

Date Received:

Town Clerk:



**NOTICE OF DECISION  
Number 07-17**

**Date of Application:** October 17, 2007

**Subject of Appeal:** The application of GFA Federal Credit Union for a Special Permit to construct a drive-thru bank pursuant to Section 3.24(o), *Drive-in or open-air business other than a restaurant* and for a Variance to construct a drive-thru bank pursuant to Section 4.2, *Schedule of Dimensional Regulations*, of the Ashburnham Zoning Bylaws and all other necessary zoning relief on the property located at 35 Main Street, Map 62, Parcel 126 in the RA District.

**Date of Hearing:** November 14, 2007

**Date of Decision:** January 9, 2008

**Decision:**

1. A Special Permit is granted under Section 3.24 (o), *Drive-in or open-air business other than a restaurant*, with conditions.
2. A Variance is granted under Section 4.2, *Schedule of Dimensional Regulations - Drive-up canopy*, with conditions.
3. A Finding was made by the Board that Section 1.42 applies for a Special Permit to tear down an existing building and replace with a new structure (a pre-existing non-conforming building may be altered or enlarged by a Special Permit) with conditions.

Special Permit granted with conditions.

See footnote: Excerpt from Ashburnham Town Counsel, Atty. Deborah Phillips e-mail to Eric Smith, Town Planner dated January 9, 2008.<sup>1</sup>

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<sup>1</sup> "As I understand it, the concern is that if GFA tears down the apartment building, the lot itself will either comply with the current zoning or be more in compliance. Therefore, some relief is needed to allow the tear down and the construction of a new second building on the lot. I believe the ZBA can look to 1.42 for authority to do this. They can find that there exists two principal buildings on the lot and allowing them to replace one of similar dimensions only allows a continuance of this non-conformity. In addition, replacing the apartment building with the bank will not be substantially more detrimental because the existing apartment building is a non-conforming use and the new building will be a conforming use. Therefore the non-conformity of having two principal buildings on the lot will not be increased and it will not be more detrimental to allow this than the current situation. The resulting uses themselves will be more conforming. This last point, in fact, is an improvement over the present situation. I understand that the ZBA does have to consider the request for the canopy as a variance and not a special permit. However, this looks like a dimensional variance. The use of the new building as a bank complies with the zoning bylaw for this zoning district."

**Basis for Decision:**

1. The granting of the Special Permit under Section 3.24(o) does not derogate from the intent of the bylaw nor does it harm the neighborhood.
2. The granting of a Variance, Section 4.2, meets the conditions set forth. The special conditions of the lay out of the structure, parking, and traffic flow prohibit the placing of the canopy in any other location which is a hardship. The granting of the Variance does not harm the neighborhood and is consistent with the intent of the bylaw.
3. The granting of the Special Permit, Section 1.42, does no harm to the neighborhood and is consistent with intent of the Bylaw.

**Conditions:**

1. Granted per plans last submitted to the Board dated December 3, 2007.
2. Site plan approval from the Planning Board required before issuance of building permit.

**Vote of the Board:**

Unanimous to Grant: David Perry, Chair  
Joseph Daigle  
Donna Brooks  
Terry Girouard

Notice: Any decision of the Board of Appeals may be appealed to the Superior Court of Worcester County within 20 days by the Applicant, Town Boards or Officers, or any person aggrieved by the decision. Appeal may also be made in Fitchburg District Court.

After the 20 days appeal period, if no appeals have been filed, this decision must be recorded with the Registry of Deeds.

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