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MINUTES OF THE HEARING ON THE PETITION FOR REVIEW

HEARING # 11-13

50 POPE ROAD

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, October 3, 2011 at 7:30 PM on the petition of R. Douglas Shaw, GS Holdings LLC for a public hearing to seek a finding from the Zoning Board of Appeals that the proposed dwelling may be built upon the non-conforming lot despite Section 8.3.6 pursuant to M.G.L. c. 40A §6, first paragraph. The subject property is located at 50 Pope Road. Map F-5/Parcel 49.

Present at the hearing was Ken Kozik, Chairman; Jonathan Wagner, Member; Richard Fallon, Alternate Member; Scott Mutch, Zoning Enforcement Officer; and Cheryl Frazier, Board of Appeals Secretary. Also present at the hearing were the petitioner, Douglas Shaw and his Attorney Sherrill Gould.

Ken Kozik opened the hearing, read the contents of the file which included two letters from Scott Mutch, Zoning Enforcement Officer. The first letter dated July 22, 2011 and the second letter dated September 6, 2011.

According to Ms. Gould, the petitioner is a developer who purchased the property at 50 Pope Road. The existing residential structure is a one story Cape Cod style 1,142 square foot home having a foot print of 34' by 24' feet. The property is located in an R-8 zoning district that requires a minimum of 80,000 square feet of lot area and 200 feet of lot frontage. The property has only 24,627 square feet of lot area and only 166.07 feet of lot frontage. Thus, the current structure is deemed non-conforming. The property is compliant with all other zoning requirements, e.g., front, rear, and side setbacks.

The petitioner purchased the property and does not reside on the property or intend to reside on the property. The petitioner proposes to raze and/or alter the current structure and erect a 3,100 square foot structure with a foot print of approximately 80' by 40', which he subsequently intends to sell.

The Zoning Enforcement Officer denied petitioner's building permit in part because (1) the submitted plans were unclear as to whether any of the existing structure would be preserved and (2) under Acton Zoning Bylaw Section 8.3.6, which requires that a replacement structure that is to be razed not exceed the floor area ratio of the original structure.

Attorney Gould argued that the increase of square footage of the structure from 1,142 square feet to 3,100 square feet does not increase the non-conforming nature of the structure because the proposed structure complies with all other zoning bylaw provisions in the R-8 zoning district, e.g., front, rear, and side setbacks. More generally, attorney Gould argued that no increase in structure square footage on a non-conforming lot can be interpreted as an increase in non-conformity so long as a proposed structure complies with all other zoning bylaws. Accordingly, attorney Gould argued that petitioner is entitled to

complete his proposed plans under Massachusetts law, at M.G.L., c 40A, §6, first paragraph, as a matter of right.

One abutter emailed a comment to the Board stating they were opposed to the petitioner's plans to increase the size of the current structure while another abutter Tom Lemire of 5 Braebrook Road attending the hearing asked several questions that were answered by the petitioner and his attorney.

Sherrill Gould said if the magnitude of the structure is at all offensive, they would remove the one garage bay and the two story height. It would be 32 feet from grade to the ridge. They would make the plans show that it's gable and not walk up.

Ken made a motion to close Hearing #11-13. Jonathan Wagner so moved. The motion was seconded by Richard Fallon. The hearing was closed.

The Board voted **UNANIMOUSLY 3-0** to **DENY** the petition.

Ken to write the decision.

Respectfully submitted,

A handwritten signature in cursive script, reading "Cheryl Frazier", written over a horizontal line.

Cheryl Frazier, Board of Appeals Secretary

A handwritten signature in cursive script, reading "Kenneth F. Kozik", written over a horizontal line.

Ken Kozik, Chairman Board of Appeals