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ACTON, MA

**BOARD OF APPEALS**

Hearing #22-01

**DECISION ON PETITION TO GRANT  
A SPECIAL PERMIT  
WITH RESPECT TO  
179 HIGH STREET**

A public hearing of the Acton Board of Appeals was held via video conference on Tuesday, April 5, 2022, at 7:42 PM, on the petition of Calvin and Jenny Wilder for a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw to allow for an addition of two sheds to an existing single-family residential dwelling located on a non-conforming lot.

The property is located at 179 High Street, Map/Parcel I3-107-1, in a Residential (R-4) and Groundwater Protection District Zone 4.

The subject property is classified as a nonconforming lot due to insufficient frontage. The required frontage for the R-4 Zoning District is 175 feet. The lot only has 122.8 feet of frontage. Based on the town's GIS, there appears to be sufficient room for the proposed sheds to comply with the required setback requirements of the R-4 zoning district.

According to the Assessor's property record card, the existing Gross Floor Area is approximately 2,974sf. Zoning Bylaw Section 8.1.4 allows for extensions or alterations by-right if they do not increase the overall size of the structure by more than 15% of the existing Gross Floor Area. The overall requested expansion in total is 29.1% (864 sf), as noted above. Therefore, the proposed expansion requires a special permit under Section 8.1.5.

(The applicant constructed a 118sf deck on the property in 2017; this addition counted towards the 15% permitted by-right. The property is only allowed an additional 328 sf by-right at the time of the hearing.)

The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.1.5 and 10.3.5, if the proposed additions meet rear, side yard setbacks, and maximum height as required under the Zoning Bylaw for the R- 8/4 Zoning District.

The application was distributed for departmental review and comments on February 5, 2022.

The Planning Division has no objection to granting the requested special permit. The proposed sheds will not be visible from the street, reducing the visual impact on abutting neighbors.

The Engineering Department submitted a memorandum stating the proposed construction does not appear to be on any recorded easements, nor does it appear to be located within the 100-year floodplain area, and the proposed two sheds do not trigger a Land Disturbance Permit.

The Building Division submitted a memorandum stating it had no issues with the shed locations, but not enough information about the sheds to comment on the construction.

The Fire Department submitted a memorandum stating they had no issues with the proposed sheds.

The Land Use Department-Health Division submitted a memorandum stating the sheds must be 10 feet away from any component of the septic system.

The Health Division submitted a memorandum stating it has no issues with the granting of this special permit.

The Water Supply District of Acton submitted a memorandum stating the application proposes no alteration or addition to the existing water service, nor should the installation of the sheds impact the buried service, and therefore, it has no comment.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member and Scott Robb, Member. Staff present included Kristen Guichard, Planning Director and Zoning Enforcement Officer; Kaila Sauer, Assistant Planner. The applicants, Calvin and Jenny Wilder, were also present.

#### Applicable Bylaws:

*8.1.4 Extensions, alterations or changes of Single- and Two-Family Dwellings on Nonconforming Lots – One or more extensions, alterations or changes to a single or two-family residential STRUCTURE on a nonconforming LOT shall be deemed not to increase any nonconformity and shall not require special permits under Section 8.1.5, provided that such extensions, alterations or changes comply with all applicable yard requirements and in total do not increase the size of the STRUCTURE by more than 15 percent of the GROSS FLOOR AREA in existence on April 1, 2012 or the date that LOT became nonconforming, whichever is later.*

*8.1.5 In all other cases, the Board of Appeals may, by special permit, allow such reconstruction 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.*

*10.3.5 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 this 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.*

Mr. Kozik opened the hearing and explained how the Board procedurally operates. Mr. Kozik then asked the petitioners to begin.

The applicants gave a brief overview regarding their special permit application. They are requesting a special permit for two sheds on a non-conforming lot for extra storage space and exercise equipment. The first shed will be 16x24 SF and the second shed will be 16x30SF. Both sheds will be placed with a 25-foot setback.

Chairman Kozik asked if there were any additional public comments. Public comments were neither submitted during the hearing nor in writing prior to the meeting.

With no further input, Mr. Robb made a motion to close the public hearing at 7:55pm. Mr. Hoffman seconded the motion. The Board unanimously (3-0) 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. Applicant seeks a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw to allow for an addition of two sheds to an existing single-family residential dwelling located on a non-conforming lot. The proposed sheds meet rear, side yard setbacks, and maximum height as required under the Zoning Bylaw for the R- 8/4 Zoning District. The additional sheds are a 29.1% increase to the size of the existing Gross Floor Area on the site. The property is located at 179 High Street, Map/Parcel I3-107-1, in a Residential (R-4) and Groundwater Protection District Zone 4.
2. Under Acton Zoning Bylaw 8.1.5, Applicants' proposed construction will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.
3. Under Acton Zoning Bylaw 10.3.5.1, Applicants' proposed construction is consistent with the Master Plan.

4. Under Acton Zoning Bylaw 10.3.5.2, Applicants' proposed construction is in harmony with the purpose and intent of the Acton Zoning Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **AMENDMENT** to the **SPECIAL PERMIT** with the following conditions:

1. The proposed construction shall be completed as substantially presented via the Aspen model during the April 5, 2022 hearing.
2. The dimensions of the sheds are limited to:
  - a. 16ft x 24ft
  - b. 16ft x 30ft
3. The proposed sheds shall be located no closer than 25ft from side yard setback.

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

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Adam Hoffman  
Member

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Scott Robb  
Member



4. Under Acton Zoning Bylaw 10.3.5.2, Applicants' proposed construction is in harmony with the purpose and intent of the Acton Zoning Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **AMENDMENT** to the **SPECIAL PERMIT** with the following conditions:

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Chairman

Adam Hoffman  
Member



Scott Robb  
Member

4. Under Acton Zoning Bylaw 10.3.5.2, Applicants' proposed construction is in harmony with the purpose and intent of the Acton Zoning Bylaw.

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