

DRAFT

BOARD OF APPEALS

Hearing # 16-02

**DECISION ON THE PETITION OF
JEAN PANETTA, TRUSTEE OF ATTENAP
REALTY TRUST, FOR A SPECIAL PERMIT
UNDER SECTION 8.3.4 TO ALLOW THE
RECONSTRUCTION OF A NON-CONFORMING
BUILDING AT 9 WILLOW STREET**

The Acton Board of Appeals (the "Board") held a duly noticed public hearing on May 1, 2016, with regard to the Petition of Jean Panetta as Trustee for Attenap Realty Trust for a **Special Permit** under Section 8.3.4 of the Zoning By-Law to allow reconstruction of a non-conforming building at 9 Willow Street. Map F-2B, Parcels 32, 37, 41.

Present at the hearing were Jonathan Wagner, Chairman; Richard Fallon, Board Member; Adam Hoffman Board Member; Board Secretary Kimberly Bricker; and Kristen Guichard and Robert Hummel, assistant Town Planners. Also present were petitioner and owner Jean Panetta, Salvatore Panetta, counsel Louis Levine, and members of the public.

Chairman Wagner opened the meeting, and read the contents of the file into the record, which included the application with architectural plans, as well as comments from the Engineering Department. An interoffice memo from Kristen Guichard, Town Planner, stated that the Planning Department had no objection to granting the special permit, and made suggestions for potential conditions for any permit.

Salvatore Panetta, speaking for the Petitioner, stated that Sal's Auto is operated at the locus. A metal building on the south side of the property, used

for storing trucks, etc., had collapsed from the weight of snow in the winter of 2014-2015, and they want to replace it. That building measured 84' x 40' feet. It is non-conforming in the side yard setback. They want to replace it with an 80' x 40' building of similar make and design, within the footprint of the existing building; drawings were included among the materials. No color was designated.

The building is in part within the Floodway Fringe, such that the requirements of By-law section 4.1.8.1 must be met.

Chairman Wagner expressed concern about abandoned vehicles and trailers on the property; counsel for the Petitioner suggested an inventory of the vehicles on the property.

Mr. Fallon inquired about flood proofing the building, and counsel stated that the local by-law and state building code would need to be satisfied in that area.

Concerns raised by the public included the height of the building, sidewalk and landscaping issues, and removal of demolition debris.

The meeting was continued until June 6, 2016. In the meantime the applicant would create an inventory for clean-up and determine the range of colors planned for the building, and a site visit by the Board was planned.

* * *

The meeting re-convened on June 6, 2016, after a site visit by the Board on June 3, 2016. A two-page inventory list for clean-up purposes was presented by the applicant, which had been made available at the site visit (first page with "Attenap Realty Trust" at the top, second page with "Some of the snow plows..." at the top). Attached to that inventory list was a third page consisting of a color map of the property, dated 5/22/16, with areas of the property inked in different colors. The Board indicated that in requiring clean-up they were not addressing the wetlands part of the property, which the Conservation Commission will be addressing, per the April 28, 2016 memo from Tom Tidman to the Planning Department.

Salvatore Panetta for the Petitioner presented a photo of another building approximating the color proposed for the new building, a light gray or brown; that photo was marked "Exhibit A." The height of the building will be within the current By-Law requirements.

It is unclear whether the Town may be realigning the intersection of Willow and Central in front of Sal's Auto in the near future. Thus, the option of either a sidewalk or payment in lieu thereof was discussed.

The applicant agreed to the plan of action outlined in the inventory list (see five lines from the bottom of page one, and continuing forward), with certain additions and clarifications. Some items were to be done within a year or other specified time, others before the occupancy permit issues.

An abutting neighbor on Homestead Street mentioned the materials stored near their property around the Ocean Freight storage containers.

The Board voted to close the hearing.

The Board, after specifically making the mandatory findings under Section 10.3.5 of the By-Law, and the findings required under Section 4.1.8.1 of the By-Law, and finding that this rebuilding will not be detrimental to the neighborhood, and that to the extent possible the structure will be rebuilt in conformity with the dimensional requirements of the By-Law, voted unanimously, 3-0, to GRANT the SPECIAL PERMIT, with the following conditions:

1. That the building be built in compliance with submitted plans, including for color purposes similar to the color in the photo marked Exhibit "A" incorporated in this decision.

2. That flood proofing and compensatory storage will occur as required by the state building code and in compliance with By-Law Section 4.1.8.1. Prior to the issuance of a building permit, the applicant shall either:

- a. Submit certified calculations, and subsequent certified plans if necessary for compensatory flood storage, by a registered engineer to

prove compliance with By-Law Section 4.1.8.1(b), and submit certified architectural building design plans that meet the Mass. Commercial Building Code (1612.4, ASCE 24) for flood proofing.

OR

- b. Provide to the Planning Department, as required by FEMA, evidence of a map change by FEMA to the Flood Zone Determination showing the building outside the Flood Plain.

3. That, while this decision does not address issues regarding the wetlands, a condition of this decision is Conservation Commission approval of the submitted plan.

4. Prior to issuance of a building permit, the Applicant shall, at the option of Applicant, construct a sidewalk along the street frontage of the property, or make a payment to the Acton Sidewalk Fund in the amount of \$17,427.50 (according to the contribution calculation of \$50/linear feet of frontage), or participate in a land swap with the Town of Acton to realign the intersection of Willow and Central Streets.

5. This decision incorporates as a condition the two-page inventory list, as well as the third page color map of the property, both of which are attached to this decision. The completion prior to the occupancy permit, of the actions described in the inventory list after the "Plan of action..." near the bottom of the first page and on the second page, are a condition of this decision, with the following additions or amendments:

- a. it is anticipated that the snowplows which stay will number 3 or 4;
- b. the "6 wheel dump truck and tag along trailer in area 4" will be removed within a year ("within a year" in this decision means within a year after the date of this decision);
- c. the go-kart will be removed within a year;
- d. the materials around the "Ocean Freight" storage containers will be stored inside them or otherwise removed within a year. Going forward, there will be no open storage closer to the Homestead Road property (see

"48-2" on the color map) than the
"Ocean Freight" storage containers,
and any such material in that area now will
be moved or removed as soon as practicable.

ACTON BOARD OF APPEALS

Jonathan Wagner, Chairman

Richard Fallon, Board Member

Adam Hoffman, Board Member

Dated:

I certify that copies of this decision have been
filed with the Acton Town Clerk and Planning Board on
June , 2016.

Kimberly Bricker, Secretary
Board of Appeals

This decision, or any extension, modification or
renewal thereof, shall not take effect until a copy of
the decision bearing the certification of the Town
Clerk that (1) 20 days have elapsed after the decision
has been filed in the office of the Town Clerk and (2)
either no appeal has been filed or an appeal has been
filed within such time, has been recorded with the
Middlesex County Registry of Deeds and indexed in the
grantor index under the name of the owner of record or
recorded and noted on the owner's certificate of title.
Any person exercising rights under a duly appealed
special permit does so at risk that a court will
reverse the permit and that any construction performed
under the permit may be ordered undone.