



## ACTON BOARD OF APPEALS

Minutes of Meeting  
July 6, 2015  
Acton Town Hall  
Room 126

Board of Appeal members attending: Jonathan Wagner; Richard Fallon, Suzanne Buckmelter. Also present: Kristen Guichard, Assistant Town Planner and Cheryl Frazier Board of Appeals Secretary. Also present at the hearing were petitioner, Leo Bertolami and his Attorney Richard Nysten.

Jonathan Wagner called the meeting to order at 7:30 PM.

### Citizens' Concerns

None

### Minutes

The minutes of the June 1, 2015 meeting were approved unanimously.

### Draft Decision Hearing #15-09

Jonathan Wagner moved to approve the decision for 19 Henley Road Hearing #15-09 as drafted. The motion was seconded by Richard Fallon and approved unanimously.

### Amendment to Decision #14-07 for 54 Pope Road

The Applicant requested an amendment to Special Permit #14-07 for the property at 54 Pope Road to allow for the removal and replacement of failing trees on the property frontage along Pope Road. The Board found that the Tree Warden deemed the existing trees were topped, and dead or growing up into the utility lines and suggested replanting; that the images provided by the Applicant confirmed failing trees along the Pope Road frontage, and the amendment as set forth herein did not require a public hearing.

(name) moved to amend the decision by deleting Condition (c): "all existing trees on Pope Road frontage shall remain;" and replace it with the following: "existing trees on Pope Road frontage shall be removed and/or replaced in accordance with recommendations from the Town of Acton Tree Warden;" The motion was seconded and approved unanimously.

### Public Hearing – Hearing # 15-08 – 429 Great Road – Special Permit

Jon Wagner opened the continued hearing at which time Attorney Richard Nysten withdrew the application for the Special Permit without prejudice.

### Public Hearing – Hearing # 15-11 – 429 Great Road – Variance

Richard Nysten, Attorney for Country Properties LLC requested a variance for the razing, reconstruction and expansion/alteration of a pre-existing nonconforming commercial structure in the Limited

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Business District with less than the required minimum front yard setback. The existing building is Pegasus Farm, a nonconforming structure that maintains less than a five foot front yard setback and does not meet the side yard setback to the southeast. It does meet the other dimensional requirements.

Jon Wagner asked Leo Bertolami, what the use would be. Leo responded it would be an Auto Dealer Repair Shop. Suzanne Buckmelter asked where in the back of the property would a dumpster be placed and if it would be screened. Leo Bertolami, owner of the property said they weren't sure yet but, it would be fenced.

Kristen explained that the Board needs to find if the request for the proposed building, with less than the required setback, meets the criteria for a Variance. Mr. Nysten said if the Board approves the Variance, they would go before the Selectmen for Site Plan Special Permit. Jon stated the Board should have more detailed site plans. Mr. Nysten's offered to provide the Board with any additional information they felt necessary to make their determination. Richard Fallon spoke to Mr. Nysten regarding the findings for a variance but added they need to see what they are planning to put up before they approve anything. Jon explained to Mr. Nysten that the board only has the ability to determine whether or not to allow a proposed building. Rick Fallon said they are decreasing the nonconformity and replacing it with a building that is more conforming, but still does not meet the required setback. Mr. Nysten contended that the request meets the criteria for a variance due to lot shape, that the lot in question has an odd shape as it relates to the other buildings in the districts. They are restricted on what they can build without asking for a variance for the frontage.

Mr. Nysten said the shape of the lot creates a hardship because they are limited to where they can construct the building and they are limited to where the building and the parking can take place for the commercial use allowed under zoning

Jon asked for comments from the audience. Harold Tubman, abutter and owner of Circle Furniture, said he feels it's a good addition to the neighborhood.

Mr. Nysten asked if the board needs any more information. Jon said the only plan they might be asked to submit would be a landscape plan. Jon said the building plans are sufficiently complete to him. Kristen noted that the Board of Selectmen would require a landscape plan if and when the applicant goes for site plan approval.

Mr. Nysten added that Variances are hard to get but this project is different and does result in a hardship due to lot shape. The key is what the parcel looks like now. He's asking that the Variance be granted.

The hearing was closed at 8:50 PM.

The Board voted to GRANT the VARIANCE from the required minimum front yard setback to erect the proposed building with the following conditions:

- **Consistent with building plans submitted in hearing # 15-08**
  - **Site Plan review and approval by BOS**
  - **Landscaping Plan review and approved by BOS**
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- **Complies with Acton storm water standards**
- **Dumpster in rear to be screened from public view**
- **No doors on rear wall of building adjacent to parking space 17**

### **Other business discussed**

#### **Board approval of Board of Appeals Rules and Regulations**

The Board reviewed and discussed the Draft Rules and Regulations. Mr. Fallon suggested landscape plans be added to submission requirements where appropriate. The Board approved the Board of Appeals Rules and Regulations as amended.

The Board members discussed the way decisions are to be handled in the future. Jon Wagner wants clarification on the change in policy. Rick Fallon said he would call Counsel to ask her if they can handle them the same way they always have.

The meeting was adjourned at 10:00 PM.

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