

**RECEIVED**

SEP 24 2015

TOWN CLERK  
ACTON



**DECISION #15-11**

**DECISION ON THE PETITION FOR VARIANCE BY COUNTRY  
PROPERTIES, LLC**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, July 6, 2015 on the PETITION FOR VARIANCE by Country Properties, LLC seeking a variance from Section 5 of the Acton Zoning Bylaw to allow the razing, reconstruction, expansion and alteration of a preexisting non-conforming structure in the Limited Business District without conforming to minimum front yard setback requirements at 429 Great Road. Map C-5/Parcel 57.

Sitting for the Board of Appeals were Jonathan Wagner, Chairman, Richard Fallon, Member and Suzanne Buckmelter, Alternate Member. Also present at the hearing were Kristen Guichard, Assistant Town Planner, Cheryl Frazier, Board of Appeals Secretary, Leo Bertolami, Manager of the Petitioner and Attorney Richard A. Nylén, Jr. representing the Petitioner.

Chairman Wagner opened the hearing and read the contents of the file. The file contained (a) Petition For Variance dated 6/18/2015 with supporting Memorandum from Attorney Richard A. Nylén, Jr., (b) Interdepartmental Communication dated 6/24/2015 from Kristen Guichard, Assistant Town Planner, stating that the Planning Department "does not oppose the petition but defers to the Zoning Board of Appeals as permit granting authority.", (c) Interdepartmental Communication dated 4/2/2015 (with 6/15/2015 update) from the Engineering Department stating that the stormwater design for the proposed building must comply with Acton stormwater standards, (d) letter from Kanayo Lalla, P.E. dated 4/17/2015 stating that the existing building is in very poor condition and cannot be occupied without replacing most of the structural components, (e) Memorandum from the Design Review Board dated 5/27/2015 ("DRB Memorandum").

The Board and the Petitioner acknowledged that Petitioner had also submitted a Petition for a Special Permit (Case No. 15-08) seeking the same relief (i.e. to raze and reconstruct the building), but that this hearing would not be heard and would be withdrawn if a variance was granted in Case No. 15-11. However, certain submissions filed in Case No. 15-08 would be incorporated and considered as dual submissions in the present case. These submissions were

the “Proposed Site Plan” and the DRB Memorandum. The Board and the Petitioner also acknowledged that the Petitioner would also have to receive approval of the proposed razing and replacement construction from the Acton Board of Selectmen; and that any decision granting a variance by the Zoning Board of Appeals was subject to Site Plan Approval by the Board of Selectmen.

Chairman Wagner then asked the Petitioner to explain his reasons for requesting a variance. Mr. Bertolami stated that the building was a barn-like structure (called “Pegasus Farm”) which was used as a “tack shop” selling equine riding supplies; but that the business had closed and was unoccupied for many years. The building’s condition has substantially deteriorated because of lack of maintenance and nonuse, was structurally unsound and could not be safely used for any use without razing it and rebuilding it. In response to several questions from the Board Members, he stated that he planned to raze the structure entirely and construct a completely new building for use as an automobile repair and service center. He added that the intended use for automobile repair and service (“Vehicle Repair”) was an allowed use and compatible for the immediate area because Great Road is already heavily commercialized and there are several automobile service centers already.

In response to several questions from the Board Members, the Petitioner and Attorney Nylen stated that the present structure was nonconforming because it is situated only five (5) feet from the road and therefor does not meet the present front yard setback requirement of 75 feet. The proposed new structure would be 15.3 feet from the road, which would still not comply with the present front yard setback requirement but would lessen the existing nonconformity.

Chairman Wagner asked the Petitioner to explain how this request for variance complied with the mandatory findings required by Section 10.5.5 of the Acton Zoning Bylaw. Attorney Nylen stated that the shape of this lot was unique and enforcement of the current front yard setback created a hardship because the existing building was so structurally unsound that it had to be razed, yet the shape of the lot in effect precluded construction of any replacement building that could comply with setback requirements.

The Board of Appeals, after considering the materials submitted with the Petition (including the Proposed Site Plan and DRB Memorandum), together with the information developed at the hearing, finds that:

1. The Petitioner seeks a Variance from Section 5 (Dimensional Regulations) of the Zoning Bylaw to raze the existing nonconforming structure and construct a replacement building (PROPOSED STRUCTURE) on the site (LOT) to be used for Vehicle Repair.
2. The LOT is located in a Limited Business District and the existing structure is nonconforming because it has a front yard setback of only five (5) feet where the current minimum front yard setback is seventy-five (75) feet.

3. The existing structure is in poor condition, structurally unsound and is essentially unusable without extensive rebuilding; and without such rebuilding, the property would be virtually useless.

4. Vehicle Repair is an allowed use in the Limited Business District.

5. The PROPOSED STRUCTURE would conform to all the dimensional requirements of the Zoning Bylaw, except that the proposed front yard setback of 15.3 feet would not meet the current 75 foot front yard setback requirement.

6. Because of the shape of the LOT, literal enforcement of the provisions of the Zoning Bylaw would impose substantial hardship on the Petitioner. These conditions especially affect this LOT and do not generally prevail in the Limited Business District.

7. The immediate area is heavily commercialized and includes several vehicle repair facilities and automobile dealerships; and the PROPOSED STRUCTURE (and use) would not be detrimental to the public good.

8. The requested relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning Bylaw. The granting of such relief is consistent with the Master Plan.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted to GRANT the VARIANCE from Section 5 (Dimensional Regulations) of the Zoning Bylaw to raze the existing structure and construct the PROPOSED STRUCTURE with the following conditions:

1. The Site Plan and PROPOSED STRUCTURE shall be approved by the Town of Acton Board of Selectmen, including a Landscaping Plan to be submitted to and approved by the Board of Selectmen.

2. The PROPOSED STRUCTURE shall be built in accordance with the plans and specifications contained in the Petitioner's Site Plan.

3. The PROPOSED STRUCTURE shall comply with all current requirements of the Zoning Bylaw, with the sole exception being the front yard setback requirement. The minimum front yard setback authorized herein shall be 15.3 feet.

4. The site and PROPOSED STRUCTURE shall comply with Town of Acton storm water Standards.

5. The PROPOSED STRUCTURE shall have no doors on the rear wall of the building adjacent to Parking Space No. 17.


6. The dumpster on the site shall be screened from public view.

Any person aggrieved by the 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**

 Jonathan Wagner Chairman	 Richard Fallon Member	 Suzanne Buckmelter Alternate Member
--	---	---

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on Sept. 24, 2015.

  
Cheryl Frazier, Secretary  
Board of Appeals

**Effective Date of a Variance:** This decision, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the Town Clerk that (1) 20 days have elapsed after the decision has been filed in the office of the Town Clerk and (2) either no appeal has been filed or an appeal has been filed within such time, has been recorded with the Middlesex South County Registry of Deeds and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. Any person exercising rights under a duly appealed variance does so at risk that a court will reverse the variance and that any construction performed under the variance may be ordered undone.

**Expiration Date of a Variance:** In accordance with MGL Chapter 40A, Section 10, if the rights granted by this variance are not exercised within one (1) year from its date, the variance will lapse. A six (6) month extension of the rights under this variance may be applied for by filing a written application for extension, before the expiration of this one year period.