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**DECISION #15-05**

**DECISION ON THE PETITION OF THOMAS HEFFERNAN, 3 NASH ROAD**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, March 2, 2015 on the Petition of Thomas Heffernan for a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws to allow the addition of a master bedroom to an existing single family dwelling on a non-conforming lot that will increase the size of the structure by more than 15%. Map G-2, Parcel 128.

Present at the hearing were Jonathan Wagner, Chairman; Richard Fallon, Member; and Adam Hoffman, Member. Also present were Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; the Petitioner, and the owner of the property, Thomas Heffernan.

Chairman Wagner opened the hearing and read the contents of the file. The file contained Interdepartmental Communications from Assistant Town Planner, Kristen Guichard stating that the subject property is classified as a nonconforming lot due to insufficient frontage and area. According to the Town of Acton Assessor's Office information the existing structure was constructed in 1953.

The existing Gross Floor Area noted above, is based on information from the Town of Acton's Assessors property field card (see attached) and was in existence as of April 1, 2012. Zoning Bylaws allow 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 450ft<sup>2</sup>, which is a 19.7% increase of the existing Gross Floor Area. Therefore, the proposed expansion requires a special permit under Section 8.1.5.

In all other respects, the proposed addition meets rear, side and front yard setbacks as required under the Zoning Bylaw for the R-2 Zoning District. The existing structure is a 1 1/2 story cape. The height of the proposed addition was not labeled but consists of a single story, which is clearly under the maximum permitted height and would comply with the Zoning Bylaw. The Planning Department has no objection to the issuance and granting of the requested special permit. The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.1.5 and 10.3.5. The decision should include a condition that the Petitioner record the decision at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

Chairman Wagner asked the Petitioner to explain the reasons he was seeking a **SPECIAL PERMIT** and to describe the proposed construction. Mr. Heffernan stated that the existing structure is very small and currently does not have a master bedroom suite, which he would like to construct. The current home is 2,287 sq. ft. The 15% permitted by right is approximately 342.75 sq. ft. while Mr. Heffernan is proposing an addition of 450 sq. ft. which exceeds limits by 4%. The home was purchased in 2005 with the intention of adding on in the future. Mr. Heffernan said life's circumstances have changed, and the addition is now needed to provide additional living space. The addition will not be more detrimental to the neighborhood and will be consistent with other neighborhood homes. The proposed addition, as well as the existing structure, are currently, and will continue to be in conformance with all setbacks.

The Board Members all agreed that the proposed addition increased the degree of non-conformity, but was not detrimental to the surrounding neighborhood and would have a positive impact on the neighborhood.

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

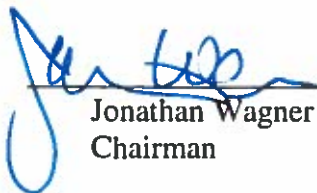
1. The Petitioner seeks a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws to allow the addition of a master bedroom to an existing single family dwelling on a non-conforming lot that will increase the size of the structure by more than 15%.
2. The proposed master bedroom addition is non-conforming because it increases the overall size of the structure by more than 15% of the existing Gross Floor Area. (Overall size of the structure according to presented plans is 19.7%)
3. The proposed addition, as well as the existing structure, are currently, and will continue to be in conformance with all setbacks.
4. The proposed addition is not detrimental to the neighborhood.

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**:

That the Petitioner record the decision at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

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

  
Richard Fallon  
Member

  
Adam Hoffman  
Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on April \_\_\_\_\_, 2015.

\_\_\_\_\_  
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.

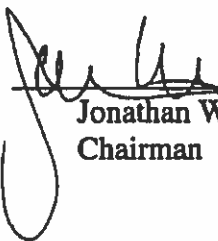
**EXPIRATION DATE OF SPECIAL PERMIT:** This Special Permit must be exercised within two (2) years of its effective date.


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**:

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Jonathan Wagner  
Chairman

  
Richard Fallon  
Member

  
Adam Hoffman  
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I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on ~~May~~ 12, 2015.  
*MAY*

  
Cheryl Frazier, Secretary  
Board of Appeals

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