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MINUTES OF THE HEARING FOR A SPECIAL PERMIT
TOWN CLERK, ACTON
494 MAIN STREET

HEARING #13- 01

A public hearing of the Acton Board of Appeals was held on Monday, June 17, 2013 at 7:30 pm in Room 126 of the Acton Town Hall for a Special Permit on the petition of Steven E. Murra for a SPECIAL PERMIT under Section 8.2.2 of the Zoning Bylaw to change from one non-conforming use to another. The property is located at 494 Main Street. Map F3A/Parcel 23.

Present at the hearing were Ken Kozik, Chairman; Jon Wagner, Member; Richard Fallon, Member; Scott Mutch, Zoning Enforcement Officer; and Cheryl Frazier, Board of Appeals Secretary. Also present at the hearing was Attorney Steven Murra and owner Danny Pantazelos.

Ken Kozik opened the hearing, read the contents of the file and asked the petitioner to begin.

Before the hearing got started Richard Fallon, alternate member wanted to state for the record and disclose that he used to work with Mr. Murra on various cases. He is not currently doing any work with him but wanted to mention it in case anyone had a problem with it. He sought advice from bar counsel and believes he can be objective and impartial in this case, and that there is no conflict. He will be filing a disclosure with the Acton Town Clerk on the next business day. Mr. Murra stated they do not have any problem with it.

Steven Murra, Attorney for the owner of the property began by saying the property in question is one door away from the Town Hall. The property is in an R-2 Zone and in the Historic District. It has always been called the Acton Center Store. It's been non-conforming since it was built. The building existed as a store, a post office, a dental office, along with many other uses. There is no way to make it conforming. Its current use is as a pizza shop, apartments, and a couple different offices. One of the office spaces is now available and they'd like to rent it. You can do one of two things. You're not going to make a residence out of it because it wouldn't be suitable for that, but as an office space or general light retail there wouldn't be a lot of traffic. A general office such as an accountant or attorney doesn't have much impact. Parking is not an issue. His question is can you go from one non-conforming use to another.

Jon Wagner asked Scott what the legal status of the property is now. Scott said its pre-existing non-conforming. It's had a variety of uses over the course of time. Under Section 8.2.2 you can change one non-conforming use to another by Special Permit.

Steve Murra added they have inquired from both office to office or office to retail. Scott said a potential florist shop came in and was told if she wanted to move forward she would have to go before the BOA for a Special Permit under Section 8.2.2. The hearing tonight stems from a retail use wanting to go in. Ken asked what the town wants. Scott said the town is not objecting to the florist shop or the change. It's a non-conforming office now. Ken summarized by saying if this address has a residence, a restaurant and an office space do you want to make a change of use.

Ken Kozik said the Board would like to have something contained in the file with some historical background analysis of the property. Ken moved that the hearing be continued to August 5, 2013 in Room 126 at 7:30 pm. The motion was seconded.

Continued Hearing #13-01

August 5, 2013

7:30 PM

The continued hearing #13-01 was re-opened for discussion. Ken recapped what was discussed at the last hearing. He said at the last hearing the board was given a picture of what is presently there and there was also a potential lessee for the unit.

Steve Murra briefly explained what they were looking for, a change of use from one non-conforming use to another. He said the reason they are back before the board again is because the property is now going to be leased to a tutoring business. So now they know what the use will be. It will be an office type use and not a retail use. The tenant will be tutoring students. When the future tenant talked to Scott Mutch, Zoning Enforcement Officer about installing a sign for the business, Scott suggested they attend the BOA meeting since it was to their best interest. Ken asked Rick and Jon if they had any questions. Rick didn't have any questions. Jon asked where we are with the application since they need to know what they are voting on. Ken asked Scott what the definition of the use would be. Scott said under Section 3.4.11 the use would be commercial education or instruction use. It very clearly defines that in the Zoning bylaw. Steve Murra said at the time of the application there was not a specific use in mind it was just changing one non-conforming use to another. Jon is concerned about what they are voting for. Rick wants to know the exact address of the business. Steve Murra said it should be identified as 492 Main Street.

Ken moved to close hearing #13-01. The hearing was closed.

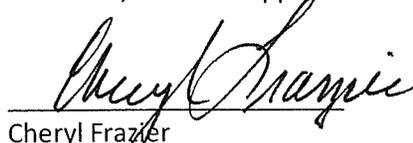
The Board voted unanimously to **GRANT** the **SPECIAL PERMIT** (Hearing #13-01) to change the non-conforming use to commercial education or instruction under **Section 8.2.2** and **3.4.11** the space being formerly identified as 492 Main Street, the former Nicki Tsongas space.

Jon Wagner to write decision.

Respectfully submitted,



Kenneth F. Kozik
Chairman, Board of Appeals



Cheryl Frazier
Secretary, Board of Appeal