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ACTON, MA**

Use Special Permit #19-08  
40 Brook Street  
May 8, 2020



**Planning Board**

**TOWN OF ACTON**  
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**DECISION  
19-08**

**40 Brook Street  
Use Special Permit**

**May 8, 2020**

**GRANTED with Conditions**

Decision of the Acton Planning Board (hereinafter the Board) on the application of Douglas and Anna Herrick (hereinafter the Applicant) for their property located at 40 Brook Street, in Acton, Massachusetts. The property is shown on the Acton town map as parcels E4-14 (hereinafter the Site).

This Decision is in response to an application for a special permit for a detached accessory apartment, received by the Acton Planning Division on December 17, 2019 pursuant to Sections 3.8.1.6 m) and n), and 10.3 of the Acton Zoning Bylaw (hereinafter the Bylaw).

The Applicant presented the subject matter of the special permit to the Board at a duly noticed public hearing on February 11, 2020. Board members Mr. Derrick Chin (Chair), Mr. Jon Cappetta, Mr. Anping Liu, and Mr. Ray Yacoubi were present at the hearing. Mr. Sam Bajwa, absent during the hearing, provided Certification pursuant to M.G.L. Chapter 39, Section 23D that he had examined all evidence received at the public hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Division or the Town Clerk's office at the Acton Town Hall.

## **1      EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

1.1    Items and documentation required by the Rules consisting of:

- A properly executed Application for a special permit dated 12/9/19, received in the Planning Division on 12/17/19, consisting of:
  - Cover page;
  - Application form;
  - Certified abutters list;
  - Accessory apartment overview and description;
  - Photographs;
  - Floor Plans;
  - Rendering of possible kitchen installation in apartment;
  - Locus maps;
  - Zoning Bylaw table of principal uses;
  - Zoning map.

1.2    Interdepartmental communication received from:

- Fire Department, dated 12/20/19;
- Health Department, dated 12/27/19;
- Engineering Department, dated 1/8/20;
- Planning Department, dated 1/15/20;
- Acton Water District, dated 1/16/20.

Exhibit 1.1 is referred to herein as the Plan.

## **2      FINDINGS and CONCLUSIONS**

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1    The 3.98 acre Site is located within the Residence 10/8 (R-10/8) zoning district. It complies with all dimensional requirements of the district.
- 2.2    The Site has a main residence on it and a detached barn. Both buildings date back to mid-1800.
- 2.3    The Applicant proposes to install a one-bedroom apartment in the barn. All modifications would be interior; there would none or very few exterior changes to the building.

- 2.4 The Site is located within Zone 2 of the Groundwater Protection District. Based on the Zone 2 limits for wastewater effluent set forth in Bylaw section 4.3.7.2, Table par. 18, the Site is limited to 1,040 gallons of wastewater effluent per day without more advanced treatment. This limits the number of bedrooms on the Site to nine (Title V). At present, the main residence has three bedrooms.
- 2.5 The existing septic system is designed for 3 bedrooms. Consequently, the additional bedroom in the proposed apartment requires a larger septic system or a new septic system unless the number of bedrooms in the main house is reduced.
- 2.6 The Site is traversed by Nashoba Brook with associated wetlands and floodplain. The buildings are not in the floodplain.
- 2.7 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as deemed appropriate.
- 2.8 The proposed accessory apartment as shown in the Plan and as conditioned herein complies with all applicable requirements of the Bylaw; is in harmony with the purpose and intent of the Bylaw; is consistent with the Master Plan; will not be detrimental or injurious to the neighborhood; and is appropriate for the Site.

### **3      BOARD ACTION**

Therefore, on May 7, 2020, the Board voted unanimously to GRANT the requested special permit, subject to and with the benefit of the following conditions and limitations.

#### **3.1    CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this use special permit null and void, without force and effect. The Town of Acton may elect to enforce compliance with this use special permit using any and all powers available to it under the law.

- 3.1.1 In all respects, the apartment shall be constructed substantially as shown in the Plan and as further conditioned herein.
- 3.1.2 Prior to the issuance of a building permit, the Applicant shall obtain Board of Health approval for a new septic system to serve the apartment, or shall modify the main dwelling to a 2-bedroom unit and submit to the Board of Health a copy of a recorded 3-bedroom deed restriction for the property.
- 3.1.3 The street address for the apartment shall be 40R Brook Street, which shall be displayed in an easily visible manner at the street side and on the building.
- 3.1.4 The apartment shall be equipped with a fully functional current code compliant smoke and CO detection system.
- 3.1.5 The Applicant is advised to also carefully review and take into consideration the recommendations and cautions provided by the District Manager of the Water Supply District of Acton incorporated in this decision under Exhibit 1.2 – 5<sup>th</sup> bullet, above.

- 3.1.6 The Applicant shall record this Decision at the Middlesex South District Registry of Deeds before the issuance of a building permit.
- 3.1.7 The Applicant shall meet all applicable requirements of the Town bylaws.
- 3.1.8 All taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to the issuance of a building permit.

### **3.2 LIMITATIONS**

This special permit shall be limited as follows:

- 3.2.1 The foregoing conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.2.2 This special permit applies only to the Site identified in this decision and to the proposed use as shown on the Plan.
- 3.2.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.2.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.
- 3.2.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

### **4 APPEALS**

Appeals, if any, shall be made pursuant to MGL, ch. 40A, s. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Acton Planning Board



Roland Bartl, AICP, Planning Director  
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

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Eva Szkaradek, Town Clerk

Date

Copies furnished:

Owner/Applicant (certified mail)  
Town Manager's Office  
Fire Department  
Historical Commission

Land Use Department  
Engineering Department  
Police Department

Town Clerk  
GIS  
Acton Water District