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TOWN CLERK, ACTON

DECISION 11-01

DECISION ON THE PETITION BY GEORGE AND PATRICIA HARAS 30 MINUTEMAN ROAD

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, January 10, 2011, at 7:30 P.M., on the petition by George and Patricia Haras for a VARIANCE from the requirements of Section 5 – Table of Standard Dimensional Regulations of the Acton Zoning ByLaw to allow an existing shed to remain within the 30 foot minimum setback requirements of both John Swift Road and Minuteman Road. The lot is located at 30 Minuteman Road, Map F3/Parcel A-8.

Board members present at the hearing were Kenneth F. Kozik, Chairman; Jonathan Wagner, Member; and Marilyn Peterson, Member. Also present were Scott Mutch, Assistant Town Planner and Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; George and Patricia Haras, Petitioners.

Mr. Kozik opened the hearing and read the contents of the file. Included in the file was an IDC Memo from Mr. Mutch which explained the history of the case and his rationale in ordering the Petitioners to remove the shed or move it to a site which complied with Section 5 setback requirements. The Memo explained that the property was located on a corner lot at the intersection of John Swift Road and Minuteman Road and that the present site of the shed was within the 30 foot minimum setback areas for both John Swift Road and Minuteman Road and therefor in violation of Section 5 – Table of Standard Dimensional Regulations of the Acton Zoning ByLaw.

In support of the Petition Patricia Haras stated that prior to purchasing the shed she called Town Hall and spoke to someone (she did not remember the name of the person) who told her that it was OK to place the shed where it was now because it was not a permanent structure and it was less than 120 square feet. George Haras also stated that he thought the shed was in fact more than 30 feet from each street and therefor not in violation of the setback requirements.

Mr. Wagner asked the Petitioners whether there was any other place on the property where the shed could be located if it had to be moved in order to comply with the setback requirements. Mr. Haras said that there were only two other sites and neither were good because one was on top of a gas line and the other was in an area where water collected.

Mr. Kozik noted to the Petitioner that Section 10.5.5 of the Zoning Bylaw states that before granting any variance from the requirements of the Bylaw, the Board must specifically find:

10.5.5.1 That owing to circumstances relating to the soil conditions, shape, or topography of the LOT or STRUCTURES in questions and especially affecting such LOT or STRUCTURES but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner.

Mr. Kozik asked the Petitioners whether the topography of their property is unique such that it prevented them from siting the shed in an area that complied with the setback requirements. Mr. Haras responded that their property slopes and they would have to fill in any sloped area where the shed could be relocated. Mr. Kozik then asked Mr. Mutch if he thought the property topography was unique because of the sloping and he responded that some areas dip slightly but that the slope was not significant or unique.

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

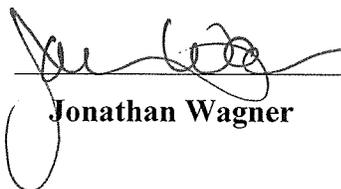
1. The Petitioner seeks a VARIANCE from the requirements of Section 5 – Table of Standard Dimensional Regulations of the Acton Zoning Bylaw.
2. The location of the existing shed is within the 30 foot minimum setback areas for both John Swift Road and Minuteman Road and therefor presently in violation of Section 5 – Table of Standard Dimensional Regulations of the Acton Zoning ByLaw.
3. Board Members Kenneth Kozik and Jonathan Wagner concluded that a literal enforcement of Section 5 – Table of Standard Dimensional Regulations of the Acton 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 as required by Section 10.5.5.1 of the Acton Zoning ByLaw.
4. Board Member Marilyn Peterson concluded that since the Petitioners apparently sited the shed within the 30 foot minimum setback areas relying on possible misinformation given to them by the Town, this circumstance would involve substantial hardship to the Petitioner as a result of circumstances relating to the soil conditions, shape or topography of the Lot or Structures and satisfied the mandated prerequisite findings of said Section 10.5.5.1.

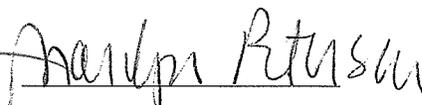
Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted 2-1 to **DENY the VARIANCE** from the requirements of Section 5 – Table of Standard Dimensional Regulations of the Acton Zoning ByLaw, Board Members Kenneth Kozik and Jonathan Wagner voting to deny the variance and Board Member Marilyn Peterson voting to grant the variance.

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


Kenneth F. Kozik


Jonathan Wagner


Marilyn Peterson

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.