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BOARD OF APPEALS

Hearing #21-04

**DECISION ON PETITION FOR A GRANT OF A VARIANCE
WITH RESPECT TO
20 PARKER STREET**

A public hearing of the Acton Board of Appeals was held via video/phone conference on Tuesday, May 4, 2021, at 7:35 PM on the petition of Heidi Nelson owner and applicant of Cucurbit Farm for a VARIANCE under Section 10.5 of the Acton Zoning Bylaw for relief from Section 5, to construct a permanent open-air timber structure within 26.2. feet of the property line, where a minimum of 45 is required. The property is located in the R-8/4 and Affordable Housing Overlay District A (Map/Parcel H4-116-2).

Present at the video/phone hearing were Ken Kozik, Chairman, Adam Hoffman, Member, R. Scott Robb, Member, and Kristen Guichard, Planning Director and Zoning Enforcement Officer. Also present was Heidi Nelson, owner of Cucurbit Farm.

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. Ms. Heidi Nelson, explained that she is requesting relief from Section 5 of the Zoning Bylaw to construct a permanent open-air timber structure within in 26.2 feet of the property line, where a minimum of 45 feet is required. She is replacing a temporary carport structure over the owner's patio area that was set up last year during the Covid-19 pandemic. The purpose of the carport structure was to move the Farm's retail operations outside in attempt to keep the farm's employees, customers, and family members as

safe as possible during the pandemic. The temporary structure was open air and provided the added benefit of keeping the vegetables fresh and protected from the direct sun and inclement weather.

Ms Nelson presented that she had considered other alternative locations for the structure and concluded that there no suitable options based on the current constraints of their parcel. Also the temporary car port was prone to “flip over” during high winds and storms.

After the presentation was completed, Mr. Hoffman emphasized that the granting of a variance under the Bylaws had nothing to do with safety issues as a result from the Covid-19 pandemic. The Applicant was encouraged to focus on the Bylaws, specifically 10.5.5.1.

Ms Nelson indicated that that the farm stand and retail operations are located at the highest point on their farm because the two roads that go behind and down into the fields present significant decline which makes developing a permanent structure not feasible. Secondly, it is not practical to develop a permanent structure on a section of the parking lot since there were limited spaces and often during their busy season customers would park on the side of the road. Thus, Ms. Nelson argued that that the topography of their parcel created significant hardship to maintain effective retail operations, especially with the uncertainty of when the pandemic eventually ends.

After Ms. Nelson was done with her presentation, the Board asked for public comments. There were four Acton residents from the surrounding neighborhood that both endorsed the proposed plans for the permanent structure and ability for the farm to continue its operation which served the town’s overall interests.

With no further input, Mr. Hoffman made a motion to close the public hearing. Mr. Robb 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 10.5.5 of the Acton Zoning Bylaw for construction of an open air timber structure within 26.2 feet of the front property line. The property is located in the R-8/4 and Affordable Housing Overlay District A (Map/Parcel H4-116-2).
2. The front yard setback to be no less than 26.2 feet where the minimum 45 Feet is required.
3. There are circumstances relating to the topography of the lot that were subject of this hearing that did not also affect 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 within the application received, March 4, 2021.
2. In compliance before any building permit is issued with any of the outstanding issues identified in the May 4, 2021 ZBA meeting folder. Address all issues satisfied to the town.
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.
4. All other conditions and limitations are met outlined in the April 28th, 2021 Memorandum outlining the Application for Variance-20 Parker Street.

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



DocuSigned by:
Adam Hoffman
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Kenneth F. Kozik, Chairman Adam Hoffman



R. Scott Robb