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TOWN OF ACTON
PLANNING DEPARTMENT



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BY:

BOARD OF APPEALS

Hearing #21-11

DECISION ON PETITION FOR A GRANT OF A VARIANCE WITH RESPECT TO 5 Strawberry Hill Road Concord Brewery, Inc. (dba Rapscallion Table & Tap)

A public hearing of the Acton Board of Appeals was held via video/phone conference on Tuesday, November 9th, 2021, at 7:35 PM on the petition of the Applicants, Co-Proprietors, Peter and Cedric Daniels of 5 Strawberry Hill Road, Concord Brewery, Inc. for a VARIANCE under Section 10.5 of the Acton Zoning Bylaw for relief from Section 5, to allow for an additional 25 parking spaces. The property is located on (Map/Parcel E4-61).

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 Stefano Caprara, Esq, legal counsel from Caprara Law firm representing the Co-Applicants of 5 Strawberry Hill Road, Concord Brewery, Inc. (dba Rapscallion Table & Tap).

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. Mr. Stefano Caprara, explained that he is requesting relief from Section 5 of the Zoning Bylaw to construct an expansion of their current parking lot with additional 25 spaces.

The prior history is that Concord Brewery, Inc. (dba Rapscallion Table & Tap) currently has 30

legal, pre-existing non-confirming parking spaces. Section 5.4.6.2 states that, “the number of parking spaces that may be constructed on a Lot shall not exceed one parking space per 3,000 square feet of Developer Site Area”. The Developable Site Area is approximately 37,026 square feet, therefore maximum number of parking spaces that conform to the Bylaw is 12 spaces.

The applicant is solely seeking a variance from the number of spaces and that, if approved, the applicant would seek a site plan special permit with a full set of engineering design plans including storm water management plans and calculations that meet the requirements of the Zoning Bylaw and General Bylaw Chapter X. Furthermore, if the Applicant seeks additional seats than previously approved (90 seats under the Select Board, 75 seats under the Board of Health) associated with the additional parking spaces, the applicant would seek approval from the Select Board and Board of Health.

Mr. Caprara initially presented the request for a variance based on economic and reputational hardship caused by the Covid-19 pandemic. Mr. Ken Kozik kindly reminded Mr. Caprara that although his client might be experiencing economic hardship and a definite need for additional parking spaces might be warranted, that there is a two-step threshold under the respective Bylaws 10.5.5.1 and 10.5.5.2 that needs to be met in order to grant a variance. Mr. Ken Kozik proceeded to review with Mr. Caprara the first step of the threshold cited in 10.5.5.1 regarding circumstances pertaining to soil conditions, shape, or topography. Much of the ensuing discussion focused on these areas where Mr. Caprara argued that the lot area was small and therefore the hardship was based on the shape of the lot.

After the presentation was completed, Mr. Hoffman emphasized that due to Covid-19, the Concord Brewery business model changed from a fine dining venue, which didn't require many parking spaces. Today, Concord Brewery is more of a brew pub with entrees that are lower cost per patron but relied more on volume which creates need for additional parking. Also, Concord Brewery offered outside dinning to provide additional safety measures to its patrons but also adhering to the town of Acton's requirements of from the Covid-19 pandemic. Mr. Hoffman mentioned that the Town's current Bylaws from Section 5.4.6.2 is not current to the economic environment of operating a viable business in the Town.

Mr. Robb asked Kristen Guichard, Town of Acton's Planning Director and Zoning Enforcement officer to present a map that had Concord Brewery's plot to compare and contrast it to the surrounding plots along Great Road within the Limited Business District. After review, Zoning Board concluded that the proposed lot did not meet any of the three criteria of Section 10.5.5.1: the lot in question was not unique to its shape, soil or topography in relation to other lots along Great Road within the Limited Business zoning district; furthermore, the Board found that the area of the lot was not the same as the shape of the lot. The Board also noted that even if the lot area could be considered, it was not unique to other lots along Great Road and within the Limited Business District.

After Mr. Caprara was done with his presentation and the Board viewed the map of the parcel of land, the Board asked for public comments. David Sumner, legal counsel for the abutter, and an Acton resident from the surrounding neighborhood both expressed concerns of the proposed plans for additional parking creating traffic problems and safety issues.

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.

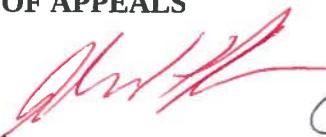
The Board of Appeals, after reviewing the materials submitted with the Petition, together with the information developed at the hearing, finds that voted unanimously to **DENY** the **VARIANCE**, because the applicant could not meet the requirements of Section 10.5.5.1.

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