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DECISION #15-12

DECISION ON THE PETITION OF MICHAEL AND BEATRIZ MAIMONE, 253A SCHOOL STREET

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, November 2, 2015 on the Petition of Michael and Beatriz Maimone for a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws to allow the construction of an addition to a single family residence on a nonconforming lot at 253A School Street, Map H4, Parcel 104.

Present at the hearing were Jonathan Wagner, Chairman; Richard Fallon, Member; and Adam Hoffman, Member. Also present were Cheryl Frazier, Board of Appeals Secretary; Roland Bartl, Town Planner; Robert Hummel, Assistant Town Planner; the Petitioners, Jeff Kehm, the Petitioner's architect and several neighbors.

Chairman Wagner opened the hearing and read the contents of the file. In addition to the Petition (which included a Site Plan, architectural plans, photographs of the property and several letters from neighbors supporting the Petition), the file contained an Interdepartmental Communication from Roland Bartl, Town Planner stating that the lot is a nonconforming lot because of insufficient frontage; and since the Gross Floor Area of the existing house is 2,884 square feet whereas the proposed addition has a Gross Floor Area of 980 square feet, the proposed new construction would increase the size of the structure by more than 15%. Therefore the proposed addition constituted an "extension, alteration or change" of an existing dwelling on a nonconforming lot requiring a Special Permit under Section 8.1.5 of the Zoning Bylaws. The proposed addition complies with all rear, side and front yard setback requirements.

Chairman Wagner asked the Petitioner to explain why he was seeking the Special Permit. The Petitioner's architect, Jeff Kehm, explained that the purpose of the Special Permit was to permit the addition of a 980 square foot single story addition to be added on to the rear of the existing home. Mr. Kehm further explained that while the lot was nonconforming because of insufficient frontage on Parker Street, in fact the present house faced on the main access road (Pond Ridge Road) for the immediate neighborhood and the insufficient frontage actually faced the rear of the home (and was quite distant from the front lot line). The site is in a small neighborhood surrounding a pond (which actually bisects the subject property); and several neighboring homes are similarly sited on their lots.

The Board members discussed whether the proposed addition might be allowable if it did not increase the nonconformity of the lot as provided in the applicable language in Section 8.1.5. Board members Adam Hoffman and Richard Fallon felt the addition would increase the nonconformity. (Chairman Wagner felt it would not.) However, all Board members concurred that the proposed addition would not be substantially more detrimental to the neighborhood than the existing structure on the nonconforming lot; and in fact would constitute a substantial improvement to both the existing structure and 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 (which references and incorporates Section 8.1.4) to allow the construction of an addition to the existing single family dwelling on a nonconforming lot that will increase the size of the existing 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 present frontage is 80.3 feet whereas 150 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 2,844 square feet; and under said Section 8.1.4 the Petitioner is entitled to increase the size of the existing structure by approximately 432 square feet.
6. Since the proposed construction consists of 980 square feet of Gross Floor Area, it exceeds the allowable square footage increase by approximately 548 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. Therefor 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”.

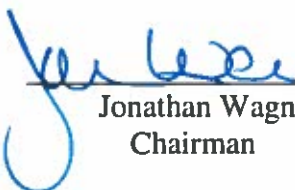


8. The proposed addition is an extension, alteration or change to a single family residential STRUCTURE that will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.
9. The proposed addition is:
 - (a) consistent with the Master Plan and is 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

		
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 November 17, 2015.


Cheryl Frazier, 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.