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ACTON**

**BOARD OF APPEALS**

Hearing #19-06

**DECISION ON PETITION FOR A GRANT  
OF A SPECIAL PERMIT  
WITH RESPECT TO  
12 ORCHARD DRIVE**

A public hearing of the Acton Board of Appeals was held on Monday, May 6, 2019, at 8:00 PM, in the Acton Town Hall on the petition of Patricia Agsten-Wildes and Ryan Wildes for a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw for reconstruction of a larger structure on a non-conforming lot. The property is located at 12 Orchard Drive (Map/Parcel D2-183).

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member and Emilie Ying, Alternate Member. Staff present included Roland Bartl, Town Planner, and Stephen D. Anderson, Acton Town Counsel. Also present were Patricia Agsten-Wildes and Ryan Wildes, the petitioners, and a neighbor residing near 12 Orchard Drive.

Applicable Bylaws:

*8.1.3 Reconstruction of Single- and Two-FAMILY residential STRUCTURES on Nonconforming Lots – A lawful Single-FAMILY Dwelling on a nonconforming LOT may be reconstructed for 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 subject to the following conditions and limitations:*

*8.1.3.1 The reconstructed STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.*

*8.1.3.2 The reconstructed STRUCTURE may be placed anywhere on the LOT provided it meets all minimum yard and maximum height requirements of this Bylaw.*

*8.1.3.3 The FLOOR AREA RATIO shall be determined by using either architectural and plot plans for the existing STRUCTURE to be razed or, in the absence of such architectural and plot plans, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor's office.*

*8.1.3.4 Additions to the reconstructed STRUCTURE may be made after two years Town of Acton Zoning Bylaw, December 2018 Page 126 following the date of initial occupancy of the reconstructed STRUCTURE, if otherwise permissible.*

*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, read the contents of the file and explained how the Board procedurally operates. Mr. Kozik then asked the petitioner to begin.

Petitioners Patricia Agsten-Wildes and Ryan Wildes explained that their lot for which the special permit is requested is located within the R-2 zoning district in which the minimum required frontage is 150 feet. The lot is nonconforming because it only has 105 feet of frontage along Orchard Drive. The existing dwelling on the nonconforming lot has a net floor area of 2,150 square feet, resulting in a Floor Area Ratio (FAR) of 0.09. The petitioners would like to construct a new single family dwelling that exceeds the FAR of the existing dwelling. More specifically, the petitioners are proposing to construct a single family dwelling having a net floor

area of 3,522 square feet and a FAR of 0.15. The resulting increase in net floor area is 63.81%. The resulting increase in FAR is 63.81%. The proposed dwelling would meet the front, side and rear yard setbacks and maximum height as required under the Zoning Bylaw for the R-2 Zoning District. The petitioners indicated that the proposed two-story single family dwelling would be consistent with other dwellings currently on Orchard Drive.

An abutter residing on Orchard Drive expressed support for the project.

The Acton Water District submitted written comments that petitioners' proposed development, if approved, would require that the owner, or owner's representative, submit a "Water Impact Report," per Acton Water District (AWD) guidelines.

The Board of Health submitted written comments stating that it had no issues with the application and that the proposed septic system upgrade has been approved.

With no further input, Mr. Hoffman made a motion to close the public hearing. Ms. Ying 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 under Section 8.1.5 of the Acton Zoning Bylaw for reconstruction of a larger structure on a non-conforming lot. The property is located at 12 Orchard Drive (Map/Parcel D2-183).
2. Petitioners' proposed reconstruction is consistent with the Master Plan.
3. Petitioners' proposed reconstruction is in harmony with the purpose and intent of this Bylaw.
4. Petitioners' proposed reconstruction will not be more detrimental or injurious to the neighborhood in which it is to take place.
5. Petitioners' proposed reconstruction is 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 **GRANT** the **SPECIAL PERMIT**, subject, however, to the following conditions:

- (a) the proposed construction shall be built substantially in accordance with the Plans submitted with the Petition and contained in the file;
- (b) the proposed addition shall comply with applicable Acton Water Department rules and regulations, including, but limited to, those matters referenced in the Acton Water Department's Interdepartmental Communication filed in this matter.

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



Emilie Ying

**EFFECTIVE DATE OF SPECIAL PERMIT:** 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.