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BOARD OF APPEALS

Hearing #19-05

**DECISION ON PETITION FOR A GRANT
OF A SPECIAL PERMIT
WITH RESPECT TO
236 CENTRAL STREET**

A public hearing of the Acton Board of Appeals was held on Monday, May 6, 2019, at 7:35 PM in the Acton Town Hall on the petition of Jean & Sal Panetta, Trustees of ATTENAP Realty Trust for a SPECIAL PERMIT under Section 8.3.4 of the Acton Zoning Bylaw for restoration of a Non-conforming Structure. The property is located at 236 Central Street (Map/Parcel F2-B-37).

Members present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member and Emilie Ying, Alternate Member. Also present were Sal and Jean Panetta, the petitioner, and neighbors residing near 236 Central Street.

Applicable Bylaw Sections:

4.1.8 USES Permitted by Special Permit Within the Limits of the Floodway Fringe – The following USES may be permitted within the limits of the Floodway Fringe upon the issuance of a special permit by the Board of Appeals:

4.1.8.1 Any USE permitted in the underlying district in which the land is located, including grading, filling or excavating, subject to the same USE and development regulations as may otherwise apply thereto provided the Board of Appeals finds that:

a) the proposed USE does not significantly conflict with the purposes of this Section;

b) at least 98 percent of the Natural Flood Storage Volume of the Flood Plain on the site is preserved without the use of compensatory storage techniques and disturbance of the natural characteristics of the Flood Plain on the site is kept to a minimum;

c) the elevation of the Lowest Floor level including basement of any new or substantially improved residential STRUCTURE is at or above the Base Flood;

d) the elevation of the Lowest Floor including basement of any new or substantially improved non-residential STRUCTURE is at or above the Base Flood or floodproofed to above the Base Flood;

e) the elevation of the lowest point of any new vehicular or pedestrian ACCESS from a STREET to any BUILDING, including garages, used for human occupancy is at or above the Base Flood;

f) any new construction or Substantial Improvements are constructed with flood resistant materials and methods and anchored to prevent flotation and lateral movement;

g) any new or reconstructed utilities, such as water or sewer mains, septic and drainage systems, fuel storage facilities, gas electric or other utilities, are anchored to prevent flotation and designed to avoid impairment during the Base Flood.

8.3.4 Restoration - If a nonconforming STRUCTURE, or a STRUCTURE on a nonconforming LOT that cannot be built on under the requirements of Section 8.1, is damaged by fire, flood or similar disaster to an extent greater than 50% of its fair market value before it was damaged, it shall not be rebuilt or reconstructed without a special permit from the Board of Appeals. No such special permit shall be granted unless the application for such special permit is filed within two years from the date on which the damage occurred and the Board of Appeals finds that 1) such rebuilding or reconstruction will not be detrimental to the neighborhood, and 2) to the extent possible the STRUCTURE will be rebuilt or reconstructed in conformity with the dimensional requirements of this Bylaw.

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 Salvatore and Jean Panetta explained that they wished to reconstruct a structurally failing building on the same foundation footprint as the existing failed building recently removed at 236 Central Street.

The building was damaged as a result of excess snow load in the winter of 2017. The damaged structure is non-conforming due its location within the 100-year flood plain. The damaged structure was constructed before FEMA in 2014 included its location within the 100-year flood plain, and Town Meeting thereafter included the location in the Flood Plain Overlay Zoning District. The Applicant proposes to demolish the non-conforming, damaged structure and to construct a new +/-6,492 square foot building on the same foot print of the damaged structure.

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. The Petitioners seek a SPECIAL PERMIT under Section 8.3.4 of the Acton Zoning Bylaw for demolishing the non-conforming damaged structure and rebuilding the building. The property is located at 236 Central Street (Map/Parcel F2-B-37).
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) Prior to issuance of a building permit the Applicant shall:
 - i. Submit certified calculations, and subsequent certified plans if necessary for compensatory flood storage, by a registered engineer to prove compliance with Bylaw Section 4.1.8.1(b) and,
 - ii. Submit certified architectural building design plans that meet the Massachusetts Commercial Building Code (1612.4, ASCE 24) for flood proofing.

OR

iii. Provide to the Planning Division, as required by FEMA, evidence of a map change by FEMA to the Flood Zone Determination showing the building outside the Flood Plain.

(b) That the Petitioner must record the decision at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the site.

(c) That all taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full before the issuance of a building permit.

(d) That the special permit 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.

(e) That the Town of Acton may elect to enforce compliance with the special permit using any and all powers available to it under the law.

(i) That other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by the decision.

(j) That the Board reserves its right and power to modify or amend the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion.

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: No Special Permit, or modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, it has been dismissed or denied.