



RECEIVED
MAY 17 2011

TOWN CLERK, ACTON

DECISION #11-03

DECISION ON THE PETITION BY PIERRE RICHARD 149 GREAT ROAD

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, March 7, 2011, at 7:30 P.M., on the petition by Pierre Richard for a VARIANCE from the requirements 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.

Board members present at the hearing were Kenneth F. 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 and read the contents of the file. The file included, in part:

1. The petition
2. An application for signage
3. Pictures of the proposed sign
4. Pictures of the building
5. An email from Health Department with no comments
6. A memo dated March 1, 2011, to the Board of Appeals from Scott Mutch, rejecting the sign permit
7. A memo dated March 3, 2011, from Roland Bartl, Acton Town Planner, stating Scott Mutch made the right decision under the Acton Town zoning bylaws but some relief should be granted because it would be unfair to deny it
8. A memo dated March 1, 2011, from the Board of Selectmen, recommending the Board 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
9. 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. Ken reminded the petitioner that the Board has to make certain mandatory findings to grant a Variance under section 10.5.5 and asked the Petitioner what circumstances relating to the soil conditions, shape or topography of the Lot or Structures differed from those in the surrounding area which would cause a substantial hardship if the Bylaw was enforced in this instance.

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. Mr. Richard did not articulate any circumstances relating to the soil conditions, shape or topography of the Lot or Structures differed from those in the surrounding area which would cause a substantial hardship if the Bylaw was enforced in this instance.

Ken asked Scott Mutch why Mr. Pierre is not entitled to a sign. Scott said the circumstances are unique in this case. Scott said as the Board knows, Section 10.5 of the State law says there are three mandatory findings that must be satisfied and it's a tough argument to say that any of these findings are satisfied here to grant a Variance. This is a residential zoned district property. Ken asked Scott in his view as applied to this matter is the bylaw reasonable to reject the sign. Scott said no.

Dave Johnson, property Manager for the plaza and TIIA Realty said he's been involved since the beginning of the shopping center and its retail environment is ever changing.

Attorney Alex Parra said there is no dispute that this application meets the hardship, and desirable relief can be granted by the Board. This property is unique on Great Road because most properties on Great Road are zoned commercial. Mr. Parra did not articulate any circumstances relating to the soil conditions, shape or topography of the Lot or Structures differed from those in the surrounding area which would cause a substantial hardship if the Bylaw was enforced in this instance.

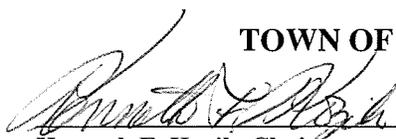
The Board of Appeals, after considering the materials submitted with petition, together with the information developed at the hearing finds that:

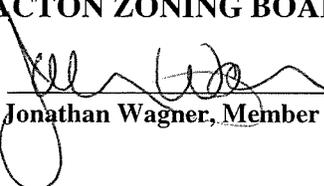
1. The Petitioner seeks a VARIANCE from the requirements Section 7 of the Zoning Bylaw to allow exterior wall signage to be installed on a business that's located in an R-8 residential zoning district.
2. A literal enforcement of Section 5 of the Zoning Bylaw would not involve substantial hardship to the Petitioner as a result of any circumstances relating to the soil conditions, shape or topography of the Lot or Structures.

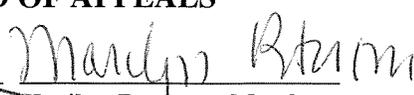
Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **DENY the VARIANCE** from Section 5, Table of Standard Dimensional Regulations, of the Zoning Bylaw.

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 ZONING BOARD OF APPEALS


Kenneth F. Kozik, Chairman


Jonathan Wagner, Member


Marilyn Peterson, Member

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.