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**MINUTES OF THE HEARING ON THE PETITION FOR REVIEW HEARING #11-02
149 GREAT ROAD**

A public hearing of the Acton Board of Appeals was held on Monday, March 7, 2011 at 7:30 PM on the petition of Pierre Richard for a **PETITION FOR REVIEW** under Section 10.1.1 of the Zoning Bylaw to appeal the decision of the Zoning Enforcement Officer as set forth in a letter dated February 3, 2011 determining that the proposed new commercial signage is not permitted in an R-8 residential zoning district. The property is located at 149 Great Road. Map F4/Parcel 37.

Present at the hearing were Ken Kozik, Chairman; Jonathan Wagner, Member; Marilyn Peterson, Member; Cheryl Frazier, Board of Appeals Secretary; and Scott Mutch, Zoning Enforcement Officer and Assistant Town Planner. Also present at the hearing was the petitioner Pierre Richard, Attorney Alex Parra, from D'Agostine and Levine, David Johnson and Cate Lynch of Brookside Shops.

Ken Kozik opened the hearing, read the contents of the file and asked Scott Mutch, Zoning Enforcement Officer if he could give the Board some background on the petition since the petition is to overturn his decision. Scott began by stating that the shopping plaza where the business is located is Brookside Shops which is entirely within an R-8 (Residence 8) zoning district and the existing shopping mall complex is a non-conforming use/development in the R-8 district. The prior zoning protection that existed previously and permitted the plaza to be constructed ceased in February of 2003. Exterior wall signage, such as that which is proposed is not permitted in residential zoning districts at this time. The space which this business now occupies was formerly a larger, single commercial space and specifically a restaurant use. When the restaurant ceased operation the space was subdivided into two (2) smaller commercial spaces. A children's clothing establishment leased one portion of the newly created commercial space. The signage for the children's clothing establishment was applied for over a year ago and approved as a "re-facing."

Ken asked the applicant if his new sign is consistent with the rest of the signs in the plaza. Owner and operator Pierre Richard of Harmony and Wellness, LLC stated that he applied for the signage in December of 2010. He proposed a 30 square foot sign with the width and height complying, but the display area did not comply. When he met with Scott to apply for the construction permit, Scott informed him that it was an extremely difficult site. Pierre knew it was a difficult property but it never dawned on him that a commercial plaza with all the existing signage would not be allowed to place a new sign on a business. He tried to duplicate the same lighting and size as the rest of the signs being used in the plaza. Mr. Richard was not aware of the amendment with the deadline date. He was never told about that. Ken Kozik said in the context of this particular instance, Mr. Pierre is asking the Board to look at the Zoning Enforcement Officer's determination. He explained to the petitioner that he has not proven to the Board that the Zoning Enforcement Officer is wrong in his letter or findings. Mr. Pierre said he is not here to challenge that the law is wrong but feels applied to him it is wrong.

Attorney Alex Parra, is here tonight representing the owner of the property TIIA Realty. Attorney Parra suggested that there is a basis in the bylaw that states each business should be allowed to have their own signage. He understands Scott Mutch's letter but said it isn't a new business center it's just a new sign. Signs are protected under 40A Section 6, pre-existing non-conforming use. The sign should be placed as a matter of right. He said that is the principal basis that they believe this board could grant this permit. They aren't expanding the space or the area that the previous wall sign was on.

Ken read a memo from the BOS in favor of changing the zoning bylaws to allow the signage to be permitted. Alex Parra said from the property owner's perspective, this situation may arise again. If a new tenant wants to rent a vacant space in the plaza it may deter them from moving in. The property as Mr. Bartl and the Selectmen suggest is that the plaza should be rezoned.

Ken made a motion to close hearing #11-02 Marilyn so moved and Jon seconded the motion. Ken made a motion to OVERTURN the Zoning Enforcement Officer's determination in Hearing #11-02 due to the unreasonableness as applied to this particular petitioner. Marilyn so moved and Jon seconded the motion. The Board voted **3-0 to OVERTURN** the decision of the Zoning Enforcement Officer.

Jon Wagner to write the decision.

Respectfully submitted,



Kenneth F. Kozik
Chairman, Board of Appeals



Cheryl Hrazier
Secretary, Board of Appeals