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BOARD OF APPEALS

Hearing #19-03

**DECISION ON PETITION FOR A GRANT OF A VARIANCE
WITH RESPECT TO
155 SUMMER STREET**

A public hearing of the Acton Board of Appeals was held on Monday, March 4, 2019, at 7:45PM in Room 126 in the Acton Town Hall on the petition of John Erikson for a VARIANCE under Section 10.5 of the Acton Zoning Bylaw for the construction of a single family home on a newly created lot. The property is located in the R-8/4 zoning district at 155 Summer Street (Map/Parcel F1-15-3).

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member, Emilie Ying, Associate Member, and Robert Hummel, Acton Planning Division. Also present were Walter Eriksen ("Petitioner") and Bruce Ringwall of Goldsmith, Prest & Ringwall, Inc. (professional engineering services). Susan Buckmelter and R. Scott Robb, Associate Members, were not present.

Applicable Bylaw:

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.

Mr. Kozik opened the hearing, explained how the Board procedurally operates and asked the petitioner to begin.

The applicants explained that they are requesting variance relief from the Bylaw to the construct a single family home on a newly created lot. The applicants contend that the current setback

requirements combined with soil conditions, topography and shape issues of the lot, prevent them from constructing a reasonably sized home.

Mr. Kozik referred them to the wording of the Section 10.5.5.1, reproduced above, and provided a general discussion of what the petitioners needed to demonstrate to the Board in order to be granted a variance. The petitioners argued that the sandy soil conditions of the lot, sloping topography of the lot and hammer head shape of the lot differed from lots in the zoning district in which their lot is located. Further, the petitioners argued that their situation would be exacerbated if any house on the lot also had to comply with the wetland setback requirements to the rear of the proposed house.

Mr. Kozik, Mr. Hoffman and Ms. Ying then asked whether literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the applicants. The applicants' responded affirmatively, stating that if the Bylaw were enforced any home would have to be unnaturally sandwiched between the front setback line and the wetland setback line, resulting in an abnormally narrow shaped structure without appeal.

With no further input, Mr. Hoffman made a motion to close the public hearing. Ms. Ying seconded the motion. The Board unanimously voted to close the hearing.

The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing, finds that:

1. The Petitioners seek a VARIANCE under Section 10.5 of the Acton Zoning Bylaw for the construction of a single family home on a newly created lot. The property is located in the R-8/4 zoning district at 155 Summer Street (Map/Parcel F1-15-3).
2. The front setback for R-8/4 is 45 feet. The petitioners propose a 39 foot setback to the house to be constructed.
3. There are circumstances relating to the soil conditions, shape, and topography of the lot that were subject of this hearing that did not also affect lots or structures generally in the zoning district in which it is located.
4. Because of these circumstances, literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner.
5. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw or the Master Plan.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **VARIANCE**, subject to the following condition:

This decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit.

Any person aggrieved by this decision may appeal pursuant to Massachusetts General Laws, Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

TOWN OF ACTON BOARD OF APPEALS


Kenneth F. Kozik, Chairman


Adam Hoffman


Emilie Ying

Under Bylaw Section 10.5.7, any rights authorized by a variance which are not exercised within one year from the date of the grant of such variance shall lapse and may be reestablished only after notice and a hearing under Section 10 of the Bylaw.