

MEMORANDUM

TO: Town of Acton Planning Board

FROM: Marc J. Goldstein, Esq., Beveridge & Diamond, P.C.
Counsel to TD Bank, N.A.

RE: 408 Massachusetts Avenue – Application for Signage Special Permits
for TD Bank Branch Store

DATE: December 23, 2010

I. SITE AND PROJECT BACKGROUND

This memorandum is submitted in support of TD Bank, N.A.’s (the “Applicant” or “TD Bank”) application for Special Permits for signage associated with the construction and operation of a TD Bank branch store at 408 Massachusetts Avenue (Map F3 Parcel 127), Acton, Massachusetts (the “Site”). Pursuant to Section 7.13 of the Zoning Bylaw of the Town of Acton (the “Bylaw”), the Applicant may obtain Special Permits for relief from certain signage requirements of Section 7 of the Bylaw from the Town of Acton Planning Board (the “Planning Board”), as the Special Permit Granting Authority.

The Applicant proposes one (1) monument sign, two (2) wall signs on the front of the building facing Massachusetts Avenue (TD Bank Shield and channel letter signs), one (1) wall sign on the east side of the building (TD Bank Shield), and two (2) directional signs. The location, dimensions, and design of each of the signs are shown in the plans enclosed with these application materials. All signs are proposed with internal illumination. The Applicant seeks the following Special Permits associated with these proposed signs:

- Bylaw § 7.13.1.1. – Greater number of signs than allowed under Bylaw §§ 7.7 and 7.8 for two additional wall signs
- Bylaw § 7.13.1.2 – Increase in display area of monument sign; and
- Bylaw § 7.13.1.9 – Internal illumination of signage for all proposed signs.¹

¹ As discussed below, although the Applicant does not believe such relief is required, to the extent the Planning Board determines it necessary, the Applicant seeks Special Permits for the location of the three wall signs pursuant to § 7.13.1.3.

A. Existing Conditions

The Site is 1.05 acres with approximately 205 feet of frontage on Massachusetts Avenue (Route 111) and situated in the Kelley's Corner Business District. Presently at the Site is Acton Tire, a vehicle service station providing gasoline and automobile repair services. The Site is improved with a ±1,600-square-foot building with two curb cuts onto Massachusetts Avenue. The service station maintains an approximately 24 SF internally illuminated freestanding sign and an additional freestanding informational sign along Massachusetts Avenue. The Site is owned by NOTCA LLC (Vincent Cuttone, manager).

B. Proposed Project

TD Bank proposes to construct a one-story, 2,951-square-foot TD Bank branch store with a 24-space parking lot and a three-lane drive-through transaction area in the rear at the Site (the "Project"). The proposed "services" use is permitted as of right in the Kelley's Corner Business District, subject to approval of a Site Plan Special Permit from the Board of Selectmen pursuant to Bylaw § 3.5.12 and the Table of Principal Uses. The Project meets all of the dimensional requirements for the Kelley's Corner Business District, and TD Bank has designed the building to achieve LEED certification. An easement on the eastern side of the Site allows cross-access to property located behind the Site.

The Project received a Site Plan Special Permit with conditions from the Acton Board of Selectmen on or about August 26, 2010. Although the Applicant appealed that decision in order to preserve its rights, the Applicant has worked with Acton planning staff and Town Counsel to modify the plan as proposed to meet the conditions of the Site Plan Special Permit. The Applicant intends to jointly move with the Town to remand the case from the Land Court to the Board of Selectmen for further proceedings to approve the revised design on January 10, 2011. The revised design is presented here.

II. COMPLIANCE WITH SUBMISSION REQUIREMENTS

A. Application Form

Pursuant to Section 3.1 of the Rules and Regulations for Special Permits for Signs (the "Rules"), TD Bank submitted the completed Application for a Sign Special Permit executed by representatives of TD Bank and the owner of the Site.

B. Certified Abutters List

Pursuant to Rules § 3.2, TD Bank obtained a certified abutters list for the Site from the Town of Acton Board of Assessors, a copy of which is attached at Tab 1, and will comply with the requirements of providing the Planning Board the materials necessary to accomplish notice as directed.

C. Other Permits, Approvals, and Variances

Pursuant to Rules § 3.3, the Applicant attaches at Tab 2 a copy of the Site Plan Special Permit issued by the Board of Selectmen. No other variances, permits, or other special permits previously issued affect the proposed sign. However, the following variances, permits, or special permits were previously issued by municipal boards or state or federal agencies concerning the Property and can be provided upon request.

1. Board of Appeals Decision No. 63-2 (April 2, 1963). Variance request for placement of gasoline pumps 15 feet from street was declared void as a repetitive application on the same issue within two years;
2. Building Permit No. 01628 (June 25, 1963) for construction of gas station;
3. Disposal Works Construction Permit (July 31, 1963) from Board of Health;
4. Building Permit No. 05801 (July 19, 1977) for construction of addition to gas station;
5. Building Permit No. 07203 (October 21, 1980) for alteration of gas station;
6. Building Permit No. 08043 (March 10, 1983) for alteration of gas station;
7. Building Permit No. 08866 (November 5, 1984) for construction of canopy;
8. Building Permit No. 0013746 (January 30, 1995) for construction of awning;
9. Sign License No. 2689 (July 9, 2003);
10. Sign License No. 2690 (July 9, 2003);
11. Hazardous Materials Control Bylaw Permit (May 1, 2009);
12. 2010 Dumpster Registration (January 11, 2010); and
13. 2010 Tobacco License (January 11, 2010).

D. Locus Plan

Pursuant to Rules § 3.4, TD Bank has provided a locus plan showing an area a minimum of one mile diameter at a scale of 1"=1200'.

E. Sign Rendering

TD Bank has provided a colored sign rendering of the proposed signs meeting the requirements of Rules § 3.5.

F. Sign Location Plan

TD Bank submitted a sign location plan meeting the requirements of Rules § 3.6.

G. Filing Fee

An application fee in the amount of \$254 was filed with the Application pursuant to Rules § 4.2, incorporating the \$250 application fee and \$4 for purchase of the Rules.

III. SIGNAGE PROPOSED AND RELIEF SOUGHT

A. TD Bank Channel Letters

The Applicant proposes a wall sign, as defined in Bylaw § 7.2.16, to be located on the second story above the front entrance to the bank measuring $\pm 2' 2''$ in height and $\pm 7' 3\text{-}7/8''$ in width, for a total of 17.6 SF. This sign meets the dimensional requirements of the Bylaw and requires no additional relief, except for illumination as discussed below.²

B. Directional Signs

TD Bank proposes two (2) internally illuminated directional signs each measuring 1' in height and 2' in width, for a total of 2 SF. These directional signs meet the Bylaw's requirements, except require a Special Permit for illumination as discussed below.

C. Monument Sign

The Applicant proposes a monument sign, as defined in Bylaw § 7.2.9, on a brick base, at a total height (including the base) of 6' 1", a width of 5' 9 5/8" and a display area of 24 SF. Bylaw § 7.8.5.1 provides that the maximum as-of-right display area for a monument sign is 12 SF (or 16 SF under circumstances not applicable here). As a result, the Applicant seeks a Special Permit for a larger sign display area pursuant to Bylaw § 7.13.1.2. The 24 SF sought is well below the 40 SF maximum that can be obtained by Special Permit under this provision.

D. TD Bank Shields

The Applicant proposes two identical "TD Bank Shield" signs on the brick tower, one on the front of the building facing Massachusetts Avenue and the other on the east side of the tower

² Because TD Bank will occupy both floors of the proposed building, pursuant to Bylaw § 7.7.4.4 it may erect its wall signs at an elevation exceeding the limitations of Bylaw § 7.7.2.

facing the adjacent parcel. The signs would measure $\pm 4' 6''$ tall by $\pm 4' 11\text{-}7/8''$ wide for a total of 22.45 SF.

1. **Number of Exterior Signs.** Pursuant to Bylaw § 7.7.1, one exterior sign (wall sign) is permitted for each principal use. Bylaw § 7.13.1.1 provides that a greater number of signs than allowed under Bylaw §§ 7.7 and 7.8 may be obtained by Special Permit, provided that the total number of signs does not exceed the number otherwise permitted per lot of per principal use by more than one. The total number of wall signs permissible on this Site is three pursuant to Bylaw §§ 7.7.1 and 7.7.7. Bylaw § 7.7.7 provides for secondary exterior signs on walls containing a second direct entrance or facing street or parking area without a direct entrance. As a result, the Applicant is entitled to place wall signs on the rear of the building where there is a direct entrance to the bank and another on the west side of the building facing the parking lot, for a total of three (3) wall signs. As a result, the two additional signs that TD Bank seeks through Bylaw § 7.13.1.1 are within that provision's limitation on the total number of signs.³
2. **Height.** The maximum as-of-right height for a wall sign is 3 feet in a business district pursuant to Bylaw § 7.7.4.2. As a result, pursuant to Bylaw § 7.13.1.2, the Applicant seeks Special Permits for sign heights of 4' 6". The proposed height meets the maximum height requirements of Bylaw § 7.13.1.2 and provides improved visibility for the building's use, while presenting a restrained and coordinated design.
3. **Location.** For the following reasons, the Applicant does not believe it requires a Special Permit for the location of these signs. The Bylaw provides no limitation on which side of a building a primary wall sign may be affixed. Although Bylaw § 7.7.7 does provide limitations on the locations of secondary exterior signs, Bylaw § 7.13.1.1 provides no such limitations for additional wall signs obtained under that provision. Moreover, nothing in Bylaw § 7.7 prohibits more than one wall sign from being placed on the same wall. As a result, the location of the TD Bank Shields on the eastern side and front of the building require no additional zoning relief. The combined display areas of the display areas of the two signs on the front of the building are considerably smaller than the allowed display area of a single sign pursuant to Bylaw § 7.7.4.1. The display area

³ TD Bank could, alternatively, seek to move two signs permitted under Bylaw § 7.7.7 on the rear and west sides of the building to other locations pursuant to Special Permits pursuant to Bylaw § 7.13.1.3.

of the two signs measures 40 SF, while the Bylaw would allow one sign up to 66 SF.⁴

E. Internal Illumination

Pursuant to Bylaw § 7.4.3.3, all signs are to be illuminated through stationary external light sources unless the proponent obtains a Special Permit pursuant to Bylaw § 7.13.1.9 to use a type or method of illumination not otherwise permitted and the illumination meets the general objectives of Bylaw § 7.4.3. The Applicant proposes internally illuminated signs and requests a Special Permit pursuant to Bylaw § 7.13.1.9.

The general objectives of Bylaw § 7.4.3 pertain to safety of illumination and aesthetics. The proposed signs have no safety concerns, and the Applicant is not aware of any safety issues caused by the other internally illuminated signs at neighboring businesses or its own signs at other locations. The proposed signs with internal illumination do not cause blinding or otherwise obstruct safe vision of any traffic participants. The proposed signs are consistent with internally illuminated signs used at neighboring businesses in the area and TD Bank signage used throughout New England, including recently permitted or constructed banks in Wayland, Cambridge, Hingham, Lexington, East Providence RI, Johnson RI, and Barrington RI. Internal illumination of signs is consistent with other banks, including Sovereign and Bank of America, in the immediate area.

IV. **COMPLIANCE WITH CRITERIA FOR SPECIAL PERMITS**

Pursuant to Bylaw § 7.13.2, Special Permits for signage may only be issued if the Planning Board finds that the sign or the resulting deviation meets the signage Special Permit criteria of Bylaw § 7.13.2 as well as the general Special Permit criteria of Bylaw § 10.3.5.

A. Signage Special Permit Criteria

The proposed signage meets the signage Special Permit criteria of Bylaw § 7.13.2.

1. **Bylaw § 7.13.2.1.** The proposed signs are consistent with the intent and purpose of Section 7 of the Bylaw as articulated in Bylaw § 7.1. These signs are simple in design and restrained in terms of size, location, and illumination. They adequately identify the use and do so in a way to promote safety and welfare of surrounding users. Location of the TD Bank Shield signs on the tower provide excellent visibility for travelers on Massachusetts Avenue to allow drivers to make turning decisions sufficiently far in advance. These signs are harmonious and compatible with surrounding buildings and the commercial nature of the area, many of

⁴ To the extent the Planning Board determines that Special Permits are required for the location of these signs, TD Bank requests such permits pursuant to Bylaw § 7.13.1.3.

which have internally illuminated signs that exceed proscribed dimensions.

2. **Bylaw § 7.13.2.2.** The proposed signs are consistent with the character and use of the area and with the KC zoning district. Internally illuminated signs of the type and size of those proposed here abound in the surrounding commercial blocks, including the existing signage at the Site, the stores in the Roche Bros. shopping area, including CVS and TJ Maxx, Sovereign and Bank of America.
3. **Bylaw § 7.13.2.3.** The proposed signs are appropriate in scale and proportion in their design and visual relationship to the buildings in the area and the general surroundings. The signs do not exceed sizes or dimensions allowed by Special Permit and are in relation to the size of the building and are compatible to the architectural elements – tower and entrance – to which they relate.
4. **Bylaw § 7.13.2.4.** The proposed signs will provide continuity with other signs on adjacent buildings or lots. The Goodyear Tire and Northern Bank and Trust located on the adjacent lots also have commercial, internally illuminated signs. The proposed signs are in proportion to the size of the building that will be constructed.
5. **Bylaw § 7.13.2.5.** The colors, materials, and illumination are consistent with TD Bank signage throughout New England and the United States. There is less and smaller signage than is ordinarily sought for projects of this type by TD Bank. The resulting proposed signage is restrained and harmonious with the building and the Site.
6. **Bylaw § 7.13.2.6.** The material used for the signs is appropriate and does not detract from the aesthetic qualities of the surrounding. The signs are consistent with the materials used on adjacent parcels and lots across the street.
7. **Bylaw § 7.13.2.7.** The proposed signs are simple with limited graphic elements. The only graphic element is the TD Bank Shield, which is incorporated into each of the signs. The two TD Bank Shields themselves are simply the shield. The channel letter sign incorporates the shield with short lettering. The monument sign incorporates more elements and provides additional key information while keeping the graphic element restrained.
8. **Bylaw § 7.13.2.8.** The signs do not unduly compete for attention with any other signs.

9. **Bylaw § 7.13.2.9.** The Site contains an easement along its east side to provide access to the property in the rear, which, in combination with requirements of the Board of Selectmen that the building be close to the road, dictate the location of parking and other direct entrances. Location of a sign in the rear or west side would not provide adequate identification of the bank from the Massachusetts Avenue. The proposed signs in their requested sizes and location are necessary for adequate identification of the business.

B. General Special Permit Criteria

The proposed signage meets the signage Special Permit criteria of Bylaw § 10.3.5.

1. **Bylaw § 10.3.5.1.** The proposed signs are consistent with Acton's Master Plan (1991), Acton's Master Plan Update (1998), Kelley's Corner Specific Area Plan (1995), Kelley's Corner Business District – Final Circulation Plan (1997), Acton's Master Plan (1991), and Acton's Master Plan Update (1998).
2. **Bylaw § 10.3.5.2.** The proposed signs are in harmony with the purpose and intent of the Bylaw.
3. **Bylaw § 10.3.5.3.** The proposed signs are not detrimental or injurious to the neighborhood.
4. **Bylaw § 10.3.5.4.** The proposed signs appropriate for the Site.
5. **Bylaw § 10.3.5.5.** The proposed signs comply with all applicable requirements of the Bylaw.

V. **CONCLUSION**

Having demonstrated compliance with the required criteria for the requested signage Special Permits, the Planning Board should approve TD Bank's requested Special Permits.



Town of Acton
 472 Main Street
 Acton, MA 01720
 Telephone (978) 264-9622
 Fax (978) 264-9630

Brian McMullen
 Assistant Assessor

Parcel Location 408 Massachusetts Avenue
 Parcel I.D.: F3-127

Location	Parcel ID	Owner	Co-Owner	Mailing Address	Address 2	City	ST Zip
285 MAIN ST	F3-94	HOGLE ROBERT M	HOGLE TINA B	285 MAIN ST		ACTON	MA 01720
291 MAIN ST	F3-97	E&A NORTHEAST LTD PRTN	C/O EDENS & AVANT INC	PO BOX 528		COLUMBIA	SC 29202
401 MASS AV	F3-97-1	ACTON VENTURES II	C/O EDENS & AVANT INC	PO BOX 528		COLUMBIA	SC 29202
381 MASS AV	F3-98	E&A NORTHEAST LTD PRTN	C/O EDENS & AVANT	PO BOX 528		COLUMBIA	SC 29202
421 MASS AV	F3-105	421 MASS AVE LLC		205 WILLOW ST		WALTHAM	MA 02453
279 MAIN ST	F3-106	HOGLE ROBERT M TRUSTEE	C/O QUILL & PRESS INC	285 MAIN ST		ACTON	MA 01720
403-9 MASS AV	F3-108	NAGOG KNOLL LLC		260 GREAT RD		ACTON	MA 01720
411 MASS AV	F3-114	NAGOG KNOLL LLC		260 GREAT RD		ACTON	MA 01720
422 MASS AV	F3-117	BAY BANK HARVARD TRUST	C/O BANK OF AMERICA	ATTN: CORPORATE REAL EST	101 N. TRYON ST	CHARLOTTE NC	28265
414 MASS AV	F3-118	NORTHERN BANK & TRUST	ALAN BERKO	215 LEXINGTON STREET		WOBURN	MA 01801
418 MASS AV #1	F3-118-1-1	BERKO FAMILY LLC		418 MASS AV #1		ACTON	MA 01720
418 MASS AV #2	F3-118-1-2	WITTS GARY J		418 MASS AV #2		ACTON	MA 01720
418 MASS AV #3	F3-118-1-3	HWANG JAMES		418 MASS AV #3		ACTON	MA 01720
418 MASS AV #4	F3-118-1-4	CARLEY GILBERT E TRUSTEE	CARLEY ELIZABETH B TRUSTEE	CARLEY NOMINEE TRUST	7 ASHWOOD ROAD	ACTON	MA 01720
418 MASS AV #5	F3-118-1-5	BECCOTTE NANCY E		418 MASS AV #5		ACTON	MA 01720
418 MASS AV #6	F3-118-1-6	PINANSKY I VICTOR		418 MASS AV #6		ACTON	MA 01720
408 MASS AV BEHIND	F3-118-2	LUDWIG ANNA TRUSTEE	PARKER LANE INVESTMENT TRUST	205 WILLOW STREET		ACTON	MA 01720
257 MAIN ST	F3-121	SUNDBERG ROBERT A JR TRUSTEE	BOWLADROME REALTY TRUST	PO BOX 2131		WALTHAM	MA 02054
400 MASS AV	F3-128	MUSTARD SEED PROPERTIES, LLC		14 PAGE RD		ACTON	MA 01720
394 MASS AV	F3-134	FOSTER MARC C TRUSTEE	FFD TRUST	PO BOX 1544		ARLINGTON	MA 02474
6 BEVERLY RD	G3-3	BUTLER CHRISTOPHER + ALEXIS	CHAN KIT-YING KIRSTY	6 BEVERLY RD		ACTON	MA 01720
2 NADINE RD	G3-4	CAPELESS CAROL L	MAIMAN ELLEN	6101 PELICAN BAY BLVD	APT 1003	ACTON	MA 01720
4 NADINE RD	G3-5	MAIMAN CRAIG E	JONES MAUREEN A	4 NADINE RD		ACTON	MA 01720
6 NADINE RD	G3-6	JONES PETER R	NOTHERN BONNY CANNELL	6 NADINE RD		ACTON	MA 01720
8 NADINE RD	G3-7	NOTHERN DENIS M	KOH SOO-JUNG	8 NADINE RD		ACTON	MA 01720
10 NADINE RD	G3-8	KOH SOON-SOUP		10 NADINE RD		ACTON	MA 01720

Abutters and owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list.

HEARING NOTICES FOR ALL SPECIAL PERMITS MUST BE SENT TO THE PLANNING BOARD, TOWN HALL IN THE FOLLOWING TOWNS:

Boxborough, MA 01729	Maynard, MA 01754	Concord, MA 01742	Littleton, MA 01460
Carlisle, MA 0174	Stow, MA 01775	Westford, MA 01886	Sudbury, MA 01776

Daryl Powell
 Property Lister
 Acton Assessors Office
 12/13/2010

RECEIVED
AUG 26 2010

TOWN CLERK, ACTON

TD Bank, N.A.
Site Plan Special Permit (Adachi)
408 Massachusetts Avenue
August 25, 2010



Board of Selectmen

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9612
Fax (978) 264-9630
bos@acton-ma.gov
www.acton-ma.gov

DECISION

#04/30/10-424

TD Bank, N.A.

Site Plan Special Permit
August 25, 2010

GRANTED with Conditions

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of TD Bank, N.A. of Two Portland Square, Portland, ME 04101 (hereinafter the Applicant), dated March 31, 2010 and received April 30, 2010. The application is for a Site Plan Special Permit pursuant to Section 10.4 of the Zoning Bylaw (hereinafter the Bylaw) and the Site Plan Special Permit Rules and Regulations (hereinafter the Rules) for property is owned by NOTCA, LLC (Vincent Cutione, Manager) located at 408 Massachusetts Avenue and shown on the 2007 Acton Town Atlas map F-3, parcel 127 (hereinafter the Site).

The Board held a duly noticed public hearing on June 21, 2010, continued once to July 26, 2010. Board members Lauren Rosenzweig-Morton (Chair), Mike Gowing (Vice Chair), Terra Friedrichs (Clerk), Janet Adachi, and Pamela Harting-Barrat were present throughout the hearing. Attorney Marc J. Goldstein of Beveridge & Diamond, P.C. and Josh Swerling of Bohler

Engineering represented the Applicant. The minutes of the hearing and submissions upon which this Decision is based upon may be found in the Town Clerk's office or the Board's office at the Acton Town Hall.

1. EXHIBITS

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

- 1.1 A plan entitled "Site Development Plans for Proposed TD Bank, 408 Massachusetts Avenue, Town of Acton", dated April 5, 2010 and last revised on June 21, 2010, drawn by Bohler Engineering, consisting of 14 sheets.
- 1.2 A plan entitled "ALTA/ACSM Land Title Survey, TD Bank, NA, 408 Massachusetts Avenue, Town of Acton", dated June 8, 2009 and last revised on January 8, 2010, drawn by Control Point Associates, Inc., consisting of 1 sheet.
- 1.3 Architectural plan entitled "TD Bank, 408 Massachusetts Ave., Acton, MA", dated March 26, 2010, drawn by Bergmeyer Associates, Inc., consisting of 4 sheets.
- 1.4 An application package consisting of the following items and documentation as required by the Rules or additionally provided:
 - A properly executed application form for a Site Plan Special Permit, dated 03/31/10.
 - A cover letter from Marc J. Goldstein, Esq., Beveridge & Diamond, PC, dated 4/30/2010.
 - Memorandum from Marc J. Goldstein with use and project descriptions, and presentations and discussions of various application items, dated 4/30/2010, consisting of 12 pages.
 - Authorization by TD Bank for Bohler Engineering to represent TD Bank, dated 1/2/2009.
 - Copy of existing Town of Acton drainage easement deed and plan.
 - Other record plans.
 - Copies of previously issued permits, variances and licenses.
 - Filing fee.
 - Certified abutters list.
 - Stormwater Drainage Report.
 - Earth works calculations memorandum.
 - Traffic Impact Assessment, prepared by Vanasse & Associates, Inc., dated 4/15/2010.
 - Letter from Bohler Engineering, dated 7/16/2010 regarding revised documents submissions and responses to departmental comments.
 - Updated Motor Vehicle Crash Analysis prepared by Vanasse & Associates, Inc., dated 7/13/2010.
 - Water balance calculations.
- 1.5 Interdepartmental communication received from:
 - Acton Planning Department, dated 6/18/2010, revised 7/21/2010.
 - Acton Engineering Department (Corey York), dated 6/14/2010 (e-mail) and 6/17/2010 (memorandum with Kelley's Corner Plan attachment).
 - Acton Design Review Board, dated 5/19/ 2010.
 - Acton Fire Chief (Robert Craig), dated 6/14/2010.
 - Acton Tree Warden (Dean Charter), dated 6/17/2010.

- Acton Health Department (Justin Snair), dated 6/17/2010.
- Acton Building Commissioner (Frank Ramsbottom), dated 6/17/2010.

Exhibits 1.1 through 1.4 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 zoning district (KC District) and Groundwater Protection District Zone 4.
- 2.2 The application proposes the complete redevelopment of the Site. The Site is currently used as a gas station. The Plan proposes its demolition.
- 2.3 **The proposed new use, a bank with three drive-up tellers/ATM stations in the rear, is permitted on the Site under the Bylaw, including all overlay district requirements.**
- 2.4 The property is approximately 1.05 acres in area. The plan shows a 55-foot wide easement connecting to another property in the rear. The resulting developable site area as defined in the Bylaw is therefore +/-0.77 acres.
- 2.5 The proposed bank building would measure +/-3,072 square feet in net floor area. The resulting floor area ratio would be +/-0.067.
- 2.6 The Plan shows two proposed 2-way access driveways on Massachusetts Avenue more or less in the same location as the current driveways for the gas station. The Bylaw normally permits only one driveway. In this case, however:
 - a) Traffic patterns with two driveways have long been established.
 - b) The Applicant's traffic study shows a projected increase in site traffic for the proposed bank as compared to the existing gas station. The increase is not insignificant, but also does not suggest the need for major changes in the existing traffic patterns at this time.
 - c) The recorded MassDOT crash rates for this location are rather low.
 - d) The presence of the non-signalized intersection of the "No-Name Road," a heavily used connector street running between Main Street and Massachusetts Avenue across from the easterly access driveway to the Site, suggests that the westerly driveway will ease congestion and vehicle conflicts at the intersection.

For these reasons the Board finds, pursuant to section 6.7.3 of the Bylaw, that for the limited purpose of the proposed bank, the proposed two access driveways are necessary to provide adequate area for safe vehicular turning movements and circulation. This finding is subject to the limitations set forth in Finding 2.7, below, and Condition 3.2,1, below, respecting future development involving the Site.

- 2.7 Along the easterly side of the Site, encompassing the easterly access driveway, the Plan shows a 55-foot wide "proposed access and utility easement for future development to rear." The 2.77-acre parcel in the rear has significant development potential that may have a severe impact on traffic flow in the area, specifically at the intersection of the easterly Site driveway and the "No-Name Road" with Massachusetts Avenue.

Consequently, if and when the property in the rear is slated for development, the issue of traffic management in the area will require a complete re-evaluation and possible modifications on the Site, including changes to the two-way vehicular circulation patterns on the Site, the two access driveways approved hereunder, and other related features on the Site.

- 2.8 The proposed building is shown on the Plan with a 75.9-foot front yard setback; the minimum in the KC District is 30 feet.
- 2.9 The Plan proposes 26 parking spaces. The required minimum number in the KC District is only seven. Eight of the proposed parking spaces and a two-way drive aisle would be located in the front yard in front of the building.
- 2.10 The walking distance from the Massachusetts Avenue sidewalk via a proposed walkway and crosswalk would be approximately 92 feet through more than 30 feet of a landscaped island, across a 24-foot-wide driveway, alongside the 18-foot long parking spaces, and along the front of the proposed building to the entrance.
- 2.11 The large setback pushes the building and drive-up facilities far to the rear of the Site, which necessitates substantial excavation of the hill at the rear of the property that extends onto the adjacent property, and the installation of a substantial retaining wall in the rear, up to +/- 12 feet high with fence on top.
- 2.12 The Kelley's Corner Specific Area Plan (hereinafter KC Plan) calls for redevelopments in the KC District to provide for convenient and efficient pedestrian access, safe and comfortable pedestrian environments with walkways, pedestrian conveniences and amenities, and buildings with a pedestrian-oriented scale and design. Section 5.6 of the Bylaw sets forth special provisions for the KC District intended to implement the KC Plan as amended. Section 5.6.1 of the Bylaw further summarizes the KC Plan goals and design objectives.
- 2.13 The Board finds that the proposed Site design, particularly the proposed large building setback and vehicle parking spaces in front of the building, is inconsistent with the goals and design objectives of the KC Corner Plan. This Decision therefore requires design and layout changes that will bring the proposed development on the Site into better harmony with the KC Plan and the design principles set forth in Section 5.6 of the Bylaw.
- 2.14 The Board has received comments from various Town departments. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as the Board deemed appropriate.
- 2.15 The Site Plan as amended and conditioned in this Decision will be consistent with the Master Plan and the KC Plan, will not be detrimental or injurious to the neighborhood in which the use is to take place, will provide for convenient and safe vehicular and pedestrian movement within and through the site, will provide an adequate number of parking spaces, will provide adequate methods of refuse and waste removal from the site, and will be in harmony with the purpose and intent of the Bylaw.

3 BOARD ACTION

Therefore the Board voted on August 23, 2010 unanimously (four in favor, one absent) to GRANT the requested Site Plan 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 for this project or any portion thereof, including the demolition of existing buildings, nor shall any construction activity approved hereunder begin on the Site, until and unless the Zoning Enforcement Officer confirms 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 Zoning Enforcement Officer. Where approvals are required from persons, boards, commissions, 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 Applicant shall remove all parking spaces and the entire driveway and maneuvering aisle located in the front yard of the building.
- 3.1.2 The Applicant shall move the building forward towards Massachusetts Avenue, preferably as far forward as the minimum front yard setback line at 30 feet.
- 3.1.3 ~~The Applicant shall retain vehicle parking spaces to the west side of the building, and reconfigure them as the aforesaid changes may require.~~
- 3.1.4 The Applicant shall retain the drive-up teller/ ATM locations on the rear side of the building, and reconfigure them as the aforesaid changes may require.
- 3.1.5 The Applicant shall reduce the height of the retaining wall in the rear to the minimum necessary after the aforesaid changes have been made.
- 3.1.6 The Applicant shall provide the written consent of the owner of the property in the rear of the Site to the proposed work affecting that property that this Decision, including Plan Modifications, authorizes, and that may or will affect the property in the rear.
- 3.1.7 The Applicant shall provide a written explanation of why the use of natural stone for the retaining wall is not technically or otherwise feasible, and the technical and other reasons that the proposed Versa-Lock blocks are preferable.
- 3.1.8 The Applicant shall provide substantial natural screening of the proposed Versa-Lock retaining wall with native bushes or other plantings at its base and non-invasive vines at its top that will grow to hang down over the wall. The specific planting details and plant selections for the retaining wall screening shall be subject to the Acton Tree Warden approval.
- 3.1.9 The Applicant may modify the building footprint as the aforesaid changes, including the shifting forward of the building location, may require to accommodate access to the parking on the west side and the access easement on the east side.
- 3.1.10 The Applicant may relocate the vehicle parking spaces removed from the front to the west side of the building or to other locations on the Site, or eliminated them entirely.
- 3.1.11 The Applicant may relocate the groundwater recharge system on the Site as the aforesaid changes may require.
- 3.1.12 The Applicant may modify the remainder of the site as the aforesaid changes may require, provided that the Applicant:
 - a) Retains the general appearance of the building as shown on the Plan;
 - b) Maintains the general scope and effect of the landscaping as shown on the Plan;

- c) Ensures maneuverability for SU-30 vehicles (fire trucks);
- d) Maintains the pedestrian and bicycle facilities as shown on the Plan, or improves and increases them over what the Plan depicts; and
- e) Addresses all comments and concerns listed in the June 17, 2010 Engineering Department memorandum, including those already covered in the last revised Plan submission.

3.1.13 At this time, in the absence of information about the extent or nature of possible additional development in the rear, one-way vehicular circulation or removal of one access driveway shall not be options under the Site redesign as required and set forth herein; any such traffic-management modifications shall require further study and a formal site plan amendment, which the Board in its discretion may approve or disapprove.

3.1.14 The Applicant shall provide detailed drawings or pictures of the proposed luminaires, including details of the proposed methods of shielding to achieve the illumination levels indicated on the lighting plan (Plan sheet 11).

3.1.15 The Applicant shall modify the Plan to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Applicant also shall modify the Plan to comply with all requirements of the Rules, and to address all departmental comments in a manner that resolves any concerns raised therein to the satisfaction of the Board.

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 the special permits that are granted with this decision null and void, without force and effect, and shall constitute grounds for the revocation of any or all of these special permits, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with these special permits using any and all powers available to it under the law.

- 3.2.1 Prior to the issuance of any demolition or building permit approved hereunder, the Applicant and the owner shall agree in writing, individually or jointly, for themselves and their successors in title or tenancy that, in the event the property at the rear of the Site is proposed for development pursuant to special permit or comprehensive permit applications filed with the Town:
- a) The Board may re-evaluate the vehicular circulation pattern on the Site, the two access driveways approved hereunder, and of any related Site features;
 - b) The Board may require such reasonable design and circulation changes on the Site as a qualified traffic engineer may recommend at such time to better accommodate traffic and vehicular movements and to improve safety at the "No-Name Street" intersection with Massachusetts Avenue and the surrounding area;
 - c) The Board may require the removal of one access driveway to the Site as a qualified traffic engineer may recommend at such time to better accommodate traffic and vehicular movements and improve safety at the "No-Name street" intersection with Massachusetts Avenue and the surrounding area

- d) The Board may require the Applicant or owner to pay for a peer review of the traffic engineer's work and recommendations in this matter by another qualified traffic engineer selected by the Board or its designee.
- 3.2.2 The Applicant shall maintain all existing monitoring wells in good functioning order and ensure that they are accessible. Any abandonment or relocation of monitoring wells shall require approval of the Health Department.
- 3.2.3 The Applicant shall be diligent in complying with the erosion and sediment control plan and notes (Plan sheets 7 and 8). The Applicant shall not cause or permit the runoff of water or erosion that results in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
- 3.2.4 **The Applicant shall meet all requirements of Title V and Town Bylaws, including but not limited to the bylaw regulating stormwater effluent, that require Board of Health permits, special permits, and variances.**
- 3.2.5 If applicable, the Applicant shall pay in full all taxes, and penalties and back charges resulting from the non-payment of taxes prior to the issuance of a Building Permit.
- 3.2.6 No work on the Site authorized hereunder shall begin prior to the issuance of a demolition or Building Permit.
- 3.2.7 All work on the Site shall be conducted in accordance with the terms of this special permit and shall conform with and be limited to the improvements shown on the Plan as conditioned, modified, and approved herein.
- 3.2.8 All water service lines shall be installed in accordance with the procedures and specifications of the Acton Water Supply District including but not limited to the Applicant's submission of a water impact report and as-built plans.
- 3.2.9 All work on the Site shall be performed in compliance with the applicable law and regulations protecting wetlands and wildlife habitat in the Town of Acton.
- 3.2.10 All construction activity on the property relating to this special permit shall be limited to the following hours: Monday – Friday: 7:00am – 6:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: No work permitted.
- 3.2.11 The Applicant shall make every attempt to minimize adverse construction conditions, such as dust and noise, on neighboring and abutting properties.
- 3.2.12 Any changes in the work that this special permit authorizes and that the Plan approved hereunder depicts shall require the approval of the Board.
- 3.2.13 All activities on the Site shall comply with the Town of Acton Hazardous Material Control Bylaw.
- 3.2.14 The Applicant shall follow the Drainage System Operation and Maintenance Plan outlined in the application's Stormwater Drainage Report and shall follow the manufacturer's recommendations for the maintenance of the Stormceptor Units.

- 3.2.15 The Applicant shall record this Decision at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a demolition or building permit for work approved hereunder.
- 3.2.16 Upon completion of construction, the Applicant shall submit to the Zoning Enforcement Officer an as-built plan stamped by a land surveyor and/or engineer as required for the information shown, showing the buildings, pavement, drainage, walkways, utilities, and pavement markings in their true relationship to lot lines, and outdoor lighting and appropriate grades and elevations as they pertain to each phase of the project. The as-built plans shall be accompanied by a Professional Engineer's certification stating that they witnessed the construction of the project and that the project conforms to the approved Plan.

3.3 LIMITATIONS

The authority granted to the Applicant under this special permit is limited as follows:

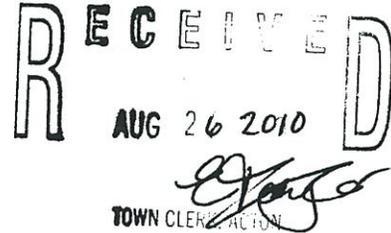
- 3.3.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.3.2 This special permit applies only to the Site identified in this decision and to the proposed uses and activities shown and noted in the Plan.
- 3.3.3 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.
- 3.3.4 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. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 2 years. 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.
- 3.3.5 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, its 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 filing date of this decision with the Town Clerk.

The Town of Acton Board of Selectmen

Lauren Rosenzweig Morton
Lauren Rosenzweig-Morton, Chair



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 -	Building Commissioner	Health Director
certified mail #	Engineering Administrator	Municipal Properties Director
Town Clerk	Conservation Administrator	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Historical Commission	Assistant Assessor

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