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Jan 26, 2010
By: [Signature]

Town of Acton
Massachusetts

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Date Received
BOARD OF APPEALS
JAN 26 2010
By: [Signature]
ACTON BOARD OF APPEALS

Board of Appeals
(Form 5)
Petition For Variance

1-26 2010

I (We) hereby petition the Board of Appeals for a public hearing and a variance from the requirements of Section 8.3.6.1 of the Zoning By-law, as provided by G.L. Chapter 40A, Section 10 to allow:

The replacement of a single (one story) family dwelling. The current approximate square footage is 1,008. The new dwelling would be colonial in style and under 2800 sq. ft. of livable space.

OFFICE USE ONLY

Seven copies of petition? ✓

Location Map? ✓

Plot plans? ✓

Additional briefs? ✓

List of abutters and other interested parties? ✓

Fee - ~~\$100.00/1-25 abutters?~~ paid
\$125.00/26 + abutters? ✓

Next Hearing Date? 3/8/10 # 10-01

Respectfully submitted,

Signed [Signature]
(Petitioner)

Name Daniel Silva

Address 28 Esterbrook Rd.

Phone # 978-263-3326

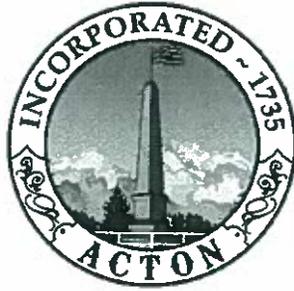
Signed [Signature]
(Owner of Record)

Name Mary Jane Silva

Address 28 Esterbrook Rd

Phone # 978-263-3326

A variance may be granted by the Board of Appeals only if all the conditions, given in Section 10.5.5 are met. The Board may impose conditions, safeguards, and limitations as a part of their decision. (Section X-D)



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JAN 27 2010

TOWN CLERK, ACTON

Board of Appeals

NOTICE OF PUBLIC HEARING

The Board of Appeals will hold a Public Hearing on Monday, March 8, 2010 at 7:30 PM in Room 126 of the Town Hall.

on the following petition:

Hearing # 10-01

Daniel Silva for a VARIANCE from Section 8.3.6 of the Acton Zoning bylaw to allow a 1,008 square foot single family dwelling to be demolished and a new 2,800 square foot single family dwelling to be constructed.

The property is located at 28 Esterbrook Rd., Map F5/Parcel 22.

Petitioner must be present, or send authorized representative

BOARD OF APPEALS

Ken Kozik

Chairman



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

**Board of Appeals
Hearing # 10-01**

A public hearing of the **Acton Board of Appeals** will be held in the Town Hall on **Monday, March 8, 2010 at 7:30 PM** on the petition by Daniel Silva for a **VARIANCE** from Section 8.3.6 of the Zoning bylaw to allow a 1,008 square foot single family dwelling to be demolished and a new 2,800 square foot single family dwelling to be constructed. The property is located at 28 Esterbrook Road. Map F5/Parcel 22.



Planning Department

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
planning@acton-ma.gov

INTERDEPARTMENTAL COMMUNICATION

To: Town of Acton Building Department/Applicant

Date: January 11, 2010

From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner

Subject: 28 Esterbrook Road – Demolition of Existing Single Family Residence and Construction of New Single Family Residence

Dear Applicant,

The Planning Department has reviewed your submitted building permit application and has the following comments:

- The subject property is located within an R-8 Zoning District. The property, as it currently exists, is non-conforming with respect to minimum lot area requirements. Based upon the Town of Acton's Zoning Bylaw requirements, the minimum lot area for property located within an R-8 zoning district is 80,000 ft². According to the Engineering Department's Index Reference Cards, the existing property is only 46,080 ft² which results in the non-conforming lot status.
- Based upon the above noted information, the demolition of the existing single family residence is permitted, however, the construction of the new residential structure is limited to the following Town of Acton Zoning Bylaw requirements:

8.3.6 Replacement of Single- and Two-Family Dwellings – A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE, or rebuilt for single family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE, or rebuilt for two-family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; in both cases subject to the following conditions and limitations:

*28 Esterbrook Road
Acton Massachusetts 01720*

It is our intent to knock down our existing home and have New England Homes build a modular home at their factory and transport the home to Acton. Our existing home is a one story with a crawl space attic and an unfinished basement. Our basement is unfinished due to a water problem on this property, with that said, there is wetlands running from South to North East along the entire border of the property. This wetland varies in depth from 20 feet to 60 feet, again, along the entire border of the property. In our opinion, this wetland gives the 1.02 acre (46,434SF) property a unique status due to the mandated wetland setback. In the most recent certified plot plan, completed by Acton Survey & Engineering Inc. in 2004, the setback line mirrors the contour line of the wetlands, making the entire property, except for where the existing home is non-buildable.

In 2004, we approached the conservation commission to seek permission to place an addition in the wetland setback zone; this was approved providing we take approximately 1/3rd of the yard space (25 foot buffer) to be planted with native species, and large stones. This addition would not correct our urgent need to create a safer home for our 6 year old son (see attached letter). In viewing the plot plan, it is clear that due to the unique nature of this property (wetland setback, zoning offset), there is no other location on this property where a dwelling may be built.

In our plan, the new home will have a smaller footprint than the existing home, again, we are only adding space by adding a second floor (colonial). We are very willing to work with the Board and with Town of Acton Staff on this matter. We both work in the town and plan on being here for a long time.

Thank you
Dan, Mary Jane & Mark Silva

*28 Esterbrook Road
Acton Massachusetts 01720*

In the summer of 2003 we refinanced our home in order to build an addition. It was to include a remodel of existing kitchen, add a family room and a garage. We met with and completed plans with an architect. Dan was deployed in the fall of 2004 and all plans were put on hold.

Upon his return, we sat down to look at where we were at and the full scope of the project. Beside the improvement in living space there were existing problems with the house that needed to be addressed. The chief concern was a water problem in the basement. There are two openings in the concrete floor, as well as a sump pump that continuously runs throughout the year. The basement floods often just due to the high water table. A dehumidifier runs year round in the basement. The house needs new windows (all are original), a new roof, and ventilation in the homes one bathroom. One bedroom has a major crack in the wall adjoining the bathroom.

With the scope of work being what it was, we explored the option of replacing the existing structure with a modular home. The greatest benefit of doing so would be the opportunity to bring in soil, in order to raise up the foundation, so that we are above the water table. Due to the amount of water we have experienced in the past, we would also elect to go ahead and put in a french drain as a back up. All major systems would also be brand new. We have one child (6) who suffers from asthma and has had chronic upper respiratory infections. The opportunity to improve the many aspects of the home that we feel affect his health to us is priceless.

There are many benefits to modular construction. A home that is built in a factory and is delivered to the lot approximately 85% complete. We can expect to be out of our home for only 2 months.

The company we are looking at requires a deposit of \$4000.00 to obtain a set of detailed home plans. The plans we

*28 Esterbrook Road
Acton Massachusetts 01720*

submitted to the Town of Acton are of the home style we chose, but are the company's standard outline of the Tamworth. We would only amend it slightly and anticipate a much smaller version. With permission of the Board, we are willing to submit the actual "blueprint" copy once it has been determined if we can proceed.

Acton Medical

ASSOCIATES, PC

321 Main Street
Acton, MA 01720
978-263-1131

592 King Street
Littleton, MA 01460
978-486-9255

231 Ayer Road
Harvard, MA 01451
978-772-1213

Mark Silva
28 Esterbrook Rd
Acton, MA 01720

Patient DOB: 07/19/2003
MRN: 3004457
PCP: JOHN J. JAKIMCZYK
Encounter Date: Jan 25 2010 9:05AM

To Whom It May Concern:

Mark Silva is a patient of mine who suffers from asthma. He is currently on two, and sometimes three, medications to keep his lung disease stable.

His parents recently brought to my attention that the family is looking to knock down their existing residence and construct a new home, and as you know, the bylaws in Acton prohibit this unless there is a hardship. Per the parents report, there is a river running under the current home, and despite pumps for two sump holes, there is mold in the basement. Mold is a potential trigger for asthma and I hope you consider the current living conditions a hardship for Mark and his family.

Sincerely,
John J. Jakimczyk, MD
JJJ/laj

Electronically signed by: JOHN J JAKIMCZYK MD Jan 25 2010 9:17AM EST