



## BOARD OF APPEALS

Hearing #20-10

### DECISION TO GRANT A SPECIAL PERMIT WITH RESPECT TO

**62-64 Pope Road, Acton, MA**

The first public hearing of the Acton Zoning Board of Appeals was held on Tuesday, October 6, 2020 and continued to October 20, 2020 on the petition of Leo Bertolami and Country Properties, LLC for a Special Permit under Section 8.1.5 of the Acton Zoning Bylaw to reconstruct and expand a single family home on a non-conforming lot.

62-64 Pope Road does not meet the required lot area in the R-8 zoning district (80,000 sq. ft.) and is therefore considered non-conforming. The lot area is 42,415 sq. ft. On October 6, 2020, Paul Kirchner from Stamski & McNary, on behalf of owner/Applicant Leo Bertolami, petitioned the Zoning Board of Appeals to raze the existing single family one-story dwelling and reconstruct a larger, two-story dwelling on the existing site. Additionally, Mr. Kirchner stated Mr. Bertolami wished to erect a large barn on the property adjacent to the new home.

Zoning Bylaw Section 8.1.3 allows for an existing single family dwelling on a non-conforming lot to be razed and rebuilt by-right as long as it does not exceed the original Floor Area Ratio (FAR). The requested Net Floor Area of the proposed structure on the lot exceeds this threshold. Therefore, the proposed reconstructed dwelling and new barn requires a special permit under Section 8.1.5.

The net floor area of the existing dwelling is 2,964 sq. ft. The proposed new dwelling is 7,576 sq. ft, representing an increase of the floor area ratio to .18.

The property is located at 62-64 Pope Road, Map/Parcel F5-43 & F5-46 and is located in a R-8 residential zoning district. The proposed new dwelling(s) meets all required property setbacks, except for a small shed which is non-conforming and needs to be moved/removed.

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, Robert Hummel, Assistant Town Planner. Also present was the petitioner, Paul Kirchner of Stamski & McNary.

Mr. Kozik opened the hearing, explained how the Board procedurally operates and asked the Petitioner to begin.

Mr. Kirchner said that due to public objections to the proposed barn at the October 6, 2020 public hearing, the Applicant had decided to resubmit plans to reconstruct and enlarge the existing dwelling without the adjacent barn. The newly submitted architectural plans reflected that change, which reduced the overall square footage of the proposed construction, but it still exceeds the existing floor area ratio by 0.5.

The application was distributed for departmental review and comments prior to the October 6 hearing.

The Acton Health Division supplied a written memo saying the proposed septic system had been reviewed and approved.

The Acton Engineering Department provided a written memo saying while the proposed construction does not appear to be on any recorded easements and does not appear to be located within the 100-year floodplain area, *the plot plan is not stamped by a registered MA Land Surveyor*. The Engineering Department said a street cut permit is required for all new driveway and utility connections. They also said the Applicant should submit a permit for Land Disturbance to determine whether or not the permit is needed for this site.

The Acton Planning Division provided a written memo saying a proposed second curb cut would require a curb cut permit from the Engineering Department. The applicant is also required to request a scenic road hearing with the Planning Board for removal or relocation of the stone wall that is proposed on the submitted plans. They also reiterated the need for the owner/Applicant to remove/relocate the existing shed, which does not currently meet required setbacks.

There being no additional questions from the board or the public, at 7:39pm, Mr. Hoffman moved, Mr. Robb seconded and the board unanimously (3-0) voted to close the public hearing. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye.

The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.1.5 and 10.3.5.

Acton Zoning Bylaw 8.1.5 States:

*In all other cases, the Board of Appeals may, by special permit, allow such construction of, or extension, alteration or change to a Single- or Two-FAMILY residential STRUCTURE on a nonconforming LOT, including the reconstruction anywhere on the lot of a larger structure than*

*otherwise allowed under Section 8.1.3, where it determines either that the proposed modification does not increase the nonconformity or, if the proposed modification does increase the nonconformity, it will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.*

Acton Zoning Bylaw 10.3.5 States:

*Mandatory Findings by Special Permit Granting Authority – Except for a Site plan Special Permit, the Special Permit Granting Authority shall not issue a special permit unless without exception it shall find that the proposed USE:*

- *10.3.5.1. Is consistent with the Master Plan.*
- *10.3.5.2. Is in harmony with the purpose and intent of the Bylaw.*
- *10.3.5.3. Will not be detrimental or injurious to the neighborhood in which it is to take place.*
- *10.3.5.4. Is appropriate for the site in question.*
- *10.3.5.5. Complies with all applicable requirements of this Bylaw.*

During deliberation, the board agreed that the project met the conditions of Zoning Bylaws 8.1.5 and 10.3.5 and voted to approve the revised plan as presented with conditions prior to issuing the building permit. At 7:43pm Mr. Hoffman moved, Mr. Robb seconded and the Board unanimously (3-0) voted to approve the special permit. The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing, finds that:

The Petitioner seeks a Special Permit under Section 8.1.5 of the Acton Zoning Bylaw to reconstruct and expand a single story structure on a non-conforming lot. The property is located at 62-64 Pope Road, Map/Parcel F5-43 & F5-46.

1. The proposed reconstructed and expanded dwelling is not more detrimental to the neighborhood.
2. The proposed reconstructed and expanded dwelling meets the mandatory findings of section 10.3.5 of the Acton Zoning Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously (3-0) to **Grant** the Special Permit with the following Conditions:

- The proposed construction shall be executed substantially as presented in the most recent plans submitted during the October 20, 2020 meeting.
- The owner/applicant shall remove/relocate the existing shed or apply for a Variance.
- The owner/applicant shall apply for a street cut permit.
- The Applicant should submit a permit for Land Disturbance to determine whether or not the permit is needed for this site.

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**



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Kenneth F. Kozik, Chairman    Adam Hoffman    R. Scott Robb

Special Permit Hearing #20-10 62-64 Pope Road

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**TOWN OF ACTON BOARD OF APPEALS**

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Kenneth F. Kozik, Chairman

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Adam Hoffman

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Kenneth F. Kozik, Chairman

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Adam Hoffman

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R. Scott Robb

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R. Scott Robb