Planning

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DECISION 10-06

DECISION ON THE PETITION BY KEVIN KIELER

A public hearing of the Acton Board of Appeals was held in Town Hall on Monday, June 7, 2010 at 7:30 pm on the petition by Kevin Kieler, of Brady Built Sunrooms for a VARIANCE from Section 5, Table of Standard Dimensional Regulations of the Zoning Bylaw. The property is located at 273 Great Road. Map E5/Parcel 12.

Present at the hearing were Jonathan Wagner, Member and Acting Chairman; Marilyn Peterson, Member; and Francis Mastroianni, Alternate Member. Also present were Scott A. Mutch, Zoning Enforcement Officer and Assistant Town Planner; Cheryl Frazier, Board of Appeals Secretary, Kevin Kieler of Brady Built Sunrooms on behalf of the Monsoon Indian Bistro (operator of the site) and various principals and consultants of the operator.

Jonathan Wagner opened the hearing and read the contents of the file. The file contained the Petition and a cover letter from Mr. Kieler explaining the reasons for the request for VARIANCE and a Planning Department Staff Report from Scott A. Mutch. The Staff Report stated that the site is located in a Limited Business Zoning District with the structure (building) being pre-existing nonconforming because it is located 15.4 feet from northern side yard property line where presently 30 feet is required for side yard setback. The proposed sunroom addition would be 12.4 feet from the northern property line, thereby increasing the nonconformity by an additional 3 feet.

Jonathan Wagner asked the petitioner to explain the reasons for the request for variance. Mr. Kieler explained that the operator determined that it would be desirable to have a permanent luncheon buffet and this would require removal of seating so that buffet tables could be installed where seating presently exists. He also stated that the restaurant needed a separate room for private groups and that the addition would serve this purpose also. In response to Board members questions as to why the addition had to be located in the area chosen as opposed to a different location off of the structure, he stated that it was the only feasible location because the septic system is located in front of the building and the kitchen is located in the rear of the building, which would make access impractical. He also stated that the proposed addition would not add any additional seating, just relocate the existing seating.

In response to Board members questions as to whether the sunroom addition could be reconfigured or reduced in size to make it either conforming or at least not worsen the nonconformity of the side yard setback, the petitioner stated that any such redesign would be would not be cost effective.

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 Section 5, Table of Standard Dimensional Regulations of the Zoning bylaw to construct a sunroom addition within the minimum required setback.

2. The existing STRUCTURE (now used as a restaurant) is a pre-existing nonconforming STRUCTURE. The present STRUCTURE is located 15.4 feet from the side yard property line on the northern boundary. The present Zoning Bylaw requires a side yard setback of 30 feet.

3. The proposed sunroom addition would locate the STRUCTURE 12.4 feet from the northern side yard property line, thereby increasing the existing nonconformity by an additional 3 feet.

4. An addition to the STRUCTURE could be constructed that, while possibly less desirable both from a financial and design perspective, could achieve the purpose of relocating seating while not increasing the nonconformity of the side yard setback.

5. A literal enforcement of the provisions 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 STRUCTURE.

6. Desirable relief may not be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted to **DENY the VARIANCE** (one member voting to approve and two members voting to deny) from Section 5, Table of Standard Dimensional Regulations of the Zoning Bylaw.

TOWN OF ACTON BOARD OF APPEALS

Jonathan Wagner Acting Chairman	Marilyn Peterson Member	Francis Mastroianni Alternate Member

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.