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BOARD OF APPEALS

Hearing #20-03

**DECISION ON PETITION FOR A GRANT OF A VARIANCE
WITH RESPECT TO
66 SCHOOL ST, ACTON MA**

A public hearing of the Acton Board of Appeals was held on Thursday, April 23, 2020, at 7:00 PM on the petition of Peter Lukacic and Sandra Mika for a VARIANCE under Section 10.5 of the Acton Zoning Bylaw for the construction of a 1-1/2 story barn with a 20' x 20' foot print on the foundation of a barn that existed there until its collapse in 2017.

The property is located at 66 School Street, zoning district R-2 (Map/Parcel H3-A-13).

The applicant is requesting variance relief from Section 5 of the Zoning Bylaw to construct the new barn within +/- 6 feet from the rear lot line and within +/- 9 feet from the side lot line, where a 10 foot setback is required for both dimensions.

Due to COVID-19 concerns, the hearing was conducted virtually with all participants following the Town's remote access guidelines.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member, Scott Robb, Member, Roland Bartl, Planning Director, Kristen Guichard, Senior Planner, Robert Hummel, Assistant Planner, and Vivian Birchall, Administrative Assistant to the Board of Appeals and the Planning Department. Also present were the petitioners, Peter Lukacic and Sandra Mika.

Applicable Bylaw(s):

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.

Variance Hearing #20-03 66 School Street

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 opened the hearing, explained how the Board procedurally operates and asked the petitioners to begin.

Mr. Lukacic and Ms. Mika explained they are seeking relief from the minimum side yard and rear yard setbacks as indicated in Section 5 – Table of Standards of the Zoning Bylaw which calls for 10'-0" rear and side yard setbacks.

The petitioners explained their desire to construct a new barn within the foundation structure footprint of a previously existing barn which collapsed in December 2017.

The previously existing barn built in 1862 was a nonconforming structure as shown on the survey documents submitted with the petitioners' application. The new proposed barn, although smaller in dimension, does not meet the minimum 10 foot setbacks required by the Zoning Bylaw, and so an application for a Variance was submitted.

The petitioners said they would like to replicate the historic location of the original 1862 barn with a new structure similar in appearance and construction methodology. The Historic District Commission approved the appearance of the proposed new construction and supports the proposed location to maintain the overall fabric of Historic South Acton.

Mr. Kozik referred the petitioners to the wording of Sections 10.5.5.1 and 10.5.5.2 of the Zoning Bylaw, reproduced above, and provided a general discussion of what the petitioners needed to demonstrate to the Board in order to be granted a variance. In response, the petitioners argued that the shape of the lot is the issue in this petition. More specifically, the petitioners argued that the shape of their lot is much smaller, on average, than the surrounding lots. Thus, the petitioner concluded that a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner. Mr. Kozik pointed out that shape and size are different; and that the Board is required to base its decision on shape, not size.

Google Maps provided everyone in attendance the ability to view the petitioners' lot and the surrounding lots. It appeared the vast majority of lots, including the petitioners' lot, are similar in shape.

Mr. Kozik asked the petitioners whether or not there were any soil or topographical conditions unique to their lot versus the neighboring lots. The petitioners said their lot did not have any unique soil or topographical conditions except that the westerly side of the lot tends to be wetter.

The Board asked the petitioners whether or not they would consider moving the proposed construction to another location, or even slightly pivoting the proposed construction so as to meet Zoning Bylaw setbacks, which would not require a Variance? The petitioners said there are

other locations on the lot where the new structure could be built, but expressed their desire to keep the structure in its previous historical location. Mr. Kozik pointed out that the Board does not consider historical aspects in making a decision to Grant or Deny a Variance.

With no further input, Mr. Robb made a motion to close the public hearing. Mr. Hoffman seconded the motion. The Board unanimously voted to close the hearing.

During deliberation, the Board discussed the evidence presented by the petitioners and reviewed the requirements of Zoning Bylaws 10.5.5.1 and 10.5.5.2. The Board could not find any uniqueness with the petitioners' lot in either shape, soil conditions or topography. 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 the construction of a 1-1/2 story barn with a 20' x 20' footprint on the foundation of a barn that existed there until its collapse in 2017. The property is located at 66 School Street, zoning district R-2 (Map/Parcel H3-A-13).
2. There are no unique circumstances relating to the shape, soil conditions or topography of the lot that was subject of this hearing relative to lots or structures generally in the zoning district in which it is located.
3. Because of these circumstances, literal enforcement of the provisions of this Bylaw would not involve substantial hardship, financial or otherwise, to the Petitioner.
4. The Denial of such Variance is consistent with the Master Plan.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously (3-0) to **DENY** the **VARIANCE**.

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

Adam Hoffman

R. Scott Robb

Dated: May 5, 2020

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Kenneth F. Kozik, Chairman

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Adam Hoffman
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Rob Scott

Dated: May 5, 2020

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Kenneth F. Kozik, Chairman

Adam Hoffman

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Rob Scott

Dated: May 7, 2020