

*Mary Allott*

**DECISION 06-08A**

**DECISION ON THE PETITION BY PLATT BUILDERS**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, October 2, 2006, at 7:30 P.M., on the petition by Platt Builders for a VARIANCE from the requirements of Section 5.1 (Table of Standard Dimensional Regulations) of the Zoning Bylaw to allow the demolition and reconstruction of an existing single family dwelling on a lot with 71,700 square feet where 80,000 square feet is required in zoning district R2. The lot is located at 211 Pope Road, Map E5/Parcel 38.

Board members present at the hearing were Jonathan Wagner, Chairman; Kenneth F. Kozik, Member; and Cara Voutselas, Member. Also present were Gary Rhodes, Building Commissioner; Cheryl Frazier, Board of Appeals Secretary; E.J. Mezzanotte and Tim Hess of Platt Builders; Steve and Pauline MacLellan, owners of the property; and abutters to the lot.

Jonathan Wagner opened the hearing and read the contents of the file. Included in the file was a memo from Town Planner, Roland Bartl, stating that the Planning Department had no comments regarding the petition.

Mr. Hess, licensed Architect for Platt Builders, presented the petition. Mr. Hess said they were seeking permission to replace an existing structure with a new structure. Platt Builders planned to remodel the owner's property, which is approximately 6,000 square feet. Mr. MacLellan testified that the cost to make the improvements were substantial and thought it would be more reasonable to build a new house. Mr. MacLellan indicated that the current home was built around 1962 and sits on a lot with a high water table, resulting in water problems that past remediation failed to remedy fully. Platt Builders proposed to design a new septic system that would be above grade. The proposed new home would be positioned on the lot further back than the existing home. In summary, Mr. Hess testified that the lot is a non-conforming lot and in compliance with other requirements in this zoning district for front, side and rear setbacks.

Board member Ken Kozik explained to the petitioner that the Board has to make certain mandatory findings to grant a Variance under section 10.5.5 and asked the Petitioner what circumstances relating to the soil conditions, shape or topography of the Lot or Structures differed from those in the surrounding area which would cause a substantial hardship if the Bylaw was enforced in this instance. In response, Mr. MacLellan testified

that he believed the soil conditions are a problem with their lot and that this lot receives water flowing from Strawberry Hill Road.

Janet Adachi of 2 Simon Hapgood Lane, an abutter, had prepared a letter stating the petitioner has no substantial hardship and the proposed dwelling would cause substantial detriment to the neighborhood. Ms. Adachi testified that they have privacy issues and wildlife issues with the proposed new home that she believes will adversely affect the enjoyment of her property.

Stephen Mubarek of 4 Simon Hapgood, an abutter, testified that he also had concerns similar to the abutter Ms. Adachi..

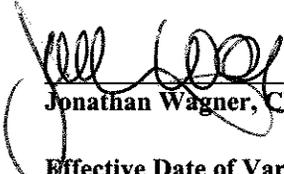
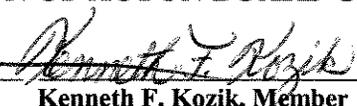
The Board of Appeals, after considering the materials submitted with petition, together with the information developed at the hearing finds that:

1. The Petitioner seeks a VARIANCE from the lot size requirement of 80,000 square feet found in Section 5, Table of Standard Dimensional Regulations, of the Zoning Bylaw.
2. The existing dwelling is located on a 71,700 square foot lot and is therefore a non-conforming lot.
3. A literal enforcement of Section 5 of the Zoning Bylaw would not involve substantial hardship to the Petitioner as a result of any circumstances relating to the soil conditions, shape or topography of the Lot or Structures.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **DENY the VARIANCE** from Section 5, Table of Standard Dimensional Regulations, of the Zoning Bylaw.

Any person aggrieved by this decision may appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

#### TOWN OF ACTON BOARD OF APPEALS

    
Jonathan Wagner, Chairman      Kenneth F. Kozik, Member      Cara Voutselas, Member

**Effective Date of Variance:** No variance or any modification, extension or renewal thereof shall take effect until a copy of this decision has been recorded in the Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the Office of the Town Clerk, and that no appeal has been filed, or that if such an appeal has been filed it has been dismissed or denied.

**Expiration of Date of Variance:** In accordance with Massachusetts General Laws Chapter 40A Section 10, if the rights granted by this variance are not exercised within one year from its date, the variance will lapse. A six-month extension of the rights under this variance may be applied for by filing a written application for an extension before the expiration of this one-year period.