



Planning Department

**TOWN OF ACTON**  
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**MEMORANDUM**

**To:** Zoning Board of Appeal

**Date:** November 30, 2015

**From:** Robert Hummel *RH*

**Subject:** Variance #15-15 —155 Summer Street

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**Applicant:** John Erikson  
**Property Owner:** John Erikson  
**Location:** 155 Summer Street  
**Map/Parcel:** F1-15  
**Zoning:** R-8/4  
**Proposed Use:** Construction of a Single Family Home on Newly Created Lot  
**Hearing Date:** December 7, 2015  
**Decision Due Date:** March 6, 2016

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**Background**

The applicant is requesting a variance relief from Section 5 from the Zoning Bylaws so that they can construct a new single family house within the required front yard setback. The applicant would like to separate the existing parcel that currently contains one single family house into two separate lots and to also construct a new single family house on the newly created lot. The current lot has sandy soils that have over time created a steep slope dropping away from the road roughly 22 feet at about 90 feet back from the right of way of Summer Street. Due to the steep slope within a short horizontal distance the ability to gain access to the lower elevation is not practical or feasible. The soil condition together with the steep slope limits the level buildable area near Summer Street to about 90 feet. This was not a problem prior when the current house was built with smaller front yard setback. The 75 foot no structure setback from the wetland at the toe of slope required in the Acton Wetland Protection Bylaw coupled with 45 foot setback from the road creates a very limited envelope to build within.

The variance request is for a reduction of 6 feet from the required minimum 45 feet front yard creating a 39 foot setback instead. The applicant argues that the current setback requirements with topography issues would create a hardship for the applicant to build a house of reasonable square footage while creating some interest in the facade.

*According to MGL 40A Section 10 Variance- The Zoning Board of Appeal has authority (but not the obligation) to grant a variance to a petitioner when they can demonstrate a circumstance of hardship in relations to the soil conditions, shape, or topography of such land or structures and*

*especially affecting such land or structures but not affecting generally the zoning district in which it is located.*

### **Comments**

1. The standard minimum lot requirements for the R-8/4 zoning district are 80,000 sq. ft. of lot area and 200 feet of lot frontage. Both of the newly created lots meet the lot area and frontage requirements in the R-8/4 zoning district for Frontage Exceptions Lots pursuant to Section 5.3.3.1 of the Zoning Bylaw, which allows a frontage reduction of up to 50 feet if the lot area is doubled. .
2. The front setback for R8/4 is 45 feet and for R-2 is 30 feet.
3. The existing house on the newly formed lot 2 has a setback of +/- 30 feet. It is a preexisting nonconforming structure under section 8.3 of the zoning bylaw.
4. The existing parcel of land is located in Zone 2 Recharge Protection Area of the Groundwater Protection District.
5. There is 2014 FEMA Flood Zone – 100-year flood zone located in the back area of the parcel.
6. The Engineering Department provided comments separately.

### **Recommendation**

1. The Planning Department has no objections to this variance request with incorporating the provided interdepartmental comments in the conditions.
2. If the variance is granted, the decision should include findings, conditions and limitations as follows:
  - a. That the Petitioner must record the variance decision at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit.
  - b. The petitioner must file for two street cut permits with the Engineering Department between April and November.
  - c. That all taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full before the issuance of a building permit.
  - d. That the variance conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw.
  - e. That the Town of Acton may elect to enforce compliance with the variance using any and all powers available to it under the law.
  - f. That other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by the decision.
  - g. That the Board reserves its right and power to modify or amend the terms and conditions of this variance with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion.
  - h. That the proposed request is consistent with the Master Plan; is in harmony with the purpose and intent of the zoning bylaw; will not be detrimental or injurious to the neighborhood; is appropriate for the site; and complies with all applicable requirements of the zoning bylaw.
  - i. Before granting any variance, it needs to meet the following mandatory findings.
    - i. That owing to circumstances relating to the soil conditions, shape, or topography of the LOT or STRUCTURES in question 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; and

- ii. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. In deciding whether the requested variance nullifies or substantially derogates from the intent or purpose of this Bylaw, the Board of Appeals shall consider whether the granting of such variance is consistent with the Master Plan.