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DECISION #16-11

DECISION ON THE PETITION OF TWIN VALLEY HOMES, INC., 62 HARRIS STREET

Public hearings of the Acton Board of Appeals were held in the Town Hall on Monday, December 5, 2016 and on Monday, January 9, 2017 on the Petition of Twin Valley Homes, Inc. for a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws to alter an existing structure on a nonconforming lot. 62 Harris Street, Map C5, Parcel 88.

Present at both hearings were Jonathan Wagner, Chairman; Kenneth Kozik, Member; and Adam Hoffman, Member. Also present were Katelyn Huffman, Board of Appeals Secretary; Roland Bartl Planner Director; John Stansfield (the property owner) and Stan Dillis, principal engineer from DuCharme & Dillis Engineering.

Chairman Wagner opened the 12/5/2016 hearing and read the contents of the file. In addition to the Petition (which included a Site Plan, and architectural and schematic plans) there were several Interdepartmental Communications, one of which was from Kristen Guichard, Assistant Town Planner. The site presently has a single family residential structure in the front portion of the lot and the Petitioner proposes to raze that structure and replace it with a much larger single family residential structure further back on the lot. The existing single family residential structure does not currently comply with all setback requirements and the new structure will comply with all setback requirements. (The Board noted that the proposed work was described in the Petitioner's application as "replace dilapidated existing house", in the Planning Department IDC as "reconstruction" and in the Notice of Public Hearing as "alteration".) The lot is a nonconforming lot because it has an insufficient frontage, although the nonconformity is relatively minor (5 feet.)

Chairman Wagner asked the Petitioner to explain why he was seeking the Special Permit. Mr. Dillis explained that the purpose of the Special Permit was to raze an existing dilapidated structure which was essentially unusable and unsaleable in its present condition and replace it with a new modern single family residential structure. The existing structure had been built as a small schoolhouse many years ago and at some point had been converted to residential use. In addition to the structure being in very poor condition and essentially uninhabitable, its usefulness

as a residence was impractical because of the original design as a schoolhouse and the manner in which it had been altered over the years. It has not been occupied for many years and was currently unoccupied. The replacement structure would more than double the size of the present structure. The Floor Area Ratio (FAR) of the existing structure is approximately 1,500 square feet and the FAR for the replacement structure as proposed was 3,195 square feet.

In response to the Board's inquiries, Mr. Dillis stated that his application was seeking a Special Permit for the proposed replacement structure under Section 8.1.5 of the Zoning Bylaws because it was not approvable under Section 8.1.3 since the FAR of the replacement structure exceeded the FAR of the present structure and was not approvable under Section 8.1.4 since it was not an extension, alteration or change of a residential structure. The application for seeking a Special Permit was requested under Section 8.1.5 because it constituted "reconstruction" as provided in that Bylaw section.

Section 8.1.5 states:

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, 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.

The Board discussed whether the replacement of an existing structure was permissible under said Section 8.1.5 in that it might not be considered a "reconstruction", "extension", "alteration" or "change". The Board inquired of the Petitioner whether they might reconsider the size of the replacement structure in light of the wording and intent of Section 8.1.5. The Petitioner indicated it would consider such a reduction and requested a continuance of the hearing to January 9, 2017.

The hearing reconvened on Monday, January 9, 2017. The Petitioner submitted revised plans for the replacement structure which essentially reduced the FAR from 3,195 square feet to 2,565 square feet (and met all setback requirements).

The Board members discussed whether the proposed replacement of an existing residential structure constituted "reconstruction" as that term is used in the applicable language in Section 8.1.5. In response to the Board members specific inquiry, Roland Bartl, Planning Director opined that it did because he felt that "replacement" and "reconstruction" meant the same thing in the context of the Bylaw. (He also stated that he intended to draft an amendment to the current Bylaws that would clarify this issue.) The Board members all agreed that the proposed replacement structure would not be substantially more detrimental to the neighborhood than the existing structure.

The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing, finds that:

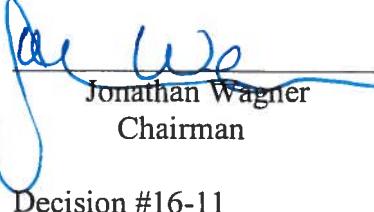
1. The Petitioner seeks a SPECIAL PERMIT under Section 8.1.5 of the Zoning Bylaws to allow the replacement of an existing single family residential structure on a nonconforming lot.
2. The site is located in an R-2 Residential District.
3. The lot is nonconforming because of insufficient frontage of approximately five feet.
4. The proposed replacement single family residential structure will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.
5. The proposed replacement single family residential structure is:
 - (a) consistent with the Master Plan and is in harmony with the general purpose and intent of the Zoning Bylaws;
 - (b) appropriate for the site and will not be more detrimental or injurious to the neighborhood;
 - (c) otherwise complies with the applicable requirements of the Zoning Bylaws.

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

The proposed replacement single family residential structure shall be built substantially in accordance with the most recent revised Plans submitted for approval at or before the January 9, 2017 hearing.

Any person aggrieved by the decision may appeal pursuant to Massachusetts General Laws, Chapter 40A, Section 17 within twenty (20) days after this decision is filed with the Acton Town Clerk.

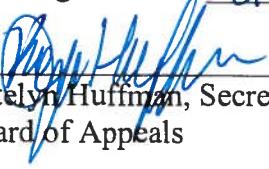
TOWN OF ACTON BOARD OF APPEALS


Jonathan Wagner
Chairman


Kenneth Kozik
Member


Adam Hoffman
Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on 217, 2017.


Katelyn Huffman, Secretary
Board of Appeals

This decision, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the Town Clerk that (1) 20 days have elapsed after the decision has been filed in the office of the Town Clerk and (2) either no appeal has been filed or an appeal has been filed within such time, has been recorded with the Middlesex South County Registry of Deeds and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.