

TOWN OF ACTON

Building Department

INTERDEPARTMENTAL COMMUNICATION

4/9/07
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To: Board of Selectmen **Date:** April 5, 2007
From: Garry A. Rhodes, Building Commissioner *Garry Rhodes*
Subject: Special Permit #04/07/03-391
2 Craig Road (Shupert)

I had previously circulated this Draft Decision on 2 Craig Road Special Permit for your review. I have heard from several Selectmen on suggested changes. To expedite your review, I highlighted the additions in red and the deletions as red strike.

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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Daniel Magrath, Athletes Edge (hereinafter the Petitioner) for the property located at 2 Craig Road Acton, Massachusetts. Said property is shown on Acton Town Atlas Map H-4 parcel 25.

This Decision is in response to an application submitted to the Board on January 26, 2007 along with a follow-up letter dated February 1, 2007 by the Petitioner for an amendment of the existing Special Permit under Section 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw), to change the limitation on the hours of operation.

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 February 26, 2007 at 8:40 PM and closed on March 26, 2007 at 7:30 PM in the Francis Faulkner Room at the Acton Town Hall. Board members Walter Foster, Lauren Rosenzweig, Andrew D. Magee, F. Dore` Hunter and Peter Ashton, 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.

Submitted for the Board's deliberation prior to the close of the hearing were the following exhibits:

Exhibit I

A request to amend the decision dated January 26, 2007 and February 1, 2007. Numerous letters and e-mails in opposition and in support of the request.

Exhibit II

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

- Building Commissioner dated January 30, 2007 and February 23, 2007
- Town Planner dated February 6, 2007
- Health Director dated February 5, 2007
- Municipal Properties Director dated January 29, 2007
- Fire Chief dated February 22, 2007

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 subject to a Special Permit issued on June 23, 2003 and amended on July 12, 2004. Both Permits are to allow a Commercial Recreation USE with a total of 20,000 square feet of the existing 45,000 square foot building.
- 1.2 Currently the Special Permit has three conditions, they are as follows;
 - (1) The Petitioner shall put in place procedures to ensure all vehicles park on site.
 - (2) The Spruce tree shall be up branched to a height of 7' prior to any building permit.

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(3) The hours of operation are limited to 6:00 AM to 9:00 PM weekdays and 8:00 AM to 5 PM weekends. The Petitioner seeks to increase the hours of operation of Athletes Edge, who occupy 15,000 square feet from 8:00 AM to 5 PM on weekends to 8:00 AM to 9:00 PM on weekends. The Petitioner also seeks to increase the hours of Anytime Fitness who occupy 5,000 square feet to 24 hours 7 days a week.

- 1.3 The Board received many letters and e-mails from the neighbors in opposition to the request to increase hours. The neighbors concerns can be summarized as follows;
Do not want a 24 hour business open there,
Noise from vehicles,
Decrease in property values,
Do not want the Board of Selectmen to negotiate 24 hours,
If only a few people use the facility at night why inconvenience the entire neighborhood,
They were concerned a larger facility could open there,
Don't trust the business to live within any time limits,
Traffic does not stop at the intersection of Lawsbrook Road and School Street,
The use of the rear door will increase the traffic and vehicle lights at night.
- 1.4 The Board received many letters and e-mails in support of the request to increase hours. The letters in support can be summarized as follows;
They were concerned if this business was not there another business that could not be limited by Special Permit might open there,
Wants a facility to be open more hours to meet the need for non-traditional work schedules,
Wants to support a facility that has been instrumental in the development of children's athletic abilities,
Athletes Edge has provided space for local fund raising and has contributed to the fund raising,
Provides space for school training when school fields are not available,
Provides support to troubled youth.
- 1.5 The Board finds there have been complaints concerning compliance with the current hours of operation. The Board finds it is necessary to clarify the hours of operation.
- 1.6 The Board finds there is both strong support and strong opposition to the request to increase hours of operation. The Board finds that only by Special Permit can they limit hours of operation and set conditions.
- 1.7 The Decision will remain in full force and effect except as herein amended.

Therefore, the Board voted to conditionally **GRANT** in part an amendment of the existing Special Permit as follows.

2.0 Conditions

- 2.1 This Permit is limited to Athletes Edge and Anytime Fitness. Any change to a different business or different owner shall only be allowed by further action by the Board.
- 2.2 The rear door to Anytime Fitness shall be exit only. The approval of the door hardware shall be subject to the acceptance by the Building Commissioner.

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- 2.3 The Petitioner shall put in place written procedures to ensure all vehicles are parked either on this site or on a neighboring site and not on either Craig Road or School Street.
- 2.4 The Petitioner shall provide two Handicap Parking spaces including signs adjacent to the entrance to Athletes Edge. Those spaces shall be painted.
- 2.5 The hours of operation of both Athletes Edge and Anytime Fitness shall be limited to 6:00 AM to 9:00 PM. In order to clarify "hours of operation" the following shall apply; the doors shall be locked and all paying clients shall not be allowed to enter or shall have exited the building. The Petitioner shall encourage all clients not to remain on site after or before "hours of operation".
- 2.6 The "hours of operation" of Anytime Fitness shall be limited to 00 AM to 00 PM but subject to the following additional conditions:
 - 2) Written procedures shall be in place clients, after the hours of 6:00 PM, to park either to the northwest of the building or in the parking lot of 1 Craig Road, if permission is obtained from the owner of 1 Craig Road.
 - 3) Front yard along School Street shall include a semi-opaque landscape screen. Said screen shall be opaque from the ground to a height of three feet, with intermittent visual obstruction from above the opaque portion to a height of at least 20 feet. The semi-opaque screen is intended to block visual contact between uses and to create a strong impression of the separation of spaces. The opaque screen may be composed of a wall, fence, landscaped earth berm or densely planted vegetation. The semi-opaque screen may be composed of planted vegetation or existing vegetation. At maturity, the portion of intermittent visual obstructions should not contain any completely unobstructed openings more than ten (10) feet wide. The zone of intermittent visual obstruction may contain deciduous plants. Examples of screens meeting this standard include combinations of the following:
 - small trees planted 30 feet on center, or large shade trees planted 40 feet on center; and
 - a 3-foot high stone wall or landscaped earth berm, or 3-foot high evergreen hedge shrubbery planted 3 feet on center.

The Petitioner shall prepare a plan of the landscaping for the approval of the Building Commissioner. The landscaping shall be completed prior to increase in hours provided for in 2.6.
- 2.7 The Petitioner shall be responsible for keeping noise to the lowest levels possible. Any complaints concerning either parking or noise shall be directed to the Building Commissioner in writing. The Building Commissioner shall notify the Petitioner of such complaint and they shall immediately address the problem.
- 2.8 This permit, to increase hours of operation, shall lapse if; The Building Commissioner has received a verified written complaint that the Petitioner has not resolved to the satisfaction of the Building Commissioner within thirty days. The Building Commissioner shall notify the Petitioner in writing of said complaint. The petitioner may request a hearing with the Board if aggrieved by the decision of the Building Commissioner.
- 2.9 The Petitioner shall not request any further amendments for a period of 6(six) months from the date when this Decision is signed by the Chairman
- 2.10 The Petitioner shall place up to three "Directional Signs" as by Bylaw 7.5.3 directing vehicles going to Anytime Fitness down Craig Road. They shall be placed at the direction of the Building Commissioner

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3.0 **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 day of April 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

Date filed with Town Clerk

Eva Taylor, Town Clerk

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

Date

Eva 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

