



**MINUTES OF THE HEARING ON THE PETITION OF
GEORGE & PATRICIA HARAS, 30 MINUTEMAN ROAD**

HEARING #11-01

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, January 10, 2010 at 7:30 pm on the petition of George and Patricia Haras, for a VARIANCE from Section 5 – Table of Standard Dimensional Regulations of the Zoning by-law to allow a shed to remain within the minimum required 30' foot front yard setbacks of both John Swift Road and Minuteman Road. The subject property is located at 30 Minuteman Road. Map F3/Parcel A-8

Present at the hearing was Ken Kozik, Chairman; Jonathan Wagner, Member; Marilyn Peterson, Member; Scott Mutch, Zoning Enforcement Officer; and Cheryl Frazier, Board of Appeals Secretary. Also present at the hearing were

Ken Kozik opened the hearing, read the contents of the file which included an IDC from Scott Mutch, Zoning Enforcement Officer.

Ken Kozik asked the petitioner to begin. Patricia Haras began by submitting a few documents for the record which included a signed petition from a few neighbors stating they had no issues or concerns with the shed, plans showing the concrete platform preparation for the shed, and an email from a neighbor. She then read a narrative she prepared explaining how they ended up here tonight. She said they received a certified letter from Scott Mutch, Zoning Enforcement Officer on October 20th 2010 stating that their shed was not in compliance with the town setbacks. Then on October 22, 2010 Mr. Mutch, along with another member of the Planning Department came out for a site visit and explained to Pat and George Haras that even though they had called the building department and were given permission to be 30' feet back from each street the shed was not in compliance. Scott Mutch suggested alternate site locations on the property for the shed and also mentioned to them the process to apply for a Variance for the shed. They evaluated the suggested alternative sites which did present several concerns to them so they decided to try for the Variance. She thanked the board for their time and asked the Board to find the location of the shed to be in their favor.

Ken began by explaining to the petitioner that under the zoning by-law the shed that they erected needed to be 30' feet from both Minuteman and John Swift Road. The petitioner explained that when they called the town to inquire about the shed they were told they needed to be 30' feet from the road not the property line. They believed the shed was compliant when they erected it. Ken then asked Scott if they are in violation of the 30' foot setback from both streets. Scott said they are 14' feet non-compliant on the Minuteman Road side but probably only within a foot of being compliant from the John Swift side. Ken asked Scott how they became aware of this violation. Scott said it came to the Planning Director's attention when he was driving by. Scott then sent the letter to the owners and set up a site visit. Marilyn asked for a clarification between the property line and the street. She asked who owns the pavement. Scott told her the town owns the right of way.

Marilyn asked the petitioners if the shed is moveable. Jon Wagner asked if there are any other locations where the shed could be placed if they had to move it. The petitioner's explained that between the gas line that they don't want to cover and the very wet back yard they really don't have any other place to put it.

Ken Kozik explained that the Board has to abide by Section 10.5.5 to grant a variance. The Board has no options but to abide by this section of the bylaw. Ken asked the petitioner if there was a topography issue on their property. The petitioners said they are on a slope and would have to fill the land to place the shed on the slope. The second issue is that the shed is already built and is in noncompliance even though they were unaware of it. Desirable relief could be granted.

Ken asked Scott if he thinks the topography is unique in this case. Scott does not believe it drops off significantly. He said one of the photos shows it dips slightly in the back but it's very minimal. He doesn't believe it's significant enough from adjacent properties. Scott said they suggested other locations on the property where the shed could be placed.

Ken asked for a motion to close the hearing. Marilyn so moved and Jon seconded the motion.

Jon does not feel it's a substantial hardship. Ken agrees with Jon. Marilyn is troubled by how this came about and feels there is a significant hardship. She feels they acted in good faith. She supports the topography and would support the Variance. Ken agrees the misinformation that was given bothers him but it is not the job of the Board to determine that. Jon doesn't feel it complies with the mandatory findings.

Ken asked for a motion to Grant the Variance. The Board voted unanimously 2 to 1 to DENY the VARIANCE.

Jonathan Wagner to write the decision.

HEARING #08-04

AMENDMENT TO 40B COMPREHENSIVE PERMIT FOR 3 CHARTER ROAD

MINUTES of the MODIFICATION of a 40B COMPREHENSIVE PERMIT FOR COMMON GROUND DEVELOPMENT, 3 CHARTER ROAD

The Board of Appeals re-opened Hearing #08-04 on January 10, 2011 8:00 pm in Room 126 of the Acton Town Hall to discuss the modification of a 40B COMPREHENSIVE PERMIT FOR COMMON GROUND DEVELOPMENT, 3 CHARTER ROAD.

Ken Kozik asked the attendee present at the hearing to introduce himself and begin. Attorney Kevin Erickson began by stating he is present tonight on behalf of Common Ground Development for an insubstantial modification to the Comprehensive Permit for 3 Charter Road. Under the Comprehensive Permit for 3 Charter Road, Mass Housing was listed as the subsidizing agency and they have informed the applicant that they are no longer able to serve in that capacity and will no longer be able to subsidize the project. Attorney Erickson is here tonight to request a modification to allow DHCD (Department of Housing and Community Development) to act as that subsidizing agency, they are in

agreement to do so and what they need from this Board is the administrative approval to allow DHCD to act in that capacity. Attorney Erikson has prepared a document that DHCD and the applicant will need to close on financing hopefully in February and get this project moving. Marilyn asked if the financing would be at the same level. Attorney Kevin Erickson said it would be.

Ken asked Scott Mutch, Zoning Enforcement Officer if the Town has any issues. Scott Mutch said the town has no objection.

Ken Kozik moved to close hearing # 08-04. The motion was so moved.

The Board voted to APPROVE the modification as presented and is deemed by the Board as being insubstantial and therefore adopted.

HEARING # 10-07

MINUTES FOR AMENDMENT TO A 40B COMPREHENSIVE PERMIT FOR 99 PARKER STREET

The Acton Board of Appeals re-opened Hearing #10-07, on Monday, January 10, 2011 at 7:45 pm for a request for an amendment to Decision #10-07 for the 40B Comprehensive Permit for 99 Parker Street.

Ken Kozik read the contents included in the file. There was an email from Mr. Starr requesting the waiving of the betterment fee until time of occupancy as well as eliminating the handicapped access in one of the units.

Ken Kozik asked Mark Starr applicant and developer of 99 Parker Street to begin. He stated he had asked the Selectmen to waive the betterment fee until the occupancy of the houses as opposed to it being paid up front at the time of construction as the town's policy states. He is here tonight to ask the Board to amend the decision stating such. There is another issue that he would like the board to look at. He said his original intent was to build one of the units as a handicap accessible unit for a veteran but it does not look like 40B laws will allow that to happen. He would still love to do it but nobody thinks it's going to work. It narrows the scope of the segment of population. He would like to have the discretion and flexibility to eliminate the handicap accessible unit even though he would still prefer to do it.

Ken Kozik asked Scott Mutch, Zoning Enforcement Officer if the town had any input. Scott said with regards to the sewer betterment, the original decision did state that the sewer betterment be paid prior to building permits being issued. Scott's understanding is that the Selectmen created a policy drafted by Doug Halley in the Health Department. The new policy is included in the file and endorsed by the Board of Selectmen. The Board of Appeals would just need to adopt the policy to amend the time of payment from before the building permit is issued to prior to Certificate of Occupancy. In regards to the handicap accessible unit that was shown on the original application and was referenced in the decision, Mark Starr said he would like to amend the decision to make the handicap accessible unit an affordable unit not handicap accessible unit.

Jon Wagner asked if this policy adopted by the Selectmen is going to in fact be the new policy in the future. Scott said the policy has been adopted by the BOS and the decision that affects Mr. Starr was written prior to the policy existing. The policy now exists that says sewer betterments can be paid prior to Certificate of Occupancy.

Ken Kozik made a motion to close Hearing #10-07. The motion was so moved and seconded.

Ken made a motion that the sewer betterment payment will now be at the time of occupancy and the change of the designation for the handicap accessible unit will now be affordable but not handicap accessible.

Respectfully submitted,

Cheryl Frazier, Board of Appeals Secretary

Ken Kozik, Chairman Board of Appeals