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Sign Special Permit – 11-02  
TD Bank, 408 Massachusetts Avenue  
March 14, 2011

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Planning Board

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**TOWN OF ACTON**  
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**DECISION**

11-02

**TD Bank, 408 Massachusetts Avenue**

Sign Special Permit

March 14, 2011

GRANTED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of TD Bank, N.A., c/o Mr. Marc Goldstein, Esq. of Beveridge & Diamond, P.C. of Wellesley, MA (hereinafter the Applicant), for property located at 408 Massachusetts Avenue, Acton, MA owned by NOTCA LLC (Mr. Vincent Cuttone, Manager) of Acton, MA. The property is shown on the 2007 Acton Town Atlas map F-3 as parcel 127 (hereinafter the Site).

This Decision is in response to an application for a sign special permit, received by the Acton Planning Department on December 23, 2010, pursuant to Section 7.13 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Sign Special Permit Rules and Regulations (hereinafter the Rules).

The Applicant presented the subject matter of the special permit to the Board at a duly noticed public hearing on February 15, 2011. Board members Mr. Ryan Bettez (Chairman), Mr. Jeff

Clymer (Vice Chairman), Mr. Ray Yacouby, Mr. Roland Bourdon III, Ms. Kim Montella, Ms. Margaret Woolley Busse, and Mr. Derrick Chin 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 Planning Department or the Town Clerk's office at the Acton Town Hall.

## **1 EXHIBITS**

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

### 1.1 Items and documentation required by the Rules consisting of:

- A properly executed Application for a Sign Special Permit, received in the Planning Department on December 23, 2010.
- A letter authorizing Bohler Engineering to apply for and represent TD Bank in the filing of any applications, dated 1/3/2009.
- Certified abutters list.
- A locus map.
- Sign renderings, last revised 12/20/2010.
- Exterior elevations and signage details sheets, dated 12/15/2010.
- A sign location plan.
- A cover memorandum from Marc Goldstein to the Board regarding the sign special permit application, dated 12/23/2010.
- Site Plan Special Permit Decision #04/30/10-424 for TD Bank, N.A. for 408 Massachusetts Avenue, dated 8/25/2010.

### 1.2 Additional information submitted by the Applicant:

- Letter from Marc Goldstein, dated 2/11/2011, to Kristin Alexander, Assistant Town Planner, responding to the Planning Department comments dated 1/28/2011 with the following attachments:
  - TD Bank Signage Application Table;
  - Detailed Exterior Elevations drawing;
  - Detailed Signage Details sheet;
  - Landscape Plan, last revised 2/10/11.
- E-mail from Matthew Hyatt, Senior Associate, Bergmeyer Associates, Inc. to Kristin Alexander regarding "TD Bank Acton – Revisions to Signage", dated 2/15/2011.
- A revised detailed Exterior Elevations drawing and a revised detailed Signage Details sheet based on the Hyatt e-mail dated 2/15/2011.
- Photos based on the Hyatt e-mail dated 2/15/2011, depicting:
  - A "TD Bank, Open 7 Days" freestanding monument sign with external lighting;
  - Two "TD" wall signs on a brick tower of a bank building;
  - One "TD Bank, Open 7 Days" freestanding sign, and two "TD" wall signs on a brick tower of a bank building, all internally illuminated;
  - The proposed Acton TD Bank site - northwest view (last revised 2/15/2011);
  - The proposed Acton TD Bank site – northeast view (last revised 2/15/2011).

### 1.3 Interdepartmental communication received from:

- Acton Building Commissioner, dated 1/27/2011;
- Acton Engineering Department, dated 1/19/2011;
- Acton Health Department, dated 1/27/2011;
- Acton Planning Department, dated 1/28/2011 and 2/15/2011;

- Acton Tree Warden & Municipal Properties Dir., dated 1/18/2011 and 2/15/2011.

Exhibits 1.1 and 1.2 are 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 Kelley's Corner (KC) zoning district.
- 2.2 Following discussions with the Acton Planning Department, at the public hearing the Applicant requested a special permit for three signs (hereinafter the Signs) at the Site that would not otherwise be allowed under the Bylaw:
  - a) The first Sign, an externally illuminated freestanding monument "TD Bank, Open 7 Days" sign, supported by a brick structure, with a display area in excess of the by-right 12 square feet prescribed in Bylaw Section 7.8.5.1 (freestanding sign). The display area of the proposed freestanding sign is 24 square feet.
  - b) The second Sign, an internally illuminated exterior wall "TD" sign located on the north side (street facing side) of the building's brick tower (north "TD" sign):
    - (i) in a location and/or position not otherwise permitted because it would be located above the first floor of the building but not on a parapet, gambrel roof or mansard roof (as prescribed in Bylaw Section 7.7.4.5);
    - (ii) with a height in excess of the by-right three (3) feet prescribed by Bylaw Section 7.7.4.2. The proposed north "TD" sign is 4'-6" high;
    - (iii) with a type or method of sign illumination not otherwise permitted by-right because the green on the north "TD" sign would not be opaque when internally illuminated as required in Bylaw Section 7.4.3.4e).
  - c) The third Sign, an internally illuminated exterior wall "TD" sign located on the east side of the building's brick tower (east "TD" sign):
    - (i) would be one additional sign not otherwise permitted by-right as prescribed by Bylaw Section 7.7.1;
    - (ii) in a location and/or position not otherwise permitted because it would be (a) located above the first floor of the building but not on a parapet, gambrel roof or mansard roof (as prescribed by Bylaw Section 7.7.4.5), and (b) one foot from the vertical edge of the building rather than the by-right two feet from the vertical edge (as prescribed by Bylaw Section 7.7.4.7);
    - (iii) with a height in excess of the by-right three (3) feet prescribed by Bylaw Section 7.7.4.2. The proposed east "TD" sign is 4'-6" high;
    - (iv) with a type or method of sign illumination not otherwise permitted by-right because the green on the east "TD" sign would not be opaque when internally illuminated as required in Bylaw Section 7.4.3.4e).

In all other respects the proposed Signs as requested would comply with by-right requirements of the Bylaw.

- 2.3 A landscape plan shows the freestanding sign will be integrated into the landscape design of the lot and centered within a landscaped area, measuring not less than 278 square feet and planted and maintained with suitable vegetation including shrubs and flowering perennials surrounding the base of the sign. The proposed landscaping surrounding the base of the freestanding sign complies with Bylaw Section 7.8.3.
- 2.4 The Signs will increase visibility of the business to vehicular traffic.
- 2.5 The Signs may be allowed on the Site by special permit in accordance with Bylaw Sections 7.13.1.1, 7.13.1.2a), 7.13.1.2c), 7.13.1.3, and 7.13.1.9.
- 2.6 The Signs are consistent with the character and uses of the area and with the Zoning District in which they will be located.
- 2.7 The Signs are appropriate in scale, design, and proportion relative to the buildings in the area and to the general surroundings. They are attractively designed, appropriately located, and will be compatible with the building to which they principally relate, and they are in harmony with the general area of the Kelley's Corner zoning district.
- 2.8 The Signs are a continuous part of an integrated architectural design of the entire Site.
- 2.9 The colors and materials of the freestanding Sign are appropriate, restrained, in harmony with the buildings, and do not detract from the aesthetic qualities of the surroundings.
- 2.10 When illuminated as proposed, the north "TD" sign and the east "TD" sign are too garish, not restrained, not in harmony with the buildings, and detract from the aesthetic qualities of the surroundings.
- 2.11 The number of graphic elements on the Signs are held to the minimum needed to convey their primary messages and are in good proportion to the area of the Signs' faces.
- 2.12 The Signs will not unduly compete for attention with any other signs in the area.
- 2.13 The Signs are necessary for adequate identification of the business at this Site.
- 2.14 The Signs as approved herein are appropriate for the Site; are consistent with the Master Plan; are in harmony with the purpose and intent of the Bylaw, specifically Section 7; will not be detrimental or injurious to the neighborhood where they are proposed; and comply in all respects to the applicable requirements of the Bylaw and the Rules.
- 2.15 The Board has received comments from various Town departments, which are listed in Exhibit 1.3 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as deemed appropriate.

### **3 BOARD ACTION**

Therefore, the Board voted on February 15, 2011, six in favor – one opposed, to GRANT the special permit for the requested freestanding sign, for the requested one additional exterior sign (east "TD" sign), for the requested sizes and locations of the east "TD" sign and the north "TD" sign, but not for the request to illuminate the east "TD" sign and the north "TD" sign with a type

or method of sign illumination not otherwise permitted by-right. The special permit is subject to and with the benefit of the following conditions and limitations.

### **3.1 CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns, and shall be enforceable by the Zoning Enforcement Officer in his administration of the sign permits under Section 7.6 of the Bylaw. 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 sign permit issued by the Zoning Enforcement Officer 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.

- 3.1.1 Prior to erecting the Signs, the Applicant shall obtain a sign permit from the Zoning Enforcement Officer pursuant to Section 7.6 of the Bylaw.
- 3.1.2 The freestanding sign shall be erected in accordance with the revised Signage Details sheet dated 2/15/11 and received by the Board at the hearing on 2/15/2011, and shall otherwise comply with all applicable requirements of the Bylaw.
- 3.1.3 The freestanding sign shall be erected more or less in the location shown on the Landscape Plan, which is in a landscape area at the northeast corner of where the northern driveway and parking lot meet. Said landscape area shall measure at least 278 square feet and be planted according to the Landscape Plan.
- 3.1.4 The east "TD" sign and the north "TD" sign shall not be internally illuminated; instead, illumination, if any, of these signs shall be from an external light source in compliance with the Bylaw.
- 3.1.5 The east "TD" sign and the north "TD" sign shall be erected in accordance with the Plan approved and amended herewith, except that the heights of these signs may be reduced as needed to accommodate the external light source without further review by the Planning Board, and shall otherwise comply with all applicable requirements of the Bylaw.
- 3.1.6 All taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to issuance of a sign permit.

### **3.2 LIMITATIONS**

This special permit shall be limited as follows:

- 3.2.1 The foregoing 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.
- 3.2.2 This special permit applies only to the Site identified in this decision and to the proposed Signs as shown on the Plan.
- 3.2.3 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.
- 3.2.4 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. 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.

3.2.5 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.

Signed on behalf of the Acton Planning Board



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Roland Bartl, AICP, Planning Director  
for the Town of Acton Planning Board

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 K. Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -  
certified mail #  
Town Manager

Building Commissioner  
Engineering Administrator  
Owner

Town Clerk  
Municipal Properties Director

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