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## BOARD OF APPEALS

Hearing # 11-13

**DECISION ON PETITION FOR A FINDING  
UNDER MGL c.40A, §6, FIRST PARAGRAPH,  
THAT PETITIONER IS ENTITLED TO BUILD  
UPON A NON-CONFORMING LOT AT  
50 POPE ROAD, MAP F-5, PARCEL 49**

The Acton Board of Appeals (the "Board") held a duly noticed public hearing on October 3, 2011, at 7:30 PM at the Acton Town Hall. The hearing was attended by Board Chairman Kenneth F. Kozik, Member Jon Wagner, Alternate Member Richard Fallon, Assistant Town Planner and Zoning Enforcement Officer (ZEO) Scott Mutch, and Board Secretary Cheryl Frazier. Attending for the Petitioner were owner Douglas Shaw of GS Holdings, Inc., and his legal representative, Attorney Sherrill R. Gould of Gould Law Offices of Littleton, MA. Also present were numerous abutters.

### Massachusetts Law

Massachusetts law, at M.G.L., c 40A, §6, first paragraph, allows for the expansion of certain structures located on non-conforming lots, at the discretion of the local Zoning Board of Appeals. More specifically:

40A Section 6. Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-

## **Petitioner's Appeal**

According to Ms. Gould, 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 a 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 set backs.

Petitioner purchased the property and does not reside on the property or intend to reside on the property. 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 set backs. 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 attending the hearing asked several questions that were answered by the petitioner and his attorney.

## **Findings**

Petitioner owns a non-conforming structure of 1,142 square feet. The structure is non-conforming because it sits on a non-conforming lot in the R-8 zoning district. The R-8 zoning district requires a minimum lot size of 80,000 square feet and 200 feet of lot frontage. The petitioner's lot is 24,627 square feet with 166.07 feet of lot frontage. Thus, the 1,142 structure is non-conforming.

Applicant proposes to erect a 3,100 square foot structure, almost three times size of the current non-conforming structure. The Board finds that the proposed 3,100 square foot structure on the non-conforming lot would increase the non-conformity of the present 1,142 structure on the non-conforming lot.

**Conclusion**

For the reasons stated above, the Board voted **3-0** to Deny the petitioner the right to extend the structure located on the non-conforming lot under M.G.L., c 40A, §6, first paragraph.

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.

**ACTON BOARD OF APPEALS**

*Kenneth F. Kozik*

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Kenneth F. Kozik, Chairman

*Jon Wagner*

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Jon Wagner, Member

*Richard Fallon*

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Richard Fallon, Alternate Member

Dated:

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on 10/7, 2011.

*Cheryl Frazier*

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Cheryl Frazier, Administrative Assistant  
Board of Appeals