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DECISION #14-04

DECISION ON THE PETITION OF DIANA COBB, 50 NEWTOWN ROAD

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, June 2, 2014 on the Petition of Diana Cobb for a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws to allow the construction of a kitchen addition on a nonconforming lot that will increase the size of the structure by more than 15%. Map E-3, Parcel 97.

Present at the hearing were Kenneth Kozik, Chairman; Jonathan Wagner, Member and Richard Fallon, Member. Also present were Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; and the Petitioner.

Chairman Kozik opened the hearing and read the contents of the file. The file contained an Interdepartmental Communication from Scott Mutch, Zoning Enforcement Officer, which gave a detailed analysis of the current setbacks, gross floor area and proposed increase of the structural addition. Based on his analysis, Mr. Mutch concluded that the proposed addition constituted an "extension, alteration or change" on a nonconforming lot which would increase the size of the structure by more than 15% and therefore required a Special Permit under Section 8.1.5 of the Zoning Bylaws.

Chairman Kozik asked the Petitioner to explain why she was seeking the Special Permit. The Petitioner explained that the purpose of the Special Permit was to allow the construction of a kitchen addition on the rear of the house in accordance with the submitted plans. The addition is needed because the present kitchen is very small and in need of renovation. The proposed construction would enlarge the kitchen area and also add a new staircase providing access to the second floor.

Chairman Kozik and Mr. Mutch then discussed why the property is nonconforming, what would be an allowable increase in the size of the structure and how much the proposed addition exceeded the allowable increase. Mr. Mutch explained that the site was nonconforming because the present minimum lot area is 20,000 square feet and the present site has 19,680 square feet, i.e. 320 square feet less than is presently required. With respect to the allowable increase in size, he explained that the present structure is 1,901.61 square feet and the Petitioner is entitled as a matter of right to increase the size of the structure by 285 square feet (15% more than the existing structure) under Section 8.1.4 of the Zoning Bylaws. Since the proposed addition comprises 357.60 feet, it exceeds the 15% allowable increase by 72.6 square feet.

Mr. Fallon asked Mr. Mutch whether the setbacks were conforming and whether the addition to the structure would impact setback compliance. Mr. Mutch stated that the property complied with all setback requirements presently and the proposed addition would not impact setback compliance.

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 (which references and incorporates Section 8.1.4) to allow the construction of an addition to the existing structure on a nonconforming lot that will increase the size of the structure by more than 15%.
2. The site is located in an R-2 Residential District.
3. The site is a nonconforming lot because the site has an area of 19,680 square feet when 20,000 square feet is required under present Zoning Bylaws.
4. Section 8.1.4 of the Zoning Bylaws permits an extension, alteration or change of a structure on a nonconforming lot if the proposed addition does not increase the size of the existing structure by more than 15% of the Gross Floor Area.
5. The Gross Floor Area of the present structure is 1,901.61 square feet; and under said Section 8.1.4 the Petitioner is entitled to increase the size of the existing structure by 285 square feet.
6. Since the proposed addition consists of 357.60 square feet of Gross Floor Area, it exceeds the allowable square footage increase by 72.6 square feet and constitutes an extension, alteration or change on a nonconforming lot that increases the size of the existing structure by more than 15% of the Gross Floor Area. Therefore the proposed addition is not allowed under said Section 8.1.4.
7. Section 8.1.5 of the Zoning Bylaws provides that “in all other cases” such extension, alteration or change of a structure on a nonconforming lot may be permitted by SPECIAL PERMIT if the Board 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”.
8. The proposed addition is an extension, alteration or change that will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.

9. The proposed addition 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 addition shall be built substantially in accordance with the Plans submitted with the Petition and contained in the file.

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



Kenneth Kozik
Chairman



Jonathan Wagner
Member



Richard Fallon
Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on June 30, 2014.



Cheryl Frazier
Secretary
Board of Appeals

EFFECTIVE DATE OF SPECIAL PERMIT: No Special Permit, or modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, it has been dismissed or denied.

EXPIRATION DATE OF SPECIAL PERMIT: This Special Permit must be exercised within two (2) years of its effective date.