



Planning Department

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
Fax (978) 264-9630
planning@acton-ma.gov

MEMORANDUM

To: Board of Appeals **Date:** March 3, 2011
From: Roland Bartl, AICP, Planning Director *R. B.*
Subject: **Wall Sign for "Elements", 145 Great Rd. (Brookside Shops)
Variance Petition – Hearing # 11-03**

In my opinion, Scott Mutch, the Zoning Enforcement Officer, properly denied the license for the proposed sign. The Bylaw did not allow him to do otherwise¹. The result, however, is absurd, unfair, inappropriate, and unreasonable. The reasons for that are not the denial itself, but the unique zoning history and context of the property, and the State zoning statute itself. It is my understanding that Scott Mutch has provided a summary of this property's zoning history.

This is a classic case for why any law must have procedures for exemptions and variances. The business is trapped in a situation that is literally unique in this Town, as best as we know. While not strictly related to the statutory variance prongs of soil, shape and topography, the situation is the direct absurd consequence of the statutory provisions related to grandfathering and vesting (with subdivision plan filings) to gain zoning protections for excessive times into the distant future. Such protections were obtained for this property, but have now run out. This business should not become the victim of these absurd statutory provisions. Relief should be granted.

Now, that we have become aware of this situation, we have every intent to propose at the next available opportunity to the Planning Board and to Town Meeting a rezoning of the Brookside Shops parcel from Residence 8 to Limited Business. While that will not cure all non-conformity problems, it will at least allow reasonable and proper signage for new businesses². In that sense, if Town Meeting agrees, the relief from the Board of Appeals would only be temporary in nature; and the Town will not, once again unjustly, be labeled as unfriendly to business.

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cc: Planning Board, Board of Selectmen, Scott Mutch

¹ Scott consulted with me on this matter and we both searched for a reasonable way out. But, we could not find it. We did consider section 7.13.1.3 ("a sign in a location or position not otherwise permitted...") with a special permit from the Planning Board. However, we determined that it would be an improper application in this case. In our opinion Section 7.13.1.3 refers only to alternative locations on a lot or on a building, which is supported by the listing in the same section to signs that even with a special permit cannot be approved (roof sign, billboard, sign within the minimum required sign setback). Had the legislative intent of section 7.13.1.3 been broader so as to allow this sign by special permit, it would have to read "a sign in a location or position **or zoning district** not otherwise permitted".

² Prior to this case, new businesses at Brookside Shops re-faced existing signage. This was not a problem because the re-facing of non-conforming signs is allowed under the bylaw. This case is different, in that it involves the division of interior space into two smaller units. One of these units has been occupied earlier having "used up" the re-faced existing sign. "Elements" requires an entirely new sign.