearby campus. The seating is openly accessible; there is no table service by restaurants located in the plaza, and there is no requirement that anyone sitting there must have purchased food from these restaurants. Therefore, while the consumption of restaurant food in the seating area certainly occurs incidentally (as opposed to in the car in the parking lot), this is not restaurant seating.

The Acton 2020 Comprehensive Community Plan calls for a transformation of Kelley's Corner into a more walkable and pedestrian friendly mixed use area with outdoor amenities for Acton residents and area shoppers more generally. In developing the plans for the plaza improvements, E&A Northeast was aware of the goals in the Acton 2020 plan and in direct response provided pedestrian improvements and outdoor amenities throughout the Upper and Lower Plaza, including the subject public outdoor seating area, new sidewalks, and a kid's play area/park. The Town is now working on the Kelley's Corner Improvement Initiative, and public input so far firmly corroborates the Acton 2020 goals.

More technically from a zoning perspective: Where the Acton Plaza's Floor Area Ratio is in excess of FAR 0.20, it's layout and configuration is pre-existing non-conforming in many respects to the

now existing Kelley's Corner zoning requirements, which among other things call for pedestrian amenities including pedestrian plazas with outdoor seating. The improvements that E&A Northeast had incorporated in its plans and has now implemented, also serve to reduce the degree of non-conformity of the Plaza. Reducing non-conformities is always a goal when we review and critique proposed site plan changes on existing commercial properties. I commend E&A Northeast for working closely with Town staff throughout the site planning process and for their efforts in embracing the Town's Acton 2020 planning goals.

Lisa Tomyl

From: Doug Halley
Sent: Wednesday, January 07, 2015 11:44 AM
To: Roland Bartl; Steve Ledoux
Cc: Manager Department; Kristen Guichard
Subject: RE: Acton Plaza - Outdoor Seating
Attachments: ActonPlazaOutdoorSeating0001.pdf

Attached is the Health Department's recommendation regarding a request by E&A Northeast for a determination by the Sewer Commissioners of a non-intensification of use at the Acton Plaza Shopping Center.

From: Roland Bartl
Sent: Monday, December 22, 2014 10:22 AM
To: Steve Ledoux
Cc: Manager Department; Doug Halley; Kristen Domurad-Guichard
Subject: FW: Acton Plaza - Outdoor Seating

Hi, Steve:

This is a follow up on the matter of outdoor seating at Eden's upper Acton Plaza. The attached is only the final draft. A final signed letter should arrive at your office via USPS.

This result comes from meetings and conversations Doug and I had with Edens and their attorney. Doug will write a cover memo to the BoS in their role as Sewer Commissioners.

If it is okay, can you please place this on the 1/12/15 BoS agenda?

Thank you

Roland Bartl, AICP
Planning Director
Town of Acton
472 Main Street
Acton, MA 01720
978-929-6631

From: Brian C. Levey [<mailto:BLEvey@bdlaw.com>]
Sent: Friday, December 19, 2014 8:17 PM
To: Roland Bartl
Subject: Re: Acton Plaza - Outdoor Seating

My error. Of course, final version sent.

Brian C. Levey, Esq.
Beveridge & Diamond, P.C.
15 Walnut Street Suite 400
Wellesley, MA 02481
T (781) 416-5733 ~ F (781) 416-5799
blevey@bdlaw.com

CONFIDENTIALITY STATEMENT: This electronic message contains information from the law firm of Beveridge & Diamond, P.C. and may be confidential or privileged. The information is intended solely for the use of the individual(s)



INTERDEPARTMENTAL COMMUNICATION

Acton Board of Health - Telephone 978-929-6632 - Fax 978-929-6340

January 7, 2015

TO: Sewer Commissioners
FROM: Doug Halley, Health Director
SUBJECT: Acton Plaza – Outdoor Seating

During the implementation of improvements to the Acton Plaza Shopping Center it came to the attention of the Health Department that outdoor seating was a part of the improvements. This part of the proposal was overlooked by the Health Department during the review process of the Site Plan Special Permit. However, as the property is within the sewer service area a question was raised regarding a potential privilege fee for the intensification of a use on the property.

Section D-10.5 of the Sewer Assessment Bylaw states *“The Sewer Commissioners may establish reasonable fees pursuant to G.L. c. 83, § 17, to cover costs of construction of common sewers and other facilities required to serve land previously assessed a sewer betterment based on its existing use and/or its existing zoning potential where such land is later developed and/or subdivided for more intensive use (such as through a comprehensive permit under G.L. c. 40B, a zoning change, a subdivision, an approval not required plan, or other means)”*. Additional seating at a location is a possible intensification of a use as defined by the bylaw.

Application of this requirement was recently addressed at 255 Main Street when Subway requested outdoor seats for their customers. A prorated privilege fee was assessed to the property based on the number of months the outdoor seats would be in service. In this case it should be noted that the outdoor seats at 255 Main Street are directly in front of Subway and are clearly delineated by an enclosure surrounding the outdoor seating.

E&A Northeast LP has submitted a request to the Sewer Commissioners requesting that a determination be made that the purpose of the outdoor seating at the Acton Plaza Shopping Center is for broad public purposes and not intended to directly intensify the use of the existing food service facilities on the property. The Health Department has worked closely with E&A Northeast and agrees that the outdoor seating provided at the Acton Plaza Shopping Center is dissimilar to the outdoor seating at 255 Main Street.

The Acton Plaza Shopping Center outdoor seating is not enclosed and not directly related to any particular business on the property. It is located in a convenient location for walkers in the neighborhood to sit and converse for periods of time. When the seats are in use it's not unusual to see students from the Central School Complex sitting at the tables conversing and studying.

Based on the representations made in the letter from Brian C. Levy and a mutual understanding that the outdoor seating is available for all of the public the Health Department would recommend that the Sewer Commissioners determine that the public outdoor seating at the Acton Plaza Shopping Center is not an intensification of use as defined by the Sewer Assessment Bylaw Section D10-5.



Brian C. Levey
15 Walnut Street, Suite 400
Wellesley, MA 02481
Direct:(781) 416-5733
Fax:(781) 416-5799
blevey@bdlaw.com

December 18, 2014

Mike Gowing, Chair
Board of Sewer Commissioners
Town of Acton
472 Main Street
Acton, Massachusetts 01720

Re: Acton Plaza – Outdoor Seating

Dear Chairman Gowing:

This firm represents E&A Northeast LP (“E&A”) in connection with the implementation of certain improvements to the Acton Plaza Shopping Center at 291, 295, 313 and 315 Main Street and 381 and 401 Massachusetts Avenue, Acton (“Acton Plaza”). E&A respectfully requests that the Sewer Commissioners join the Board of Selectmen (the “Selectmen”) in its authorization of outdoor seating at Acton Plaza without the assessment of a Sewer Privilege Fee under the Sewer Betterment Bylaw, § D10.5.

By decision dated June 24, 2013, the Selectmen granted a Second Amendment of Decision on Site Plan Special Permit #04/30/71-15 for Acton Plaza (the “2013 Amended Site Plan Approval”). (See, 2013 Amended Site Plan Approval attached as Ex. 1) Paragraph 1.8 of the “Exhibits” section of that decision references “A Site Plan set entitled: ‘Proposed Site Improvements at Acton Plaza’ dated 01/16/13 and last revised on 05/28/13 consisting of eleven sheets, prepared by Bohler Engineering of 352 Turnpike Road Southborough, MA 01772 for Edens [the “2013 Site Plan”].” In turn, Sheet 4 of the 2013 Site Plan refers to and identifies the location of public outdoor seating at Acton Plaza. (See, Sheet 4 of 2013 Site Plan attached as Ex. 2.) Further, paragraph 2.7 of the “Findings and Conclusions” of the 2013 Amended Site Plan Approval expressly provides that “The proposed plan shows a public outdoor seating area along the front of the ‘Acton I’ building.” Finally, in granting the 2013 Amended Site Plan Approval, the Selectmen approved the “permit amendments as the Applicant had requested and as delineated in the Exhibits listed herein....”

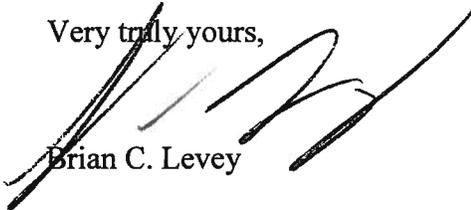
At the request of the Acton Public Health Director, Doug Halley, E&A now files this request for a second affirmation of the outdoor seating to the Selectmen sitting in its capacity as the Sewer Commissioners. The Sewer Betterment Bylaw provides for the assessment of a Privilege Fee in instances “where such land is later developed...for more intensive use...” based on the number of additional “Sewer Assessment Units” resulting from the work. Here, where

Mike Gowing, Chair
Board of Sewer Commissioners
Page 2

none of the variables associated with the calculation of Sewer Assessment Units under § D10.2(b)(iii) have been altered (i.e., floor area ratio and lot size), there is no change in the Sewer Units and, therefore, no increase in the Privilege Fee. Moreover, E&A has also provided an opinion to the Town confirming that the Massachusetts Uniform Plumbing Code, 248 CMR 10.00, requires no minimum toilet facilities. Nonetheless, even though no tenant of Acton Plaza owns or otherwise controls the outdoor seating, in an abundance of caution, E&A has secured the agreement of Dunkin Donuts to allow the customers of T.C. Lando's to use the rest rooms at Dunkin Donuts.

For all these reasons, E&A respectfully requests that the Sewer Commissioners vote to confirm the maintenance and use of public outdoor seating at Acton Plaza in accordance with the 2013 Amended Site Plan Approval without the imposition of any Sewer Privilege Fee.

Very truly yours,



Brian C. Levey

BCL/lcb
Enclosures

cc: Doug Halley, Public Health Director (w/enc.)
Roland Bartl, Planning Director (w/enc.)
Anne H. Meyer, Esq., Real Estate Counsel (w/enc.)
Keith Hague, Senior Project Manager (w/enc.)

RECEIVED
JUN 25 2013

TOWN CLERK, ACTON

Acton Plaza Shopping Center
Amendment # 2 Site Plan Special Permit #04/30/71-15
291, 295, 313 and 315 Main Street and 381 and 401 Massachusetts Avenue
June 24, 2013



Board of Selectmen

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6611
Fax (978) 929-6350
bos@acton-ma.gov
www.acton-ma.gov

SECOND AMENDMENT OF DECISION
#04/30/71-15 – Site Plan Special Permit

Acton Plaza Shopping Center

June 24, 2013

GRANTED

Decision of the Acton Board of Selectmen (hereinafter the Board) on the request of E&A Northeast LP, of 21 Custom House Street, Suite 450 Boston MA 02110 (hereinafter the Applicant), dated May 29, 2013 for an amendment of a Site Plan Special Permit dated April 30, 1971, previously amended on May 17, 1994 (together the Original Decision). The subject property is located at 291, 295, 313 and 315 Main Street and 381 and 401 Massachusetts Avenue (hereinafter the Site).

The Board considered the request at a duly noticed public hearing on June 24, 2013. Board members Janet Adachi (Chair), David Clough, Mike Gowing (Vice Chair), Katie Green (Clerk), and John Sonner were present. The minutes of the hearing and submissions upon which this Amendment Decision is based on may be found in the Town Clerk's office or the Board's office at the Acton Town Hall.

1. EXHIBITS

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

- 1.1 Cover Letter dated, May 29, 2013, by Brian C. Levey Esq. of Beveridge & Diamond;
 - 1.2 Memorandum dated, May 29, 2013, by Brian C. Levey Esq. of Beveridge & Diamond;
 - 1.3 Certified Abutters List;
 - 1.4 Site Plan "Acton Plaza" by LEA Group, prepared for Samuels and Associates, dated 08/24/1994.
 - 1.5 A letter from Bohler Engineering to Town Engineer, dated 06/28/13;
 - 1.6 State Highway Access Permit 3-2013-0023 from the Massachusetts Department of Transportation;
 - 1.7 Request for Determination of Applicability, filed with the Acton Conservation Commission on May 21, 2013;
 - 1.8 A Site Plan set entitled: "Proposed Site Improvements at Acton Plaza" dated 01/16/13 and last revised on 05/28/13 consisting of eleven sheets, prepared by Bohler Engineering of 352 Turnpike Road Southborough, MA 01772 for Edens;
 - 1.9 A Plan set entitled: "Edens: Acton Plaza I&II Redevelopment: Construction Document Submission, 291-307 Main Street and 371-395 Massachusetts Avenue, Acton, MA 01720"; dated March 7, 2013.
 - 1.10 Interdepartmental and other communication:
 - E-mail from Frank Windmayer III, Chief of Police, dated 06/13/13;
 - E-mail from the Engineering Department, dated 05/29/13;
 - E-mail from Patrick Futterer, Fire Chief, with follow up from Kristen Guichard, Assistant Planner, dated 06/17/13;
 - 1.11 The Original Decision of April 30, 1971.
 - 1.12 The first amendment decision of May 17, 1994.
- Exhibits 1.1 through 1.8 are referred to herein as the Plan.

2 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The amendment request is for approval of maintenance and modernization improvements on the Site, which include:
 - a. Reconfiguration of parking areas and curbing to improve site circulation;
 - b. Addition of a right-in/right-out driveway on Massachusetts Avenue;
 - c. Addition of a playground area;
 - d. Addition of walkways, sidewalks and other pedestrian amenities;

- e. Re-pavement of several areas in disrepair;
 - f. Minor grading improvements;
 - g. Landscape enhancements;
 - h. Minor outdoor lighting adjustments and fixture replacements to accommodate the above changes.
- 2.2 The proposed modifications will provide an additional nineteen (19) parking spaces. As proposed, the on-site parking arrangement remains in compliance with zoning.
 - 2.3 The proposed modifications, excluding the additional sidewalk along Main Street, will decrease impervious pavement by 2,000 square feet on the site.
 - 2.4 The proposed curb cut configuration at the north plaza "Acton I" off Non Name Road accommodates an SU-30 vehicle.
 - 2.5 The Applicant has provided verification of approval from the Massachusetts Department of Transportation to perform and complete the proposed right-in/right-out driveway on Massachusetts Avenue.
 - 2.6 The Applicant proposes a 6' wide asphalt sidewalk along the frontage of Main Street and a proposed 5' wide crosswalk on the north end of No-name Road. Students cross Main Street from the school campus to the stores in the "Acton I" building mid-block in the area of the proposed new sidewalk.
 - 2.7 The proposed plan shows a public outdoor seating area along the front of the "Acton I" building.
 - 2.8 The proposed plan shows a bicycle parking rack outside the "Acton I" building.
 - 2.9 The Applicant has agreed to grant the Town a sidewalk easement along the frontage of Main Street.
 - 2.10 Overall, Site drainage patterns will remain unchanged. In some areas, stormwater conveyance to the existing onsite storm drainage system will be change from uncontrolled sheetflow conditions to controlled pipe connection.
 - 2.11 The Applicant proposes to perform construction work between the hours of 5 p.m. and 7:00 a.m. during a five week period:
 - Upper Acton Plaza (Acton I) – Total night work duration = 2 weeks
 1. Milling and Grading = 5 nights
 2. Asphalt Paving = 5 nights
 - Lower Acton Plaza (Acton II) – Total night work duration = 3 weeks
 1. Concrete Curb Installation = 5 nights
 2. Milling & Grading = 3 nights
 3. Asphalt Paving = 5 nights
 - 2.12 The Applicant suggested they provide a night construction work schedule to the Police Department, Board of Selectmen, and Planning Department at least one week prior to the start of construction.

- 2.13 The Applicant stated that signs will be posted at each driveway entrance on the Site alerting the public of scheduled night work a minimum of one week prior to construction.
- 2.14 The Chief of Police requested the Applicant contact the Police Department prior to any construction.
- 2.15 The proposed Plan changes and the requested amendments of the special permits granted in the Original Decision have been determined to be minor in nature and do not trigger a new Special Permit as they do not expand the net floor area, ground area or impervious materials; rather the proposed modifications decrease the amount of impervious materials.

3 BOARD ACTION

Therefore, the Board voted unanimously on June 24, 2013 in favor of GRANTING the special permit amendments as the Applicant had requested and as delineated in the Exhibits listed herein, subject to the following conditions.

4 CONDITIONS

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

- 4.1 The Applicant shall contact the Police Department, Planning Department and Manager's Office one week prior to commencing construction to confirm the construction work schedule and details, and keep them posted throughout the project of progress and any changes. The Applicant shall deliver schedule change notices one week ahead, or as soon as possible.
- 4.2 The Applicant shall notify all residential abutters as they appear on the certified abutters list, plus known rental tenants, one week prior to commencing night work. The notices shall be sent by mail, postage prepaid, and shall inform the recipients of the beginning date of night work, the anticipated subsequent dates and duration of night work, and the anticipated hours of night work. In the event of major schedule changes the Applicant shall mail advance change notices one week ahead, or as soon as possible.
- 4.3 The Applicant shall post signs at each driveway entrance on the Site alerting the public of scheduled night work a minimum of one week prior to construction. Such signs shall be removed once construction is completed.
- 4.4 All construction lighting for night work shall be installed at angles to shine away from residential abutters.
- 4.5 Night work on the eastern half of the lower plaza (Acton II) at Mass. Avenue shall not occur for more than three consecutive nights at a time.
- 4.6 All construction activity on the property relating to this special permit amendment shall be limited to Monday through Saturday; No work is permitted on Sundays & Holidays.

- 4.7 Throughout the construction period, the Applicant shall make every reasonable effort to minimize adverse construction conditions, such as dust, noise and lights, on neighboring and abutting properties.
- 4.8 All proposed new outdoor lighting shall comply with Bylaw Section 10.6.2.2 to control light trespass and glare.
- 4.9 Amend the plan to show additional landscaping elements (plantings and/or split rail or other fencing) along the proposed new Main Street sidewalk designed to encourage pedestrians to consider crossing Main Street using the crosswalk at the No-name Street intersection.
- 4.10 Amend the plan to show a bicycle parking rack near the proposed playground area to accommodate bike parking for the "Acton II" building.
- 4.11 The Applicant shall work with the Town to establish a sidewalk easement along the frontage of the property on Main Street.
- 4.12 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 4.13 Upon completion of construction, the Applicant shall submit to the Zoning Enforcement Officer an as-built plan stamped by a land surveyor and/or engineer as required for the information shown, showing the buildings, pavement, drainage, walkways, utilities, and pavement markings in their true relationship to lot lines, and outdoor lighting and appropriate grades and elevations. The as-built plans shall be accompanied by a Professional Engineer's certification stating that the project conforms to the approved Plan.
- 4.14 The Applicant shall record this Decision at the Middlesex South District Registry of Deeds.
- 4.15 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the Plan as conditioned, modified, and approved herein.

5 EFFECT AND SCOPE OF THIS AMENDMENT DECISION

This Amendment Decision only responds and decides on the limited matters before the Board as outlined herein. Except as herein specified, the Original Decision shall remain in full force and effect.

The Town of Acton Board of Selectmen


Janet K. Adachi, Chair

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Owner

Building Commissioner
Town Engineer
Natural Resources Director
Police Chief
Historical Commission

Health Director
Municipal Properties Director
Town Manager
Acton Water District
Assistant Assessor



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:** January 7, 2015
From: Roland Bartl, AICP, Planning Director
Subject: **Acton Plaza II - Public Outdoor Seating**

The Board of Selectmen in their role as Site Plan Special Permit Granting Authority on June 23, 2013 approved an amendment of site plan #04/30/71-15 for the Acton Plaza, located in Kelley's Corner at 291 -307 Main Street (Acton I or Upper Plaza) and 371-395 Massachusetts Avenue (Acton II or Lower Plaza). The overview site plan sheet that shows the approved amendments is located at <http://doc.acton-ma.gov/dsweb/Get/Document-38434/W111028SS6-04-Site.pdf>. The Plan shows a reconfiguration of the parking lot in front of the Upper Plaza which makes room for a pedestrian area with public outdoor seating and tables in front of the building. This public amenity was memorialized as "public outdoor seating" in the Board's decision of approval.

The owner of the property, E&A Northeast LP, is now requesting that the Board of Selectmen, in its role as Sewer Commissioners, determine that this public outdoor seating is not subject to a sewer privilege fee. I am writing to express the Planning Department's support for the notion that this public outdoor seating does not constitute an intensification of a use within the meaning of the Town of Acton Sewer Assessment Bylaw, and therefore the owner should not be assessed any privilege fees for it. The public outdoor seating has been in place for all or most of 2014 and has been widely accepted in the community, most notably by high school students from the nearby campus. The seating is openly accessible; there is no table service by restaurants located in the plaza, and there is no requirement that anyone sitting there must have purchased food from these restaurants. Therefore, while the consumption of restaurant food in the seating area certainly occurs incidentally (as opposed to in the car in the parking lot), this is not restaurant seating.

The Acton 2020 Comprehensive Community Plan calls for a transformation of Kelley's Corner into a more walkable and pedestrian friendly mixed use area with outdoor amenities for Acton residents and area shoppers more generally. In developing the plans for the plaza improvements, E&A Northeast was aware of the goals in the Acton 2020 plan and in direct response provided pedestrian improvements and outdoor amenities throughout the Upper and Lower Plaza, including the subject public outdoor seating area, new sidewalks, and a kid's play area/park. The Town is now working on the Kelley's Corner Improvement Initiative, and public input so far firmly corroborates the Acton 2020 goals.

More technically from a zoning perspective: Where the Acton Plaza's Floor Area Ratio is in excess of FAR 0.20, it's layout and configuration is pre-existing non-conforming in many respects to the

now existing Kelley's Corner zoning requirements, which among other things call for pedestrian amenities including pedestrian plazas with outdoor seating. The improvements that E&A Northeast had incorporated in its plans and has now implemented, also serve to reduce the degree of non-conformity of the Plaza. Reducing non-conformities is always a goal when we review and critique proposed site plan changes on existing commercial properties. I commend E&A Northeast for working closely with Town staff throughout the site planning process and for their efforts in embracing the Town's Acton 2020 planning goals.