



TOWN OF ACTON
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**ZONING ENFORCEMENT OFFICER
 Staff Report**

Board of Appeals

**TO: Chairperson and Members
 Board of Appeals**

DATE: March 1, 2011

**FROM: Scott A. Mutch
 Zoning Enforcement Officer & Assistant Town Planner**

**SUBJECT: File #11-03: 149 Great Road – Variance Seeking Permission to Erect Commercial
 Signage which is not Permitted in Residential Zoning
 Districts**

The applicant, Pierre Richard on behalf of Elements Therapeutic Massage, is requesting a variance in order to erect an exterior wall sign for a commercial use which is located within a residential zoning district. Commercial signage is not permitted within residential zoning districts.

ZONING / SITE DATA

Legal

Description: Middlesex South District Registry of Deeds: Book: 35208; Pages 330 & 332; Plans 1306 of 2002, 91 of 2001, 972 of 1976, 522 of 1975 and 1178 of 1969.
 Town of Acton Atlas: Map F-4; Parcel 37.

Zoning: R-8 (Residence 8)

Bylaw Requirements	Required	Existing	Proposed
Min. Lot Area (ft ²)	80,000	450,605	No Change
Min. Lot Frontage (ft) – Great Road	200'-0"	817.25'	No Change
Min. Lot Frontage (ft) – Esterbrook Rd.	200'-0"	371.20'	No Change
Min. Front Yard – Great Road	45'-0"	+/-275'-0"	No Change
Min. Front Yard – Esterbrook Road	45'-0"	+/-215'-0"	No Change
Min. Side or Rear Yard (ft) – Southern & Eastern Property Lines *	20'-0"	+/-153'-0"*	No Change
Maximum Building Height (ft)	36'-0"	Unknown	Unknown

* The setback identified is the distance between the subject building and the eastern property line of other residentially zoned properties. The setback from the southern property line greatly exceeds any minimum setback required. A larger L-shaped commercial building is located between the subject structure and the southern property line.

- 10.5 **Variance** - Variances from the specific requirements of this Bylaw may be authorized by the Board of Appeals.
- 10.5.5 Mandatory Findings – Before granting any variance from the requirements of this Bylaw, the Board of Appeals must specifically find:
- 10.5.5.1 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
- 10.5.5.2 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.

STAFF ANALYSIS

The subject application is requesting a variance in order to erect an exterior wall sign for a commercial use which is located within a residential zoning district. Commercial signage is not permitted within residential zoning districts. The variance being sought, seeks relief from Section 7.7 of the Zoning Bylaw which states “*Any PRINCIPAL USE permitted in a Business, Industrial, Office or Village District may ERECT an EXTERIOR SIGN...*” The subject signage is an entirely new commercial sign which has never previously existed. Although the commercial space itself is not new, there are now two independent and completely separate businesses in a location where there was previously only one individual business. The requested variance is unique in the sense that there are very few instances in which signage variances are sought.

Section 7 of the Zoning Bylaw specifically regulates Signs and Advertising Devices. Under Section 7.13 of the Zoning Bylaw, the Planning Board is permitted to act as the Special Permit Granting Authority which can approve, approve with conditions, or disapprove deviations from the requirements of Section 7.4 (General Regulations), 7.7 (Exterior Signs) and 7.8 (Freestanding Signs). In this particular instance, the Planning Board is not the Special Permit Granting Authority and more specifically, Section 7.13.1.3 does not apply. Section 7.13.1.3 states “*a SIGN in a location or in a position not otherwise permitted, but not a ROOF SIGN, a BILLBOARD, or a SIGN located within the minimum required distance from the sideline of a STREET or right of way customarily used by the general public.*” The reason why this section of the Bylaw does not apply is because it presumes that a sign would be permitted as-of-right due to the business being located within a Business, Industrial, Office or Village District. As mentioned previously, the subject business is located within a residential zoning district which does not permit commercial signage. Therefore, the Planning Board does not have the jurisdictional authority to approve such signage under Section 7.13.1.3’s permitted deviation.

Prior to the currently existing development, the property was utilized for agricultural use as a farm. The subject property was constructed under Site Plan Special Permit #07/26/00-372 which approved construction of a 74,000 square foot shopping plaza. The entire site was at the time of the Site Plan Special Permit, and is still currently zoned Residential 8. A Preliminary Subdivision Plan was filed on March 27, 1990 and was followed by a Definitive Plan seven months later. Although the Planning Board disapproved the plan, the decision was reversed on appeal through the Courts. This preserved the zoning

bylaw which was in effect on March 27, 1990 when the original preliminary plan was submitted. The land remained subject to that zoning until February 1, 2003 at which time all zoning protections ceased to exist and since that time, the property is deemed to be non-conforming. Therefore, the current Town of Acton Zoning Bylaw (as amended through October 2010) is the prevailing set of guidelines and requirements. Unfortunately, exterior wall signage, such as that which the applicant is proposing, is not permitted in residential zoning districts.

The space which the subject business now occupies was formerly a larger and single commercial space. More specifically, the subject space was utilized as a restaurant use (O'Naturals). When the previous restaurant use ceased operations, the space was subdivided by Building Permit #22258 (April 30, 2009) into two (2) smaller, yet equally sized commercial spaces. Each of the new commercial spaces is approximately 2,000 square feet in size. A children's clothing establishment has since leased the other portion of the newly created commercial spaces and under Building Permit #22265 (May 5, 2009) built the space out for their specific needs. The children's clothing business has also obtained a sign permit (Permit # 2932 – June 29, 2009) for exterior wall signage which has also already been installed for a significant period of time. The location of the wall signage was proposed and is installed in the same location as the signage which was previously approved and in existence for the restaurant use.

Due to the situation's very unique set of circumstances, should the Zoning Board of Appeals wish to consider granting the requested variance, it should be noted that a zoning review of the currently submitted signage application indicates that the signage does not comply with the zoning bylaw requirements for exterior signage. It should also be noted that the subject signage has already been installed and has been for some time now without the proper permits being issued by the Town. Staff has also observed a Temporary/Special Event Sign being displayed on the property which has not been legally permitted or approved by the Planning & Zoning Department. Based upon the information provided as part of the currently submitted signage application, it does not comply with Section 7.7.4.1 of the Zoning Bylaw. Section 7.7.4.1 states "*The maximum DISPLAY AREA of a WALL SIGN affixed to the exterior wall of a BUILDING in conformance with Section 7.7.2, or to an arcade, canopy, parapet, or gambrel or mansard roof, shall not exceed 1 square foot for each lineal foot of wall(*). {(*) The wall front or store front occupied by a business, or the width of the canopy side to which the SIGN is attached.}*" Based upon the building permit (Permit #30407) drawings submitted by the Applicant and approved by the Town of Acton for the build-out of the subject space, the storefront is only 20'-6" at the absolute maximum. This allows for a 20.5 square foot maximum sized sign only. The Applicant is proposing a 30 square foot sign which exceeds the maximum size permitted. This would need to be addressed and reduced before any signage permit could be issued.

Section 10.5.5 of the Town of Acton's Zoning Bylaw sets forth very specific requirements, criteria and mandatory findings which must be met and satisfied in order for the Board of Appeals to grant such a requested variance. Based upon a review of the application package submitted and all of the information provided to date, it does not appear that the mandatory findings have been met or satisfied. However, like previously mentioned, the set of circumstances which surround this particular situation are very unique in nature.

In summary, a variance to allow exterior commercial signage is being sought for a commercial establishment which is located within a residential zoning district where commercial signage is not allowed. The proposed signage is an entirely new commercial sign which has never previously existed. The commercial shopping plaza was constructed on land under zoning protections which have now ceased to exist. The shopping plaza as it currently exists today, is deemed to be non-conforming.