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MINUTES OF THE HEARING ON THE PETITION OF

HEARING # 11-03

PIERRE RICHARD FOR A VARIANCE, 149 GREAT ROAD

A public hearing of the Acton Board of Appeals was held on Monday, March 7, 2011 on the petition of Pierre Richard for a VARIANCE from Section 7 of the Zoning Bylaw to allow exterior wall signage to be installed on a business that's located in an R-8 residential zoning district. The property is located at 149 Great Road. Map F4/Parcel 37.

Present at the hearing was 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 petitioner Pierre Richard, Attorney Alex Parra, of D'Agostine and Levine, David Johnson and Cate Lynch representing Brookside Shops.

Ken Kozik opened the hearing, read the contents of the file which included the petition, an application for signage, pictures of the proposed sign, pictures of the building, an email from Health Department with no comments, a February 3rd letter from Scott Mutch, Zoning Enforcement Officer, a March 1st memo to the Board of Appeals from Scott Mutch, a memo dated March 3, 2011 from Roland Bartl, Acton Town Planner stating that Scott made the right decision under the bylaw but some relief should be granted because it would be unfair to deny it. A memo dated March 1st from the Board of Selectmen recommending the ZBA allow the sign and that it be similar in dimensions to the existing signs at the Plaza. The Board of Selectmen also felt that the zoning for the Plaza should be changed from R-8 to Commercial and that that would be best in the long term. Also included in the file were various photographs of signage from other businesses located at the plaza.

Ken opened up the discussion by asking the applicant why they felt that they are entitled to a Variance, and added that one of the interesting things about a Variance for a sign is when applying the rules for the mandatory findings for a Variance to a sign it's like trying to put a round peg in a square hole.

Pierre Richard began by stating he believes he's entitled to a variance due to the fact that the other surrounding businesses all have signs. He said he is duplicating existing signage in the plaza and he is not asking for his sign to be any larger or smaller. Ken asked Scott Mutch, Zoning Enforcement Officer why Mr. Pierre is not entitled to a sign. Scott said the circumstances are so unique in this case and isolated to this property. He said as the Board knows, Section 10.5 of the State law says there are three mandatory findings that must be satisfied, soil conditions, shape and topography of the lot and obviously it's a tough argument to say that any of these are satisfied here to grant a Variance. As was stated this is a residentially zoned district property and a very unique property and the situation is just bizarre. Ken asked Scott in his view as applied to this is the bylaw reasonable to reject the sign. Scott said he thinks yes, he said it's very clear that in section 7.7 it says any principal use permitted in a

business, industrial office or a village district is permitted exterior signage, and this one is not. Scott said it makes total sense that there should be signage without a doubt but he just doesn't know how you get that out of the bylaw.

Pierre Richard said if he moves out in a few years does this mean the town is going to make this entire business center inoperable to business owners because they won't be able to have signs.

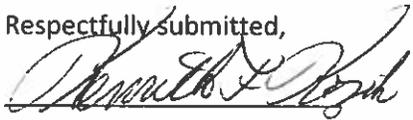
Dave Johnson, property Manager for the plaza and TIA Realty said he's been involved since the beginning of the shopping center and retail is ever changing, as a matter of fact Appleseed's, who is in that plaza will be closing all their stores. Jill was part of Talbot's and now that's changed so there will continue to be constant changes to the plaza so this problem is going to come up again.

Ken asked if anyone present had anything else to add. Alex Parra said on the Variance petition there is no dispute that this application meets the hardship, and desirable relief and can be granted but it is uniquely situated. This property is unique on Great Road because most properties on Great Road are zoned commercial this is the only property that is zoned residential. The zoning he believes was designed around the existing uses.

Ken made a motion to close hearing #11-03. Marilyn so moved and Jon Wagner seconded the motion. Hearing #11-03 was closed. After public deliberation, the BOARD voted 3-0 to **DENY** the **VARIANCE**.

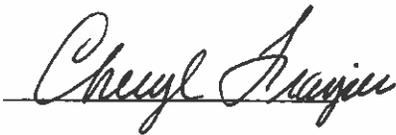
Ken Kozik to write the decision.

Respectfully submitted,



Kenneth F. Kozik

Chairman, Board of Appeals



Cheryl Frazier

Secretary, Board of Appeals