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**BOARD OF APPEALS**

Hearing #22-04

**DECISION ON PETITION FOR A GRANT OF A VARIANCE  
WITH RESPECT TO  
105 & 115 RIVER STREET**

A public hearing of the Acton Board of Appeals was held via video/phone conference on Tuesday, July 5, 2022, at 8:24PM on the petition of the Applicants, David Bamforth, 20 Sonar Drive, LLC for a VARIANCE under Section 10.5 of the Acton Zoning Bylaw for relief from Section 5, to allow reconstruction of a building in the same pre-existing, nonconforming location within the rear yard setback. The property is located on (Map/Parcel H3-226 & H3-226-1).

Present at the video/phone hearing were Ken Kozik, Chairman, David Schena, R. Scott Robb, Member, and Kristen Guichard, Planning Director and Zoning Enforcement Officer. Also present was Lou N. Levine, Esq, legal counsel from D'Agostine, Levine, Parra & Netburn, PC, Law firm representing the Applicant, as well as James Downing, Engineer, Howard Stein Hudson Associates.

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. Lou Levine, explained that he is seeking relief from Zoning Bylaw section 5 - Dimensional Regulations - Minimum Rear Yard Setback to allow a structure 10 feet from the rear property line where 30 feet is required to replace an existing commercial warehouse that is beyond its useful life with a new modern facility within the same

location and footprint as the existing building. Mr. Levine further explained that by leaving the rear wall of the existing warehouse standing and incorporating it into the proposed new warehouse, no variance from the rear yard setback would be required and rebuilding of the warehouse could proceed without zoning relief. In doing so, this would be inconsistent with the proposed new construction. Therefore, Mr. Levine framed the request for the variance as “form over substance” because demolishing the entire existing warehouse and replacing it in its entirety with new construction will produce a better result.

In the second part of his presentation, Mr. Levine contends that 105 & 115 River Street has unique conditions relating to the soil, shape, and topography that would cause substantial hardship if the rear yard setback were enforced. The Site contains steep slopes that drop off into wetlands, unlike the other sites in the same zoning district. Wetlands and flood plain indicate wet soil conditions, due to a perennial stream on the Site, that are not conducive for development. Mr. Levine explained that the additional costs of building a retaining wall to properly support the steep topography is estimated to be another \$299,300 and it would require additional landfill.

Mr. Levine, assisted by the Engineer, James Downing, concluded their presentation with outlining the several benefits by modernizing the proposed facility. Some of the benefits outlined were energy efficiencies, the mitigation of soil erosion from stormwater runoff and discontinuance of underground septic systems.

After Mr. Levine completed his presentation the Board asked their questions. Mr. Robb wanted greater clarity around the proposed dimensions and placement of the new retaining wall. Kristen Guichard, Town of Acton’s Planning Director and Zoning Enforcement officer presented a map of the parcel of land with a drawing of the proposed construction in relation to the specified area for greater clarity.

After the Board asked their questions, the public were asked for their comments and questions. Teresa Borcuch, an abutter from 140 River Street, lauded David Bamforth’s efforts to communicate both his plans as well as the designs of the construction. She strongly endorsed the projects. Another neighbor on River Street did express concern that proposed height of the building might possibly dwarf the surrounding trees, which would disrupt the character of the surrounding property. Overall, there was no significant concerns from the Acton residents.

With no further input, Mr. Robb made a motion to close the public hearing. Mr. Schena 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 5 of the Acton Zoning Bylaw for reconstruction of a building in the same pre-existing, nonconforming location within the rear yard setback. The property is located in the LI zoning district at 105 and 115 River Street (Map/Parcel H3-226-1 and H3-226).
2. The minimum rear yard setback is 30 feet for the LI zoning district. The building would be 10 feet from the rear yard property line.
3. There are circumstances relating to the soil conditions and topography of the lot that were subject of this hearing that did not also affect other lots or structures generally in the

zoning district in which it is located.

4. Because of these circumstances, literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner.


5. 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 on file for the July 5, 2022 ZBA meeting.
2. The rear yard setback is limited to 10 feet.
3. 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**



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Kenneth F. Kozik, Chairman

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David Schena

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R. Scott Robb

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