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BOARD OF APPEALS

Hearing #15-05 Amendment 1

**DECISION ON PETITION TO GRANT
A SPECIAL PERMIT AMENDMENT
WITH RESPECT TO
3 NASH ROAD**

A public hearing of the Acton Board of Appeals was held via video conference on Tuesday, May 4, 2021, at 7:30 PM, on the petition of Thomas Heffernan, for a SPECIAL PERMIT AMENDMENT under Section 8.1.5 of the Acton Zoning Bylaw for new construction of a mudroom and 1-car garage with office above an existing dwelling on a non-conforming Lot. The proposed construction exceeds the 15% FAR allowed under Acton Zoning ByLaw.

The property is located at 3 Nash Road, Map/Parcel G2-128, in a residential R-2 zoning district.

The original structure was 2,287 sq. ft. The applicant was granted a special permit by the Zoning Board of Appeals on March 2, 2015 (ZBA15-05) to construct a new 450 sq. ft. addition increasing the total square footage to 2,737. The new, proposed construction increases the existing structure an additional 984 sq. ft. and exceeds the 15% FAR allowable by the Zoning ByLaw.

The proposed addition meets rear, side yard setbacks, and maximum height as required under the Zoning Bylaw for the R-2 Zoning District.

The application was distributed for departmental review and comments on March 18, 2021.

The Planning Department submitted a memorandum with the application details and no additional comments.

Since there is no proposed modification to the existing water service, the Acton Water District had no additional comments.

The Acton Engineering Department sent a memo stating the proposed construction does not appear to be on any recorded easements, nor is it located within the 100-year floodplain area.

They did say the petitioner should submit a Land Disturbance permit to determine whether or not the proposed project is exempt from any restrictions.

The Health Division of the Land Use Department has no issues with the proposed project, given the location of the septic system in the rear of the structure.

The Natural Resources Department had no issues with the proposed project.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member and Scott Robb, Member. Staff present included Kristen Guichard, Planning Director and Zoning Enforcement Officer. The petitioner, Thomas Heffernan, of 3 Nash Road was also present.

Applicable Bylaws:

8.1.4 Extensions, alterations or changes of Single- and Two-Family Dwellings on Nonconforming Lots – One or more extensions, alterations or changes to a single or two-family residential STRUCTURE on a nonconforming LOT shall be deemed not to increase any nonconformity and shall not require special permits under Section 8.1.5, provided that such extensions, alterations or changes comply with all applicable yard requirements and in total do not increase the size of the STRUCTURE by more than 15 percent of the GROSS FLOOR AREA in existence on April 1, 2012 or the date that LOT became nonconforming, whichever is later.

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, including the reconstruction anywhere on the lot of a larger structure than otherwise allowed under Section 8.1.3, 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.

10.3.5 Mandatory Findings by Special Permit Granting Authority – Except for a Site Plan Special Permit, the Special Permit Granting Authority shall not issue a special permit unless without exception it shall find that the proposed USE:

10.3.5.1 Is consistent with the Master Plan.

10.3.5.2 Is in harmony with the purpose and intent of this Bylaw.

10.3.5.3 Will not be detrimental or injurious to the neighborhood in which it is to take place.

10.3.5.4 Is appropriate for the site in question.

10.3.5.5 Complies with all applicable requirements of this Bylaw.

Mr. Kozik opened the hearing and explained how the Board procedurally operates. Mr. Kozik then asked the petitioner to begin.

Mr. Heffernan explained that the Board had granted a Special Permit in 2015 to add a master bedroom suite to the structure. He explained that 3 Nash Road and neighboring homes were built in the 1950s and did not meet the demands of growing families. He also said the home meets current setbacks, etc., which was confirmed by the Acton Planning Department.

Mr. Heffernan continued to explain that his current structure does not have a garage and decided to petition the Board for approvable to add one. The petition includes a mudroom and single-car garage, with space above for an office. The total square footage of the proposed construction exceeds the 15% FAR allowable by the Zoning ByLaw, which triggered Mr. Heffernan's petition.

Mr. Heffernan provided the Board with an overview of detailed schematics, elevations, etc. illustrating the proposed construction. The Board deemed the proposed plans to be consistent with the existing structure and not detrimental to the neighborhood.

Chairman Kozik asked if there were any additional public comments. Public comments were neither submitted during the hearing nor in writing prior to the meeting.

With no further input, Mr. Hoffman made a motion to close the public hearing. Mr. Robb seconded the motion. The Board unanimously voted to close the hearing.

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

1. Petitioners seek a **SPECIAL PERMIT AMMENDMENT** under Section 8.1.5 of the Acton Zoning Bylaw for reconstruction of a mudroom and single-car garage with office space above on a non-conforming lot.
2. Under Acton Zoning Bylaw 8.1.5, Petitioners' proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing non-coforming structure.
3. Under Acton Zoning Bylaw 10.3.5.1, Petitioners' proposed construction is consistent with the Master Plan.
4. Under Acton Zoning Bylaw 10.3.5.2, Petitioners' proposed construction is in harmony with the purpose and intent of the Acton Zoning Bylaw.

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

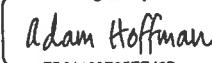
1. The proposed construction should be completed as substantially presented during the May 4, 2021 hearing.
2. The petitioner submits a Land Disturbance Permit to determine whether or not the proposed construction is/is not exempt.

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

TOWN OF ACTON BOARD OF APPEALS

Kenneth F. Kozik
Chairman

Adam Hoffman
Member

DocuSigned by:

Adam Hoffman
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Scott Robb
Member