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ACTON, MA

BOARD OF APPEALS

Hearing #22-03

**DECISION ON PETITION TO GRANT
A SPECIAL PERMIT
WITH RESPECT TO
35 MOHEGAN ROAD**

A public hearing of the Acton Board of Appeals was held via video conference on Tuesday, May 3, 2022, at 8:00 pm, on the petition of Sandra and David Wellingoff for a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw to allow for an addition of a master bedroom, entry and laundry room to an existing single-family residential dwelling located on a non-conforming lot.

The property is located at 35 Mohegan Drive, Map/Parcel D2-180, in a Residential (R-2) Zoning District and Groundwater Protection District Zone 3.

The subject property is classified as a nonconforming lot due to insufficient frontage and lot size. The required frontage for the R-2 Zoning District is 150 feet, and the lot only has 108 feet of frontage. Additionally, the required lot size for R-2 Zoning District is 20,000 sq. ft. The applicant's lot is only 16,959 sq. ft. The existing structure and proposed additions comply with the side, rear and front yard setbacks.

Zoning Bylaw Section 8.1.4 allows for extensions or alterations by-right if they do not increase the overall structure by more than 15% of the existing Gross Floor Area. The existing Gross Floor Area of the dwelling is 2,646 square feet. The proposed Gross Floor Area is 3,074 square feet, which is a 16.1% increase. Therefore, the proposed expansion requires a special permit under Section 8.1.5

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- 2 Zoning District.

The application was distributed for departmental review and comments on March 14, 2022.

The Planning Division has no objection to granting the requested special permit.

The Engineering Division submitted a memorandum stating the proposed construction does not appear to be on any recorded easements, does not appear to be located within the 100-year floodplain area, and does not trigger a Land Disturbance Permit.

The Building Division submitted a memorandum stating it had no additional comments.

The Water Supply District of Acton submitted a memorandum stating they have no comments.

No additional divisional/departmental written comments were submitted.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member and Scott Robb, Member. Staff present included Kaila Sauer, Assistant Planner, and Alicia Burak, Administrative Assistant. The applicants, Sandra and David Wellingoff, were present as well as their architect, Jeff Kehm of Kehm Architecture.

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.

Jeff Kehm, of Kehm Architecture, stated the applicant is proposing a 2-story addition on a nonconforming lot that is in excess of the allowable 15% increase to the existing Gross Floor Area. Mr. Kehm stated the addition and renovation meets bylaws except for lot area and lot frontage. Mr. Kehm displayed documents showing existing floor plans, proposed floor plans, and area calculations showing a 16.1% increase in Gross Floor Area. A master bedroom will be added to the second floor as well as a first floor entry and laundry room.

Chairman Kozik asked to see a current picture of the house. Adam Hoffman expressed concerns about not receiving comments from the Health Division and raised questions about a closet in an office. Mr. Kehm said the number of bedrooms is staying the same and the Health Division will be reviewing the building permit application anyway. Chairman Kozik agreed that the Board could not require a continuation of the hearing on the sole basis of an absence of comments from the Health Division.

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. Hoffman made a motion to close the public hearing at 8:22pm. Mr. Robb seconded the motion. The Board unanimously (3-0) voted to close the hearing.

The Board's deliberation concluded at 8:26pm with no additional comments.

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 a master bedroom, entry and laundry room to an existing single-family residential dwelling located on a non-conforming lot. The existing structure and proposed additions comply with the side, rear and front yard Zoning Bylaw setbacks. The increase to the size of the structure is 1.1% larger than what is allowed by-right. The property is located at 35 Mohegan Drive, Map/Parcel D2-180, in a Residential (R-2) Zoning District.

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 **SPECIAL PERMIT** with the following conditions:

1. The proposed construction shall be completed as substantially presented during the May 3, 2022 hearing.

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
Member



Scott Robb
Member

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.
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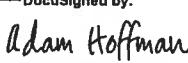
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TOWN OF ACTON BOARD OF APPEALS

Kenneth F. Kozik
Chairman

DocuSigned by:

Adam Hoffman
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Member


Scott Robb
Member