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BOARD OF APPEALS

Hearing #21-01

**DECISION ON PETITION FOR A GRANT OF A VARIANCE
WITH RESPECT TO
100 NAGOG PARK**

A public hearing of the Acton Board of Appeals was held via video/phone conference on Tuesday, April 6, 2021, at 7:30 PM on the petition of Insulet Realty Holdings, LLC, for a VARIANCE under Section 10.5 of the Acton Zoning Bylaw for the construction of a solar panel installation on a top of an existing parking garage. The property is located in the OP-1 zoning district at 100 Nagog Park (Map/Parcel B5-19).

Present at the video/phone hearing were Ken Kozik, Chairman, Adam Hoffman, Member, R. Scott Robb, Member, and Robert Hummel, Assistant Town Planner. Also present were Louis N. Levine of D'Agostine, Levine, Parra & Netburn, and several members of the Insulet Corporation team.

Mr. Kozik opened the hearing, explained how the Board procedurally operates and explained that in making a determination for variance relief, the Board must make the mandatory findings found under Zoning Bylaw section 10.5.5.1 and 10.5.5.2, reproduced below for the convenience of the reader.

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.

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.

Mr. Kozik asked the Applicant to begin. Mr. Levine, speaking on behalf of the Applicant, explained that the Applicant is requesting relief from Section 5 of the Zoning Bylaw to construct a solar panel installation on top of the existing parking garage which would exceed the maximum

height of 36 feet. The Applicant proposes a maximum height of 53 feet.

Mr. Levine then turned the presentation over to various members of the Insulet Corporation team who focused primarily on arguing that the granting of this variance would support sustainability issues in Acton and that the placement of the proposed solar array as a ground-mounted solar installation would lead to diminished electrical capacity and disturbance of underground electrical and water systems.

After the presentation of members of the Insulet Corporation team was completed, Mr. Kozik emphasized that the granting of a variance under the Bylaws had nothing to do with sustainability issues or underground electrical and water systems. The Applicant was encouraged to focus on the Bylaws, specifically 10.5.5.1.

Mr. Levine indicated that Insulet Corporation is located at the highest point on Nagog Park which slopes downward on all sides of their site. Thus, Mr. Levine argued that its topography significantly differs from land in the surrounding area. In addition, Mr. Levine argued that its soil conditions resulting from the pitched site also differ significantly from those of surrounding lots. In summary, Mr. Levine argued that the soil conditions of the lot and the sloping topography of the lot differed from lots in the zoning district in which their lot is located.

After Mr. Levine was done with his presentation, the Board asked for public comment. One employee of a proximate building located at 125 Nagog Park expressed concerns over potential glare from the proposed solar panel array and potential light obstruction. The Applicant responded that there would be no glare because the solar array was pitched only 5 degrees while the position of the solar array would be so far from any proximate building that it would not have any measurable negative effects.

With no further input, Mr. Hoffman made a motion to close the public hearing. Mr. Robb 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 10.5.5 of the Acton Zoning Bylaw for construction of a solar panel installation on a top of an existing parking garage. The property is located in the OP-1 zoning district at 100 Nagog Park (Map/Parcel B5-19).
2. The height maximum for OP-1 is 36 feet. The petitioners propose a 53 foot height.
3. The current Bylaw is silent with respect to heights of solar installations.
4. There are circumstances relating to the soil conditions 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.
5. Because of these circumstances, literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner.
6. The proposed request is consistent with the Master Plan; is in harmony with the purpose and intent of the zoning bylaw; will not be detrimental or injurious to the

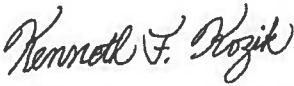
neighborhood; is appropriate for the site; and complies with all applicable requirements of the zoning bylaw.

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 conditions:

1. Be built substantially as shown in the plans dated, January 4, 2019, and as submitted to the board and on file for the April 6, 2021 ZBA meeting
2. In compliance before any building permit is issued with any of the outstanding issues identified in the April 6, 2021 ZBA meeting folder. Address all issues satisfied to the town.
3. The height is limited to 53 feet for the solar installation.
4. Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

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

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Adam Hoffman

R. Scott Robb

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Kenneth F. Kozik, Chairman Adam Hoffman

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