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TOWN OF ACTON  
PLANNING DEPARTMENT

## BOARD OF APPEALS

Hearing #21-16

### DECISION ON PETITION TO GRANT A SPECIAL PERMIT WITH RESPECT TO 110 STOW STREET

A public hearing of the Acton Board of Appeals was held via video conference on Tuesday, January 4th, 2022, at 7:30 PM, on the petition of Homelight Property Group, LLC for a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw for a larger reconstruction of a single-family residence on a non-conforming lot. Zoning Bylaw Section 8.1.3 allows for an existing single-family dwelling on a non-conforming lot to be razed and rebuilt by-right as long as it does not exceed the original Floor Area Ratio. The proposed reconstruction exceeds the existing Floor Area Ratio.

The property is located at 110 Stow Street, Map/Parcel H2-68, in a residential R-2 zoning district. The subject property is classified as a non-conforming lot due to insufficient lot frontage. The required frontage in the Residence Zone 2 (R-2) is 150 feet; 110 Stow Street has 100 feet of frontage. The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.1.5 and 10.3.5.

Zoning Bylaw Section 8.1.3 allows for an existing single-family dwelling on a non-conforming lot to be razed and rebuilt by-right as long as it does not exceed the original Floor Area Ratio. The existing Net Floor Area of the dwelling is 3,111 square feet with an existing Floor Area Ratio of .16. The proposed Net Floor Area is 3,759 square feet with a proposed Floor Area Ratio of .19. Therefore, the proposed expansion requires a special permit under Section 8.1.5.

The existing structure consists of a 5-bedroom, 2-bathroom single family dwelling with a gross floor area of 3,111 square feet. The existing structure has been abandoned for several years and has decayed over time.

The application was distributed for departmental review and comments on December 29, 2021.

The Planning Division submitted a memorandum with the application details with the following comments. The applicant's initial Net Floor Area calculations of abutting structures was not calculated properly. This is because the Planning Division had more access to floor plans of the surrounding residential houses than the applicant. The applicant submitted revised plans with an updated the Net Floor Area and the Planning Division confirmed that the calculations were calculated correctly.

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

The Engineering Department submitted a memorandum stating the proposed construction does not appear to be on any recorded easement and does not appear to be located within the 100-year floodplain area. Also, the proposed additional parking area might trigger Land Disturbance permit. The applicant should submit an applicant showing whether this applicant is exempted or not.

The Fire Department did not provide any written comments.

The Health Division submitted a memorandum stating that they permitted the 5 Bedroom house construction.

The Water Department submitted a memorandum dated December 21, 2021.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member and R. Scott Robb, Member. Staff present included Kristen Guichard, Planning Director and Zoning Enforcement Officer. The applicants, Matthew Damon, Principle and Owner, Homelight Property Group, LLC.

#### Applicable Bylaws:

*8.1.3 Reconstruction of Single and Two-Family residential structures on Nonconforming Lots-A lawful Single-Family Dwelling on a non-confirmed LOT may be reconstructed for a Single-Family residential USE on the same lot; and a lawful Two-Family Dwelling on a nonconforming LOT may be reconstructed for Two-Family residential USE on the same lot; in both cases are subject to additional conditions and limitations.*

*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.

The applicant described their current dwelling, which is abandoned 5-bedroom and a 2-bathroom home that is poor shape due to decay and lack of proper maintenance over the years. The applicant wants to demolish the dwelling and rebuild a new construction with the Gross floor area of 3,759 square feet, even though it exceeds the FAR limit by 0.03%. The applicant presented that the new construction be within an acceptable range of nearby homes in the neighborhood. Finally, the applicant presented pictures of the existing dwelling and architectural drawings of the proposed construction in order to demonstrate that it conformed to the neighborhood.

Chairman Kozik asked if there were any additional public comments. Public comments focused on several large pine trees along the property lines were in dubious conditions and posed safety hazards. Specifically, if the trees fell, they could cause significant damage on nearby houses. Other comments focused on the large size of the house was not consistent to the neighborhood. Mr. Hoffman inquired as to why the applicant desired to build a larger house that is not consistent with nearby houses. Applicant cited that it was for greater marketability in selling a bigger house.

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. Applicant seeks a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw to reconstruct a larger single-family residence on a non-conforming lot. The proposed construction meets rear, side yard setbacks, and maximum height as required under the Zoning Bylaw for the R-2 Zoning District. The FAR limit is exceeded by 0.03%. The property is located at 110 Stow Road, Map/Parcel H2-68, in a residential R-2 zoning district.
2. Under Acton Zoning Bylaw 8.1.5, the applicant's proposed construction will be more detrimental to the neighborhood than the existing non-conforming structure.

3. Under Acton Zoning Bylaw 10.3.5.1, Applicants' proposed construction is consistent with the Master Plan.
4. Under Acton Zoning Bylaw 10.3.5.2, Applicants' proposed construction is not in harmony with the purpose and intent of the Acton Zoning Bylaw.
5. Under Acton Zoning Bylaw 10.3.5.3, the Applicant's proposed construction will not be more detrimental or injurious to the neighborhood in which it is to take place.
6. Under Acton Zoning Bylaw 10.3.5.4, the Applicant's proposed construction is not appropriate for the site in question.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **DENY** the **SPECIAL PERMIT** primarily because it did not meet the conditions and intent of Bylaw: 8.1.5 and 10.3.5.2

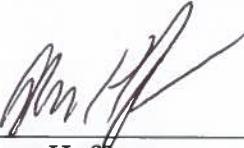
Any person aggrieved by this decision may appeal pursuant to Massachusetts General Laws, Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

**TOWN OF ACTON BOARD OF APPEALS**

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Kenneth F. Kozik  
Chairman

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Adam Hoffman  
Member

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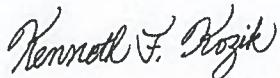
  
R. Scott Robb  
Member

3. Under Acton Zoning Bylaw 10.3.5.1, Applicants' proposed construction is consistent with the Master Plan.
4. Under Acton Zoning Bylaw 10.3.5.2, Applicants' proposed construction is not in harmony with the purpose and intent of the Acton Zoning Bylaw.
5. Under Acton Zoning Bylaw 10.3.5.3, the Applicant's proposed construction will not be more detrimental or injurious to the neighborhood in which it is to take place.
6. Under Acton Zoning Bylaw 10.3.5.4, the Applicant's proposed construction is not appropriate for the site in question.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **DENY** the **AMENDMENT** to the **SPECIAL PERMIT** primarily because it did not meet the conditions and intent of Bylaw: 8.1.5 and 10.3.5.2

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.

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