Planning

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DECISION #10-03

DECISION ON THE PETITION FOR VARIANCE BY POWDER MILL PROPERTIES, LLC

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, March 8, 2010 on the PETITION FOR VARIANCE by Powder Mill Properties, LLC seeking a variance from Section 8.3.2 of the Acton Zoning Bylaw to allow modifications, alterations and structural changes without conforming to setback and Floor Area Ratio requirements at 50 Powdermill Road. Map J-3/Parcel 49.

Sitting for the Board of Appeals were Ken Kozik, Chairman, Jonathan Wagner, Member and Adam Hoffman, Alternate Member. Also present at the hearing were Scott A. Mutch, Assistant Town Planner and Zoning Enforcement Officer, Cheryl Frazier, Board of Appeals Secretary, Leo Bertolami, Manager of the Petitioner and Mark Donohoe, Acton Survey and Engineering on behalf of the Petitioner.

Chairman Kozik opened the hearing and read the contents of the file. The file contained (a) Petition For Variance dated 1/19/10, (b) Interdepartmental Communication dated 1/11/10 from Frank Ramsbottom, Building Commissioner stating he had "no comment" on the Petitioner's petition, (c) Interdepartmental Communication dated 3/3/10 from Roland Bartl, Town Planner setting forth his reasons why the request for a variance is reasonable, (d) letter from Acton Survey & Engineering, Inc. dated 3/8/10 responding to the 3/3/10 Interdepartmental Communication from Roland Bartl, (e) Memo dated 2/26/10 from the law firm of Anderson & Krieger to Roland Bartl, (f) Memo from the Design Review Board dated 3/3/10, and (g) Memorandum (undated) from Attorney Richard A. Nylen in support of the request for a variance.

Chairman Kozik then asked the Petitioner to explain his reasons for requesting a variance. Mr. Bertolami stated that the building was in deplorable condition, structurally unsound and needed extensive renovation for any use whatsoever. He then explained in detail the proposed renovation, how the proposed renovation would address the present conditions and how the site would be significantly improved as a result of the renovations. He added that the intended use of automobile sales was compatible for the area because there were several car dealerships nearby. Mr. Donohoe restated the need to make these renovations so that the site was usable. He also stated that the soil, shape and topography of this lot are unique and therefor satisfy the mandatory requirements for a variance under applicable law.

Chairman Kozik then asked Scott A. Mutch, Zoning Enforcement Officer to explain how the property presently did not conform to the present Zoning Bylaw and whether the proposed renovation and variance would worsen the nonconformity. Mr. Mutch stated that (a) the building

does not meet the 20 foot setback requirement and (b) the Floor Area Ratio ("FAR") of the building far exceeds the allowable FAR in a Flood Plain district.

Chairman Kozik asked Mr. Bertolami and Mr. Donohoe if this lot was more unique than the other lots on Powder Mill Road; and both responded that it was because of the close proximity to the Assabet River, the unique shape that severely restricted building configuration and the fact that they were forced to make renovations to an existing building to make it usable (or would have to demolish it, rendering the property virtually unusable).

Member Jonathan Wagner asked Scott Mutch whether not allowing the variance in effect condemned this property as being unusable for any use whatsoever; and Mr. Mutch said it was probably true.

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

1. The Petitioner seeks a Variance from Section 8.3.2 (Changing a Nonconforming STRUCTURE) of the Zoning Bylaw to perform extensive renovation (collectively "alterations") to the building ("STRUCTURE") on the property. Said alterations include:

(a) filling in the basement/crawlspace,
(b) repairs to the foundation,
(c) replacement of existing upper floor,
(d) extension of the new upper floor to square off the building,
(e) replacement of roof, windows, doors and exterior siding, and
(f) installation of six garage doors.

2. Said Section 8.3.2 permits such alterations provided that the alterations conform to all the dimensional requirements of the Zoning Bylaw.

3. The subject property is located in a Flood Plain district and the site ("LOT") and STRUCTURE are pre-existing nonconforming.

4. The shape of the LOT and its proximity to the Assabet River and Powder Mill Road severely constrain placement and use of any STRUCTURE on the property because of its location within a Flood Plain district.

5. The STRUCTURE is in poor condition, structurally unsound and is essentially unusable without extensive renovation; and without such renovation, the property would be virtually useless.

6. The STRUCTURE as altered would not conform to all the dimensional requirements of the Zoning Bylaw in that:

(a) it does not meet the 20 foot setback requirement, and

(b) the Floor Area Ratio ("FAR") exceeds the allowable FAR in a Flood Plain district.

7. Because of the shape and topography of the LOT together with the nature of the STRUCTURE currently occupying it, literal enforcement of the provisions of the Zoning Bylaw would impose substantial hardship on the Petitioner. These conditions especially affect this LOT and do not generally prevail in the Powder Mill Zoning District.

8. The immediate area has several automobile dealerships and renovation of the existing STRUCTURE similar to nearby auto sales facilities would not be detrimental to the public good.

9. The requested relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning Bylaw. The granting of such relief is consistent with the Master Plan.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted to GRANT the VARIANCE from Variance from Section 8.3.2 (Changing a Nonconforming STRUCTURE) of the Zoning Bylaw to perform the alterations to the STRUCTURE with the following conditions:

1. The STRUCTURE shall be renovated in accordance with the plans and specifications contained in the Petitioner's building permit application and Petition.

2. The site and STRUCTURE shall comply with all current requirements of the Zoning Bylaw, with the sole exceptions being the frontage requirement and the Floor Area Ratio.

3. The site and STRUCTURE shall not be occupied until issuance of a Certificate of Occupancy and license by the appropriate authorities of the Town.

4. Renovation of the STRUCTURE (including landscaping and site improvement) shall begin within one (1) year of the date this decision is filed with the Town.

Any person aggrieved by the 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

Ken Kozik Chairman	Jonathan Wagner Member	Adam Hoffman Alternate Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on May 5, 2010.

Cheryl Frazier, Secretary
Board of Appeals

Effective Date of a Variance: No variance or 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 twenty (20) days have elapsed after the decision has been filed in the Office of the Town Clerk, and no appeal has been filed, or that if such an appeal has been filed it has been dismissed of denied.

Expiration Date of a Variance: In accordance with MGL Chapter 40A, Section 10, if the rights granted by this variance are not exercised within one (1) year from its date, the variance will lapse. A six (6) month extension of the rights under this variance may be applied for by filing a written application for extension, before the expiration of this one year period.