

5/19/08

(11)

Use Special Permit – 04/02/08 - 413  
Anytime Fitness  
May 19, 2008

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**Board of Selectmen**

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**DECISION**  
**04/02/08 - 413**

New England Gyms, Inc. / d.b.a. Anytime Fitness  
Use Special Permit  
May 19, 2008

**GRANTED**

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of New England Gyms, Inc. / d.b.a. Anytime Fitness (hereinafter the Applicant) for property located at 5 Nagog Park in Acton, Massachusetts, owned by KVA Nagog LLC & Alevizos Nagog, LLC, c/o Peter Alevizos, 396 Washington Street, Suite 325, Wellesley, MA 02481. The property is shown on the 2007 Acton Town Atlas map B-4 as parcel 7-2 (hereinafter the Site).

This Decision is in response to an application for a use special permit submitted to the Board on April 2, 2008, pursuant to Sections 3.5.15 and 10.3.5 of the Acton Zoning Bylaw (hereinafter the Bylaw) to establish a Commercial Recreation Use with a net floor area of 2000 square feet or greater (hereinafter the Use).

The Board held a duly noticed public hearing on May 12, 2008. Board members Lauren Rosenzweig (Chair), Paulina Knibbe (Vice Chair), Peter Berry, and Terra Friedrichs were

present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

## **1 EXHIBITS**

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

- 1.1 Application items and documentation:
  - A properly executed application for a special permit to the Board of Selectmen, dated April 2, 2008.
  - Filing Fee.
  - Cover letter with brief use description from applicant by Jim Buck and John Cherubini.
  - Location map and aerial photo.
  - Certified abutters list.
  - Photos of the building unit at the Site where the proposed would be located.
- 1.2 Interdepartmental communication received from:
  - Acton Health Department, dated 4/11/08;
  - Acton Engineering Department, dated 4/25/08;
  - Acton Planning Department, dated 5/5/08.

Exhibit 1.1 is 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 Site is located within the Limited Business (LB) zoning district and the Groundwater Protection District Zone 4.
- 2.2 The Use, Commercial Recreation with 2000 or more square feet, is allowed on the Site by special permit in accordance with the Bylaw, including all overlay district requirements.
- 2.3 The Use would be located in a 3,200 square foot business unit at the Nagog Square Shopping Plaza that is located on the southern end of the northerly plaza building.
- 2.4 The Applicant is seeking authorization under the special permit to operate the Use 24 hours a day and 7 days a week. The proposed location is suitable for the proposed business hours.
- 2.5 The Site is serviced by the North Acton treatment plant, which is subject to flow limits under orders of the Mass. Department of Environmental Protection.
- 2.6 The Board has received comments from various Town departments, which are listed in Exhibit 1.1 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.7 The Use and the Plan as conditioned and amended herein are consistent with the Master Plan, in harmony with the purpose and intent of the Bylaw, will not be detrimental or injurious to the neighborhood in which the Use is to take place, are appropriate for the Site; and comply in all respects to the applicable requirements of the Bylaw.

### **3 BOARD ACTION**

Therefore, the Board voted to GRANT the requested special permit subject to and with the benefit of the Plan modifications, conditions, and limitations.

#### **3.1 CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or occupancy permit 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.

- 3.3.1 Prior to the issuance of a building permit or occupancy permit for the Use, whichever is first, the Applicant or the owner of the Site shall submit to the Engineering Department the current layout plan of the business units in the buildings at the Nagog Square Shopping Plaza.
- 3.3.2 No showers shall be installed in the business unit where the Use will be located nor shall there be any other showers on the Site associated with the Use.
- 3.3.3 The Applicant and operator of the Use shall establish and from time to time update rules and regulations for business patrons regarding proper and courteous conduct and safety, especially at night hours. Such rules and regulations shall also require that patrons avoid excessive noise, and that patrons who use the facility at night shall park their vehicles with headlights facing away from nearby residential areas, i.e. west towards Great Road or north towards Littleton.
- 3.3.4 The Use shall be established and operated at all times in compliance with all applicable requirements promulgated by the Acton Board of Health.
- 3.3.5 The Use shall be established and conducted at all times in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.3.6 All taxes now due, and penalties and back charges, if any, resulting from the non-payment of taxes, shall be paid in full prior to issuance of a building permit or occupancy permit for the Use, whichever is first.
- 3.3.7 This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit or occupancy permit for the Use, whichever is first.

#### **3.4 LIMITATIONS**

The authority granted to the Applicant under this special permit is limited as follows:

- 3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.4.2 This special permit applies only to the Site identified in this decision and to the Use and activity indicated in the Plan.
- 3.4.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

3.4.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

**4 APPEALS**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Board of Selectmen

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Lauren S. Rosenzweig, Chair

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

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Eva Taylor, Town Clerk

Date

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Owner

Building Commissioner  
Engineering Administrator  
Conservation Administrator  
Police Chief  
Assistant Assessor

Health Director  
Municipal Properties Director  
Town Manager  
Acton Water District

DRAFT