11/27/03
11

##

DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Starbucks Coffee. (Hereinafter the Petitioner) for the property located at 411 Mass Ave. Acton, Massachusetts. Said property is shown on Acton Town Atlas Map F-3 Parcels 108 and 114.

This Decision is in response to an application submitted to the Board on November 04, 2002 by the Petitioner for a Special Permit under Section 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw), to establish a 15 interior seat and 13 seasonal exterior restaurant.

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 December 16, 2002 at 7:15 P.M. continued to January 13, 2003 at 7:10 PM in the Selectmen's Hearing Room at the Acton Town Hall. Board members, William Shupert III, Peter Ashton, F. Dore' Hunter, Pamela Harting-Barrat and Walter Foster 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.

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

Exhibit I

A properly executed application for Special Use Permit received November 4, 2002. A plan showing the layout of the restaurant and a site plan dated 12-26-02 prepared by FSL Associates.

Exhibit II

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

1. Building Commissioner dated December 12, 2002 & January 9, 2003
2. Municipal Properties Director dated November 13, 2002
3. Fire Chief dated November 13, 2002
4. Health Director dated November 14, 2002
5. Town Planner dated November 26, 2002
6. Transportation Advisory Committee dated December 11, 2002
7. Engineering Department Dated December 12, 2002

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 the Kelley's Corner Zoning District and the restaurant is permitted by Special Use Permit.

1.2 The site is located in Zone 4 of the Groundwater Protection District.

1.3 The Board finds that parking spaces #13 &14 may create conflict with traffic entering the site. The Board therefore determined spaces 13 and 14 shall be placed in reserve and marked as such on the plan. The spaces shall only be constructed at the order of the Board if the need exist.

1.4 The crosswalk proposed to access "Roche Plaza" across "No Name" requires approval of the abutter. The Petitioner shall make all possible effort and continue to make, to secure the permission to build the reciprocal curb cut.

1.5 The sidewalk curb cut located at the entrance of "No Name" and Mass. Ave. is not in compliance with 521 CMR, which requires curb cuts to be perpendicular to the street and have a reciprocal curb cut. Mass. Ave is a state highway and would require Mass Highway approval for any work within the layout.

1.6 The ATM can generate queuing. The queuing for the ATM may interfere with vehicles exiting spaces 7 through 12 or generate traffic problems at the entrance from "No Name". The petitioner believes the traffic generated by Starbucks Coffee will not generate such problems. The Board reserves the right to reopen this hearing if traffic problems are identified and take whatever action it feels necessary.

1.7 The queuing of traffic at the ATM may block through traffic. Signage should be added to advise vehicles to keep left, after parking space #7. The Board reserves the right to require additional signage as it is deemed necessary.

1.8 The Plan as herein approved:

1. Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
2. Will provide for convenient and safe vehicular and pedestrian movement and 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 if the traffic is as suggested.
3. Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
4. Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
5. Is consistent with the Master Plan.
6. Is in harmony with the purpose and intent of this Bylaw.
7. Will not be detrimental or injurious to the neighborhood in which it is to take place.
8. Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted to **GRANT** the requested Special Permit subject to the following conditions and limitations.

2.0 Conditions

2.1 The plan shall be revised to show parking spaces 13 and 14 as reserve. Starbucks Coffee shall also revise the plan to show curb cuts at all driveway connections and the deck.

2.2 The curb cut at the intersection of No Name and Mass. Ave shall be relocated to be perpendicular to Mass. Ave with a reciprocal curb cut across Mass. Ave. The curb cut shall be required unless Mass Highway denies the request.

2.3 The improvements show on the plan shall be completed prior to the patio being open to the public.

3.0 **Limitations**

The Authority granted to the Petitioner by this permit is limited as follows:

3.1 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.

3.2 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. No approval of any signs or advertising devices is implied by this Decision.

3.3 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.

3.4 This approval allows for 15 seats within the building and 13 seasonal exterior seats accessible only from within the building. The exterior seating shall not be constructed until such time as all site construction is completed.

3.5 This Special Permit shall lapse on January 27, 2004 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.

##

4.0 **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 , 2003

_____
William Shupert III, 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 Edward Ellis, Town Clerk

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

_____ _____
Date Edward Ellis, 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