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**DECISION** of the Board of Selectmen (hereinafter the Board) on the petition of Railroad Realty Trust (hereinafter the Petitioner) for the property located at 19 Railroad Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map H2A Parcel 19.

This Decision is in response to an application submitted to the Board on April 30, 2004 by the Petitioner for a Site Plan Special Permit under Section 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) to construct two residential housing units in one building and four in the second building with associated parking.

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 June 14, 2004 at 7:30 P.M. and continued several times at the request of the applicant until November 1, 2004 at 9:00 P.M. in the Selectmen's Hearing Room at the Acton Town Hall. Board members F. Dore' Hunter, Peter Ashton, Walter Foster, William Shupert III and Robert Johnson 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.

**Exhibit I**

A properly executed application for Site Plan approval received April 30, 2004, a booklet containing a certified abutters list, USE description, list of other permits, drainage calculations, water balance calculations, earth removal calculations and a traffic study. Three sheet set of engineering plans dated June 2, 2003, a two sheet engineering plan revised through October 5, 2004, a five sheet set of building plans, an outdoor lighting layout prepared by Thomas Lemons, and correspondence from the Petitioner dated 6/9/04, and 9/20/04

**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 6/9/04, 6/19/04, 8/10/04, 9/20/04, 10/8/04, 10/18/04, and 10/29/04
2. Town Planner dated 5/28/04
3. Fire Chief dated 6/8/04
4. Municipal Properties Director dated 5/28/04 and 8/9/04
5. Engineering Administrator dated 5/27/04 and 8/4/04
6. Health Director dated 5/7/04
7. Transportation Advisory Committee dated 5/19/04
8. Recreation Director dated 5/13/04
9. Water District dated 5/7/04
10. Acton Community Housing Corporation dated 8/27/04, 10/19/04 and 11/1/04
11. Historic District Commission dated 10/12/04 and 11/1/04

**Exhibit III**

Letter from Iron Works Farms dated 6/14/04, and 8/18/04

Exhibit I is hereinafter referred to as the Plan

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**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 South Acton Village Zoning District and Zone 4 of the Groundwater Protection District. The use is allowed.
- 1.2 The Petitioner has indicated he may sell one or more of the units sometime in the future. A cooperative arrangement has been reached between the Petitioner and the Acton Community Housing Corporation for the possibility of one of the units becoming available to a qualified low or moderate income first time homebuyer.
- 1.3 Section 10.6.3 limits the total amount of lighting that may be used on a lot. The Plan does not provide the information necessary to determine compliance with said section.
- 1.4 The Petitioner did not provide detailed plans of the rear addition to the existing apartment building. The Board finds without plans they cannot approve the addition at this time.
- 1.5 At the request of the Board the Petitioner met with the Historic District Commission to discuss exterior design of the building. The Commission has recommended the building not have synthetic materials. The Board finds the use of synthetic materials appropriate for new buildings because of recently constructed residential buildings at 9-13 Railroad Street. The buildings located at 9-13 Railroad Street used synthetic materials. The Board finds that any addition to the existing building will be seen differently. The Commission recommends the garage doors be painted a dark color. The Board finds this is a reasonable request. The Commission recommends a large silver maple be saved. The Board finds parking spaces at a premium and based on the recommendation of the Municipal Properties approves the parking layout as submitted.
- 1.6 The Petitioner when questioned by the Board has agreed to install a fire suppression system in both new buildings.
- 1.7 The Plan as herein modified:
  - Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
  - Will provide for convenient and safe vehicular and pedestrian movement and that 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.
  - Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
  - Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
  - Is consistent with the Master Plan.
  - Is in harmony with the purpose and intent of this Bylaw.
  - Will not be detrimental or injurious to the neighborhood in which it is to take place.
  - Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted 5-0 to **GRANT** the requested Site Plan Special Permit subject to and with the benefit of the following Plan modifications, conditions and limitations.

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**2.0 Plan Modifications**

Prior to the issuance of a Building Permit or the start of any construction on the site, the Petitioner shall cause the Plan to be revised to show the following additional, corrected or modified information. The Building Commissioner shall not permit any construction activity to begin on the site until and unless he finds that the Plan is revised to include the following additional, corrected or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Commissioner. Where approvals are required from persons other than the Building Commissioner, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Commissioner before the Commissioner shall issue any Building Permit or permit any construction on the site. The Petitioner shall submit five copies of the final plans as approved for construction by the Building Commissioner to the Building Commissioner prior to the issuance of a Building Permit.

- 2.1 The Plan shall be revised to provide information to support compliance within § 10.6.3.
- 2.2 The Plan shall be revised to include a note that both new buildings shall have an approved residential fire suppression system.

**3.0 Conditions**

- 3.1 Prior to the issuing of any permit the Petitioner shall provide the total “allowed lighting power” as per Bylaw § 10.6.3. All existing exterior lighting shall be removed prior to any permit being issued. No additional lighting or change in approved exterior lighting shall be allowed without further Site Plan Approval by the Board of Selectmen.
- 3.2 Upon issuance of a valid certificate of occupancy and when the Petitioner is ready to sell one unit, the Petitioner shall offer in writing to the Town, to make available said property to a qualified low or moderate income first time homebuyer. This shall be administered by the Acton Community Housing Corporation, or any other affordable housing entity, such as the Acton Housing Authority, for the express purpose of providing one or more deed-restricted affordable housing units.

Notice of such offer shall be addressed to the Acton Community Housing Corporation at Acton Town Hall. The ACHC shall exercise the Right of First Offer by written notice to the Applicant within 120 days of the Applicant’s offer. If such notice shall not be given within such time, and a time extension has not been requested by the ACHC, the Right of First Refusal shall be deemed lapsed and the ACHC shall have no further rights hereunder.

The exercise of such Right of First offer is expressly contingent upon the execution of a mutually-acceptable purchase and sale agreement for the property which shall be subject to the approval of the MA Department of Housing and Community Development.

The designated affordable unit shall be offered to qualified low or moderate-income first time homebuyers. Sales price, deed, deed restrictions, and all other documents and procedures shall comply with the DHCD’s Local Initiative Program (LIP). If permitted by DHCD, the affordable unit shall be marketed under ACHC’s local preference guidelines.

The Applicant shall bear the cost of marketing the designated affordable unit, including the cost of the lottery that may be necessary to select from a pool of qualified homebuyers. Included in those costs, generally 3% of the selling price, would be the expense of hiring a consultant to prepare all the necessary documents and applications required for certification of the affordable unit by DHCD. Throughout the process of marketing and selling the designated affordable unit, the Applicant shall

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consult with and seek guidance from the ACHC, which is the designated facilitator of affordable housing in Acton.

- 3.3 Prior to occupancy or use of the new building, as-built Plans shall be supplied by the engineer of record and lighting design professional certifying the project was built according to the approved documents. The as-built Plans shall show all pavement, building and drainage structure locations above and below grade in their true relationship to lot lines, and include appropriate grades elevations and exterior lighting equipment installed. In addition to the engineer of record, said plan shall be certified by a Mass. Registered Land Surveyor.
- 3.4 The garage doors shall be painted a dark color.
- 3.5 The Petitioner may request a revision of the rear addition. Any request to build the rear addition shall include detailed plans of both the interior and exterior details.

4.0 Limitations

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

- 4.1 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.
- 4.2 There shall be no further development of this site without written consent of the Board of Selectmen as outlined within the Acton Zoning Bylaw.
- 4.3 This Decision applies only to the requested Site Plan 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.
- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision, all nonconforming signs shall be removed prior to the issuance of the Building Permit.
- 4.5 The hauling of earth to and from the site shall be restricted to the hours between 9:00 AM and 4:00 PM Monday through Saturday.
- 4.6 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.
- 4.7 This Site Plan Special Permit shall lapse on November 29, 2006 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. The Board reserves the right to amend the permit by its own or at the request of the Petitioner with or without a new hearing.

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5.0 **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 November            ,2004

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F. Dore` Hunter, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

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Christine Joyce, Recording Secretary

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Date filed with Town Clerk

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Edward J. Ellis, Town Clerk

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

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Date

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Edward J 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