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**DECISION** of the Board of Selectmen (hereinafter the Board) on the petition of Acton Assisted Living, LLC. (Hereinafter the Petitioner) for the property located at 886, 900 Main Street and 8 Eastern Road, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map C-5 Parcels 39-2, 6-1, 6, and 20.

This Decision is in response to an application submitted to the Board on April 25, 2003 by the Petitioner for an amendment to the Site Plan Special Permit under Section 10.4 and Special USE Permit under Section 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw) to construct additional units within Full Service Retirement Community.

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 June 23, 2003 at 7:15 P.M. in the Selectmen's Hearing Room at the Acton Town Hall. Board members Walter Foster, F. Dore` Hunter, Peter Ashton, William Shupert III and Robert Johnson were present throughout the proceedings.

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 written request dated April 25, 2003 to amend the existing decision; A booklet dated October 31, 2002 containing, A certified abutters list, Stormwater Management Form, Recorded plans, Drainage calculations, Water balance calculations, Earth removal/ fill calculations, Roof-drain Drywell Calculations and Soil testing data; Traffic Study dated March 2003 by David J. Friend; Updated Fiscal Impact Report received February 10, 2003 from Stephen Vassa; Sound report dated January 23, 2003 from Hawk Design, Inc. A fifteen sheet set of development plans, dated November 10, 1998 revised February 05, 2003;

**Exhibit II**

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

1. Building Commissioner dated June 13, 2003
2. Town Planner dated December 30, 2002 revised May 2, 2003
3. Municipal Properties Director dated May 16, 2003 revised May 20, 2003
4. Engineering Administrator dated May 28, 2003
5. Health Department dated May 15, 2003
6. Transportation Advisory Committee not dated
7. Recreation Director dated May 12, 2003
8. Acton Community Housing Corporation dated June 20, 2003

Exhibit I, hereinafter referred to collectively as the Plan

**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 Small Manufacturing Zoning District and Zone 3 of the Groundwater Protection District. The Full Service Retirement Community USE is allowed by Special Permit in the Small Manufacturing Zoning District and by right in Zone 3.

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- 1.2 This proposal is a phase 2 consisting of 45 additional housing units. This decision is intended to supplement the initial decision along with the four amendments. Therefore the original decision with amendments remains in full force and effect and applies to these additional 45 units.
- 1.3 The Acton Recreation Department expressed concern about the walking paths at NARA. The paths are “stone dust” and the senior residents may have difficulty with footings. The developer has agreed to provide a gift in the sum of \$6,500 to help defray the cost of paving some of the paths.
- 1.4 The Transportation Advisory Committee noted that a utility pole located along Main Street still has the two original unshielded outdoor light fixtures in place. The fixtures do not meet the design standard of the Bylaw and should be removed.
- 1.5 The Bylaw section 10.4.3.4. requires sidewalks along the frontage or in such other locations as it deems necessary to accommodate the safe movement of pedestrians and bicyclists. The site has frontage north of the driveway to Nashoba Sportsman Club along Nashoba Brook. The Board finds that the following additional sidewalks/crosswalks better serve the residents of the facility than continuing the sidewalk north of the northerly site driveway;
  - a.) Relocate the proposed sidewalk along Main Street in front of the Kelleher property so as to cross the Kelleher parcel driveway and then continue on the shoulder section separate from Main Street until it reaches the Eastern Road intersection.
  - b.) The existing sidewalk along Eastern Road shall be extended so as to create a crosswalk parallel to Main Street.
- 1.6 The sound report recommends both an earthen berm four feet high and an eight foot high fence to help mitigate any potential sound attenuation from the Bennett property and Nashoba Sportsman’s Club. Both the berm and fence shall be constructed prior to occupancy on any home in the affected area. The Petitioner shall have Hawk Design certify the constructed berm and fence meets the intent of their recommendations prior to occupancy of any affected unit.
- 1.7 At the request of the Board, the Petitioner, during phase I, has agreed to give a consumer disclosure to all prospective purchasers or renters of units. Such disclosure is intended to explain, in plain language issues relevant to the development. The Board finds such disclosure shall continue to be provided to all prospective purchasers or renters of the units.
- 1.8 The Acton Community Housing Corporation recommended that three units be provided as “affordable”. The Petitioner has agreed to provide three affordable units which are limited in size to 1200 square feet.
- 1.9 The following issues were noted by the Town Engineering Department;
  - a.) Correctly indicate which lots are part of this project.
  - b.) The Petitioner shall insure the sidewalk in front of the Bennett Property is located within the layout of Main Street and the 10” white pine is either removed or pruned for proper installation of the sidewalk.
  - c.) A stop sign and line be added to the new access driveway on Main Street.
  - d.) The description in the drainage system operation/maintenance plan for the slide gate valves should clearly indicate their locations, purpose and how they operate.
- 1.10 The Board wants to reinsure the project remain age-restricted. The Board will condition this decision on an age restriction.

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1.11 The Plan as modified below in this Decision:

- 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 to **GRANT** the requested Phase 2 Special Use 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 evidence 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 Plan, as modified in accordance with and as approved for construction by the Building Commissioner to the Building Commissioner prior to the issuance of a Building Permit.

- 2.1 Relocate the proposed sidewalk along Main Street in front of the Kelleher property so as to cross the Kelleher parcel driveway and then continue on the shoulder section separate from Main Street until it reaches the Eastern Road intersection.
- 2.2 The existing sidewalk along Eastern Road shall be extended so as to create a crosswalk parallel to Main Street.
- 2.3 Correctly indicate which lots are part of this project.
- 2.4 A stop sign and line be added to the new access driveway on Main Street.
- 2.5 The description in the drainage system operation/maintenance plan for the slide gate valves should clearly indicate their locations, purpose and how they operate.

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**3.0 Conditions**

- 3.1 As agreed, the Petitioner shall provide a gift in the sum of \$6,500 for paving the walking path at NARA. The gift shall be provided prior to the issuance of any building permit.
- 3.2 Each Dwelling unit shall be occupied by at least one person fifty-five (55) years of age or older and no dwelling unit shall be occupied by more than four persons. No person under the age of twenty-one (21) shall reside within a dwelling unit in the Full Service Retirement Community for more than three (3) consecutive months in any calendar year. These age and occupancy restrictions shall be set forth in a deed restriction, restrictive covenant, or other document to be recorded with the Special Permit and to run with the land in perpetuity. This restriction shall be enforceable by any unit owners' association or by the town in any legal action as may be permitted by law or equity.
- 3.3 Both the berm and fence shall be constructed prior to occupancy on any home in the affected area. The Petitioner shall have Hawk Design certify the constructed berm and fence meets the intent of their recommendations prior to occupancy of any affected unit.
- 3.4 The utility pole located along Main Street and any signs not licensed by the Building Department according to Bylaw section 7 shall be removed prior to issuance of any Building Permit.
- 3.5 The Petitioner shall insure the sidewalk in front of the Bennett Property is located within the layout of Main Street and the 10" white pine is either removed or pruned for proper installation of the sidewalk.
- 3.6 The Petitioner shall provide three (3) affordable 1,200 square foot units. The three affordable units shall be priced, marketed, and deed restricted so as to qualify as Local Initiative Program (LIP) units in accordance with current guidelines and requirements of the MADHCD. This may include but not be limited to the Elderly Exception Program. The sale of the affordable units shall be governed by a Regulatory Agreement, which restricts the sales of the affordable units. Sales of the affordable units must be subject to long term deed restrictions requiring owners to sell to other income qualified purchasers and limit the price on resale to ensure they remain affordable. The Master Deed, to state the ownership interest in the units will be based on the actual sales price of the unit. As a result, condominium fees and voting rights will be proportional to ownership interest. The Deed documents will state the percentage of ownership interest for each of the affordable units. The Petitioner shall bear all costs associated with marketing of the affordable units, selection of qualified buyers, and the sale of the affordable units, including the preparation of the LIP applications and the necessary regulatory agreements, restrictions and deed riders. All homeowners of the development will be informed in advance, as part of the marketing program, about the affordable units present in the development. They will also be informed in writing that any condominium fees will be prorated based on a ratio of the selling price of the market rate units to the affordable units which will result in lower fees paid by the affordable owners. The occupancy permit for the first affordable unit shall be by the 12<sup>th</sup> occupancy permit issued, the second affordable unit shall be by the 24<sup>th</sup> occupancy permit issued and the last affordable unit shall be by the 36<sup>th</sup>.
- 3.7 The owner shall pay Real Estate Taxes as provided by Massachusetts General Laws. In the event a future owner of the development is eligible for an exemption from property taxes, such owner shall enter into an agreement in lieu of taxes that would result in payments to the Town equal to the amount that otherwise would be paid as property taxes.

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- 3.8 The Petitioner shall provide a numbering system for the buildings, reasonably acceptable to the Building Commissioner prior to the issuance of any building permit.
- 3.9 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 rights granted to the Petitioner by this permit are limited as and subject to 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, all nonconforming signs shall be removed prior to the issuance of the Building Permit.
- 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 July 14, 2003 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 applicant with or without a new hearing.

