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Use Special Permit - #12/24/09-423
344 Great Road
February 8, 2010



Board of Selectmen

TOWN OF ACTON

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DECISION

#12/24/09-423

344 Great Road

Use Special Permit
February 8, 2010

GRANTED with Conditions

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of Po's Barbeque, LLC, c/o Po P. Pai, 11 Forest Road, Acton, MA 01720 (hereinafter the Applicant) for the property located at 344 Great Road in Acton, Massachusetts, owned by Acton Woods Associates Limited Partnership, c/o Cres Development Company, Inc., 50 Salem Street, Lynnfield, MA 01940. The property is shown on the 2007 Acton Town Atlas; map D-4 as parcel 28 (hereinafter the Site).

This Decision is in response to an application for a use special permit, submitted to the Board of Selectmen on December 24, 2009, pursuant to Section 3.5.5 of the Acton Zoning Bylaw (hereinafter the Bylaw), to establish a 19 seat restaurant. The Board opened a duly noticed public hearing on February 8, 2010 and heard testimony from the applicant

as well as municipal staff. The Board then proceeded to close the public hearing.

Board members Paulina Knibbe (Chair), Peter Berry (Vice Chair), Lauren Rosenzweig (Clerk), Mike Gowing 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 Acton Town Hall.

1 EXHIBITS

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

1.1 A properly executed application for a Use Special Permit was received and filed with the Town Clerk on December 24, 2009. The drawings and documents submitted as part of the application comprise the following:

- Cover Letter signed by Po P. Pai, Manager of Po's Barbeque, LLC.;
- A-1.1 – Existing Floor Plan prepared by Choo & Company, Inc., One Billings Road, Quincy, MA 02171, dated October 15, 2009, and revised December 14, 2009;
- A-1.1 – Proposed Floor Plan prepared by Choo & Company, Inc., One Billings Road, Quincy, MA 02171, and dated October 15, 2009.

Additional documentation submitted as part of the application included the following:

- Certified Abutters List.

1.2 Interdepartmental communication was received from:

- Acton Health Department, dated January 15, 2010;
- Acton Engineering Department, dated January 20, 2010.

1.3 Other Correspondence included:

- Copy of Previous Site Plan Permit #03/09/83-230 approved December 7, 1983;
- Copy of Amendment to Previous Site Plan Permit #03/09/83-230 approved January 7, 1992.

Exhibit 1.1 is hereinafter referred to as the Plan.

2 FINDINGS AND CONCLUSIONS

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

- 2.1 The site is located within a Limited Business Zoning District and Groundwater Protection District Zones 2 and 3.
- 2.2 The entire property is approximately 5.34 acres (232,610 ft²) in area.
- 2.3 The applicant is proposing to expand an existing restaurant by adding additional seats. A restaurant with 10 seats or less is permitted as of right in the subject zoning district. Any additional seats in excess of 10 requires a USE Special Permit.
- 2.4 The proposed restaurant use is permitted on the Site by Use Special Permit.
- 2.5 The shopping plaza was constructed in 1985 under Site Plan #03/09/83-230. The plaza consists of a number of different and independent retail/commercial businesses and is approximately 43,312 square feet in size.

- 2.6 The total number of restaurant seats is being increased from 10 seats to 19 seats total (all seats to be located within the structure, no seating is proposed or approved for the exterior of the restaurant).
- 2.7 There are no modifications or alterations proposed to the existing parking lot. Based upon the requirements of Section 6.3.1.7, the existing parking lot would seem to comply with the minimum Bylaw parking requirements.
- 2.8 There are no proposed modifications or alterations to the structure which affect the overall FAR of the property.
- 2.9 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 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.
- 2.10 The proposed use and the Use Special Permit applied for herein are consistent with the Master Plan, will not be detrimental or injurious to the neighborhood in which the use is to take place, provides for convenient and safe vehicular and pedestrian movement within and through the site, provides an adequate number of parking spaces, provides adequate methods of refuse and waste removal from the site, and is in harmony with the purpose and intent of the Bylaw.

3 BOARD ACTION

Therefore, the Board voted to GRANT the requested Use Special Permit subject to and with the benefit of the following Plan modifications, conditions, and limitations.

3.1 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer confirms that any proposed building permit plans are in compliance with information submitted, reviewed and approved as part of this Use Special Permit. Except where otherwise provided, all such information shall be subject to the approval of the Zoning Enforcement Officer. Where approvals are required from persons or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

- 3.1.1 The General Notes on both of the existing and proposed Floor Plans (sheet A-1.1) dated October 15, 2009 and revised December 14, 2009 must be revised to reflect the scope of work related to the proposed restaurant.

3.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this Use Special Permit null and void, without force and effect, and shall constitute grounds for the revocation of this Use Special Permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this Use Special Permit using any and all powers available to it under the law.

- 3.2.1 The Use shall be established and operated at all times in compliance with all applicable requirements promulgated by the Acton Board of Health.
- 3.2.2 The owners of the property shall provide to the Town a layout of the entire shopping plaza clearly identifying all of the individual retail/commercial units and showing the

assigned street addresses or unit numbers to ensure that emergency personnel (Fire & Police) have the most recent and current street numbering being utilized. This will assist in avoiding any potential confusion during a potential 911 situation.

- 3.2.3 The Use shall be established and conducted at all times in accordance with the terms of this Use Special Permit and shall conform with and be limited to the improvements indicated in the Plan as modified herein.
- 3.2.4 No work on the Site shall begin prior to the issuance of a building permit.
- 3.2.5 The applicant shall be diligent and ensure that absolutely no construction debris or material from the site enter any of the abutting properties, storefronts, parking lot area, or the Main Street and Great Road public right-of-ways.
- 3.2.6 All construction activity on the property relating to this Site Plan Special Permit shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: no work permitted.
- 3.2.7 All work on the Site shall be conducted in accordance with the terms of this Use Special Permit and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.2.8 Any changes to the site that are not in conformance with this Use Special Permit shall require the approval of the Board.
- 3.2.9 Every attempt shall be made to minimize any adverse construction conditions (such as, but not limited to dust and noise, etc.) on neighboring and abutting properties and commercial spaces.
- 3.2.10 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 Use Special Permit is limited as follows:

- 3.4.1 The foregoing required 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 Use Special Permit applies only to the Site identified in this decision and to the proposed use and activity as shown on 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 Prior to any building permit being issued for the subject project, the applicant shall demonstrate compliance with any and all other comments/concerns provided by other municipal disciplines.
- 3.4.5 Prior to any Certificate of Occupancy being approved or issued for the subject use, the applicant shall demonstrate compliance with all conditions and comments imposed by the Board of Selectmen through this Use Special Permit.
- 3.4.6 This Use 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, and 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.

3.4.7 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Use 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

Paulina Knibbe, Chair

Date Filed with Town Clerk

Eva Taylor, Town Clerk

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.

Eva Taylor, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief

Building Commissioner
Engineering Administrator
Planning Department
Police Chief

Health Director
Assistant Assessor
Town Manager
Owner

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