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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Not Your Average Joes Inc. (hereinafter the Petitioner) for the property located at 301 Main Street Acton, Massachusetts. Said property is shown on Acton Town Atlas Map F-3 Parcels 89, 115, 97 and 98.

This Decision is in response to an application submitted to the Board on March 3, 2005 by the Petitioner for a Special Permit under Section 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw), to establish a 200 seat 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 April 25, 2005 at 8:00 P.M. in the Selectmen's Hearing Room at the Acton Town Hall. Board members, Peter Ashton, F. Dore' Hunter, Walter Foster and Lauren Rosenzweig 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 March 3, 2005. A letter from D'Agostine, Levine, Parra & Netburn, P.C. dated March 3, 2005. Certified Abutters List. A plan showing the layout of the Shopping Mall. ANR plan dated October 6, 1970 revised September 3, 1971. Land Title Survey March 26, 1998 revised August 20, 1998. Parking Calculations. Restrictive Agreement. Traffic Impact report from Rizzo Associates dated February 21, 2005. Deed from the property.

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 April 19, 2005
2. Fire Chief dated April 22, 2005
3. Town Planner dated March 29, 2005
4. Engineering Department dated March 18, 2005
5. Health Department dated March 3, 2005
6. Water Supply District dated March 11, 2005
7. Municipal Properties Director dated March 8, 2005
8. Transportation Advisory committee dated March 3, 2005

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 Business 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 Plan provides for sufficient parking to comply with the requirements of the Bylaw.

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1.4 The Bylaw § 10.3.7 provides for the Board to consider the installation of sidewalks along the entire frontage of the lot. The Petitioner indicated the owner of the property was unwilling to install sidewalks. There is a sidewalk on the other side of Main Street, however this side would also benefit from sidewalks so patrons could safely walk to the restaurant. The Board has at times agreed to accept a gift equal to the \$30/ft. where constraints to installing sidewalks are expressed so the Board can locate alternate sites for sidewalks. The Petitioner shall either construct the sidewalk along the frontage or provide a gift in the sum of \$11,400 (\$30x 380'). If the Petitioner proposes to provide the gift it shall be provided prior to a building permit being issued. If the Petitioner decides to build the sidewalk he shall provide a plan of the sidewalk prior to a building permit being issued and the sidewalk shall be constructed prior to occupancy.

1.5 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.
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 4-0 with Robert Johnson abstaining to **GRANT** the requested Special Permit subject to the following conditions and limitations.

2.0 **Limitations**

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

- 2.1 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.
- 2.2 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.

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- 2.3 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.
- 2.4 This approval allows for 200 seats within the building.
- 2.5 This Special Permit shall lapse on May 23, 2007 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.

3.0 **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 , 2005

Peter Ashton, 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

Eva K. Bowen, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Not Your Average Joes passed and there have been no appeals made to this office.

Date

Eva K. Bowen, 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