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ACTON BOARD  
OF APPEALS



**BOARD OF APPEALS**

Hearing #22-11

**DECISION ON PETITION FOR A GRANT OF A VARIANCE  
WITH RESPECT TO  
55 KNOX TRAIL**

A public hearing of the Acton Board of Appeals was held via video conference on Tuesday, January 3, 2023, at 7:30 PM, and in person/video conference on April 4, 2023 in Room 9 in the Acton Town Hall on the petition of Sergio Rubino for a variance from the fifty (50) foot setback requirement for an unpermitted structure constructed in the side setback. The property is located in the Technology District (TD) at 55 Knox Trail (Map/Parcel I4-9-3).

Present at the hearings were Ken Kozik, Chairman, Scott Robb, Member, David Schena, Alternate Member, and Kristen Guichard, Acton Planning Division. Also present was Mr. Rubino's representative. Adam Hoffman (Member) and Vicki Tardif (Alternate Member) were not present.

**Applicable Bylaw:**

*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.*

Mr. Kozik opened the hearing, explained how the Board procedurally operates and asked the petitioner's representative to begin.

The petitioner's representative explained that they are requesting variance relief from the Bylaw to construct a structure for storage of industrial equipment in the side setback. The applicants contend that the current setback requirements combined with topography and shape issues of the lot prevent them from constructing a reasonably sized home.

Mr. Kozik referred them to the wording of the Section 10.5.5.1, reproduced above, and provided a general discussion of what the petitioners needed to demonstrate to the Board in order to be granted a variance. The petitioners argued that the steep sloping drop off and the odd shape of the lot differed from lots in the zoning district in which their lot is located. Further, the petitioners argued that their situation would be exacerbated if any new lot entrance were to be constructed.

Board members then asked whether literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the applicant. The applicant responded affirmatively, stating that if the Bylaw were enforced they would be forced to store out in the open, risking theft and vandalism.

With no further input, Mr. Schena made a motion to close the public hearing. Mr. Scott 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 a structure in the side setback. The property is located in the Technology District (TD) at 55 Knox Trail (Map/Parcel I4-9-3).
2. There are circumstances relating to the soil conditions and 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.
3. Because of these circumstances, literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner.
4. 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. 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.

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*

Kenneth F. Kozik, Chairman

*R. Scott Robb*

R. Scott Robb

*David Schena*

David Schena