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AUG - 5 2015

Town of Acton  
Planning Department

August 5 2015

Town of Acton  
Board of Appeals  
472 Main Street  
Acton, MA 01720

To Whom it May Concern:

I am a veterinarian and would like to purchase a veterinary practice located at 363 Main Street in Acton. I understand a special permit was granted to the owner of this property when she purchased it from its original owner in 1997. I would like to petition the Board of Appeals to grant me an extension of the special permit (originally granted in 1997, decision #97-14) that allows non-conforming use of the property at 363 Main Street, Acton, MA. I would only be taking ownership of the property with no change to the business or structure.

I appreciate your consideration in this matter, and I look forward to speaking with you in the future.

Regards,



Daphne Flessas, DVM



RECEIVED & FILED  
DATE November 26, 1997  
Edward J. Ellis  
TOWN CLERK, ACTON

Board of Appeals

Decision on the Petition by  
Karen Geissert  
for 363 Main Street c/o Sherrill R. Gould, Attorney  
Decision # 97-14

A public hearing of the Acton Board of Appeals was held in the Town hall on Wednesday, October 8, 1997 at 7:30 PM, on the petition of Karen Geissert, 363 Main Street for a SPECIAL PERMIT under Section 8.2.3 of the Zoning Bylaw to allow for the continuation of an existing use with enhanced facilities, or to be considered as a change in a non-conforming use and/or to grant a Variance from Section 8.2.3 permitting the extension or addition of the non-conforming use (animal hospital) in a residential district located at 363 Main Street, Map F30/Parcel 56.

Present at the hearing were Board members Peter Berry, Chairman; Janet Clark, Member; Thomas Lemire, Alternate; and Cheryl Frazier, Board of Appeals Secretary. Also present were Karen Geissert, Petitioner; Jack Geissert, Bill Oullette and Sherrill Gould, attorney for the petitioner.

Mr. Berry opened the hearing, introduced the Board members, read the petition and noted the file contents, which included a communication from Roland Bartl, Acton Town Planner. Mr. Bartl stated essentially that it is incumbent upon the Board of Appeals to maintain the residential use on the lot as the principle use and to ensure that the business continues to be operated by a resident who lives on the lot.

Peter Berry asked the petitioner to begin. Sherrill Gould stated that the present use as a owner-occupied veterinary practice predates the Bylaw. Additionally, the current owner, Dr. Kenneson, is divorced from his wife and has not lived in the residence on the lot with her for five or six years. Dr. Geissert would like to expand and upgrade the veterinary facilities, live elsewhere, and hopefully rent the residence to a full-time employee of the veterinary practice.

To allow the petitioner time to confer with the Town Planner and the Building Inspector regarding the dimensions of the veterinary practice under the planned upgrade, the hearing was continued until October 22, 1997 at 7:30 PM. All previous attenders were at the continuance. Present also was Garry Rhodes, Acton Building Inspector.

Peter Berry re-opened the hearing and read a communication from Roland Bartl submitted on October 17, 1997 which stated that the proposed expansion and upgrade only minimally encroaches on the residential living space, all within existing structures. He also restated that owner occupancy would still be the most desirable circumstance. Garry Rhodes stated that he believed that a Special Permit is required when you change a resident owner to a tenant in this situation.

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

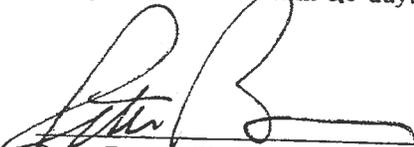
- (1) Will not expand parking, generate more traffic or change the appearance of the predominant use as a residence;
- (2) Is consistent with the Master Plan and is in harmony with the purpose and intent of the Zoning Bylaw;
- (3) Will not be detrimental or injurious to the neighborhood in which it is to take place;
- (4) Is appropriate to the site in question;
- (5) Complies with all applicable requirements of the Bylaw.

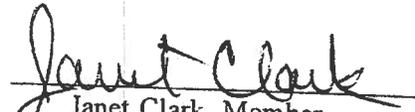
Based upon the findings, the Board voted unanimously to GRANT the SPECIAL PERMIT from Section 8.2.3 to continue a non-conforming use with the following conditions:

- 1. The <sup>LL</sup>assessory use (Veterinary care/ Animal Hospital) be less than 50% of the square footage area of the entire built structures on the site.
- 2. The residential use be greater than 50% of the square footage area of the entire built structures on the site.
- 3. If the property changes hands after Dr. Gessert, the Special Permit will require review before this Board.

Any person aggrieved by this decision may appeal pursuant to Massachusetts General laws Chapter 40A, Section 17 within 30 days after this decision is filed with the Acton Town Clerk.

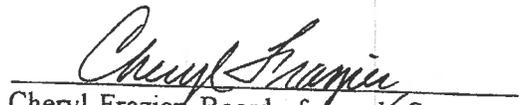
Town of Acton Board of Appeals

  
Peter Berry, Chairman

  
Janet Clark, Member

  
Thomas Lemire, Alternate Member

I certify that the copies of this decision have been filed with the Acton Town Clerk and Planning Board on November 26, 1997.

  
Cheryl Frazier, Board of Appeals Secretary

RECEIVED &amp; FILED

DATE October 29, 1997Rebecca Brown  
TOWN CLERK, ACTON**MINUTES OF THE HEARING ON THE PETITION BY KAREN  
GEISSERT, 363 MAIN ST. c/o SHERRILL R. GOULD, ATTORNEY****HEARING # 97-14**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Wednesday, October 8, 1997 at 7:30 PM on the petition by Sherrill R. Gould, attorney for Karen Geissert, 363 Main St. for a **SPECIAL PERMIT** from the requirements of Section 8.2.3 of the Zoning Bylaw to allow the continuation of an Animal Hospital and expansion, or to be considered as a change in a non-conforming use and/or to grant a Variance from Section 8.2.3 permitting the extension or addition of the non-conforming use (Animal Hospital) in a residential district located at 363 Main Street, Map F30/Parcel 56.

Present at the hearing were Peter Berry, Chairman; Janet Clark, Member; Thomas Lemire, Alternate; and Cheryl Frazier, Board of Appeals Secretary. Also present were petitioner Karen Geissert, Jack Geissert, Bill Oullette, and Sherry Gould attorney for petitioner.

Peter Berry opened the hearing read the contents of the file which included an IDC from Roland Bartl, Town Planner, stating in short it is incumbent upon the Board of Appeals to maintain the residential use on the lot as the principal use and to ensure that the business continues to be operated by a resident who lives on the lot.

Peter Berry asked the petitioner to begin. Sherrill Gould, attorney for the petitioner, began by saying the purpose for the petition is quite simple. Dr. Kenneson presently runs the Veterinary clinic and has for quite a number of years. It existed as a veterinary practice long before the zoning bylaw was enacted and therefore it predates current zoning as a non-conforming use. Dr. Kenneson is divorced from his wife since the early 1990's and in fact does not live on the property, his ex-wife lives on the property so in terms of it having been owner occupied accessory dwelling to the owner, it has not been for five or six years now. Dr. Kenneson is now ready to retire and Dr. Karen Geissert, likewise does not plan to live on the property, she does intend to be the only veterinarian there. She is interested in purchasing the property and in looking at the facility she decided there were a couple of things she wanted to do to this building in regards to the septic system and parking to make it a viable practice. None of the residence is being encroached upon in order to do any of the retrofitting on the interior. She's really just asking for permission to do interior decor for the garage area and modernizing the rest of it. The residence will be occupied principally for residential purposes and the size of the residential aspect of this site will not change. Janet Clark asked how she intended to find a tenant. Dr. Geissert said she would like to find a full time employee to work for her and also use it as a residence.

Peter Berry said what he understands the Building Commissioner and Town Planner to be saying is that right now the principle use of the property is a residential use where they believe the current owner lives and the accessory use is the veterinary hospital. There's a possibility that this proposal changes the use to make the principal use an animal hospital because the property will be rented out to someone who doesn't live there. Peter Berry said he's concerned about the comments of the Town Planner and the Building Commissioner not having enough information to determine if this is appropriate or not appropriate under the bylaws. He went on to say Roland Bartl and Garry Rhodes agree that's it not an expansion of the area. ( 8.2.3) They believe the issue is, is it a change in use because it's a change from a owner occupied residential use with an accessory or a home occupation type of thing to a business use, to rental and owner run accessory use.

Peter Berry said he would feel more comfortable having the petitioner talk further to Garry Rhodes and Roland Bartl and asking them to clarify, based on further information the petitioner can give them, and get a better understanding.

The hearing was continued until October 22, 1997 at 7:30 P.M.

Peter Berry opened the hearing which was continued from October 8, 1997. He began by reading an IDC from Roland Bartl that was submitted on October 17, 1997 stating that after he reviewed the proposed expansion with the applicant and the Building Commissioner he had a clearer picture of what is proposed. Most of the expansion would absorb the space of two existing garages and minimally encroach into the existing residential living space. There is no building addition or parking lot expansion proposed. Owner occupancy would still be the most desirable of circumstances.

Garry Rhodes, Building Commissioner began by saying he wanted to give the Board some background on the property. A building permit was issued back in 1957 for the house and a Veterinary Hospital. At that time, the Veterinary Hospital was a permitted accessory use. It was some time after that date when a Veterinary Hospital was no longer considered an accessory use within a residential district. That is what has made Garry Rhodes feel that the veterinary care aspect of it is a non-conforming use. There are restrictions in the bylaw. You cannot expand a non-conforming use but based on court cases in this area, it is ok to expand the non-conforming use within a structure that exists, however, additions would not be permitted. In this case, all the expansion is within the structure itself. Up until this point a resident has owned the property and run the veterinary hospital. He doesn't have a problem with an expansion within the structure but he feels that a Special Permit is required when you change a resident owner to a tenant. Garry said another aspect of this is that he has always felt the Veterinary care was the accessory use to the property. He thinks it is critical that the use of the Animal Hospital should remain as the accessory use because it is currently. He said it is critical that the square footage, if the board decides to grant this expansion, should not be larger than the primary use. Sherrill Gould, said they are amending their proposal to not include the breezeway so the residence would be 2,010 square feet and the hospital 1,880 square feet. Garry went on to say as part of their decision the board needs to establish what is non-conforming, and what is being changed.

The Board voted to **GRANT** the **SPECIAL PERMIT** from **Section 8.2.3** to continue a non-conforming use and expand within the structure of the non-conforming use with the following conditions:

1. The accessory use (Veterinary care/Animal Hospital) be less than 50% of the square footage area of the entire built structures on the site.
2. The residential use be greater than 50%
3. If the property changes hands after Dr. Geissert, the Special Permit will require review before the Board.

Janet Clark to write decision.



RECEIVED & FILED

DATE Sept. 30, 1999

Eva H. Bower  
asst. TOWN CLERK, ACTON

MASSACHUSETTS  
BOARD OF APPEALS

Requested extension of Special Permit Decision  
#97-14

Karen Geissert, 363 Main Street, Acton Massachusetts

A meeting of the Acton Zoning Board of Appeals was held in the Town Hall on September 16, 1999 at 8:30 P.M. The Zoning Board considered the request of Karen Geissert dated June 25, 1999. Ms. Geissert requested a one year extension because the design of the revisions, as permitted by the Special Permit, are behind schedule and cannot be completed before the expiration of the decision. The decision will lapse on November 26, 1999. The Board under Acton Zoning Bylaw section 10.3.7 may grant an extension if good cause is shown. The Board finds that good cause has been shown and grants a one-year extension until November 26, 2000.

Thomas Lemire  
Thomas Lemire, Chairman

Cara Voutselas  
Cara Voutselas, Clerk

David S. Black  
David Black, Alternate

I certify that copies of this extension have been filed with the Acton Town Clerk and Planning Board on September 30, 1999

Cheryl Frazier  
Cheryl Frazier, Board of Appeals Secretary



BK30950PG046

TOWN OF ACTON  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (508) 264-9615  
Fax (508) 264-9630

Town Clerk

Nov 30, 1999

TO WHOM IT MAY CONCERN:

This is to certify that the attached Board of Appeals Decision for a special permit (Hearing #97-14) on the Petition by Karen Geissert for 363 Main Street c/o Sherrill R. Gould, Attorney, was filed with the Town Clerk's Office and the Planning Board on November 26, 1997.

The 20-day appeal period has expired and there have been no appeals made to this office.

Edward J. Ellis  
Asst. Town Clerk

Record Owner - Jack O. Geissert - TR  
- Karen E. Geissert - TR  
Allison Realty Trust  
Book 28484  
Page 254

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