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## **BOARD OF APPEALS**

Hearing #20-07

### **DECISION ON PETITION FOR A SPECIAL PERMIT WITH RESPECT TO**

#### **6 Elm Court, Acton, MA**

A public hearing of the Acton Zoning Board of Appeals was held on Tuesday, June 9, 2020 at 7:30 pm on the petition of Nicolas and Kathleen Ammendolia for a Special Permit under Section 8.1.5 of the Acton Zoning Bylaw to add a second floor, mudroom and attached two car garage to an existing single story home.

The Applicant seeks relief from section 8.1.4 of the Zoning Bylaw. The current structure, which is on a non-conforming lot, is 1,880 sq. ft. including the basement level. Zoning Bylaw 8.1.4 permits a 15% increase in gross floor area which limits additional construction to 282 sq. ft. The proposed second story, mudroom and two car garage totals an additional 1,450 sq. ft. thus exceeding the 15% permitted by-right allowance by 77.12%. (The petitioners did not include the basement in their Gross Floor Area calculation).

The subject property is classified as a non-conforming lot in a R-2 zoning district. It is located at 6 Elm Court, Map/Parcel E2-235.

Due to COVID-19 concerns, the hearing was conducted virtually with all participants following the Town's remote access guidelines.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member, Scott Robb, Member, Kristen Guichard, Senior Planner and Robert Hummel, Assistant Town Planner. Also present were the petitioners, Nicolas and Kathleen Ammendolia.

Mr. Kozik opened the hearing, explained how the Board procedurally operates and asked the petitioners to begin.

The petitioners said they were required to apply for a Special Permit under Zoning Bylaw 8.1.5, since theirs is a non-conforming lot.

The petitioners explained they currently live with their young children in a single story home consisting of approximately 900+/- sq. ft. They like the neighborhood and the close proximity to their parents who live in a home across the street. The petitioners do not want to move from their existing location and decided to file for a special permit in the hopes of expanding their home at its current location.

The petitioners provided detailed architectural drawings depicting the current home's footprint and proposed new construction. The proposed construction will allow for a second floor addition where all bedrooms will be located. The first floor will be reconfigured to include a kitchen, living/family room, bathroom and office. Additionally, the petitioners propose a new mudroom and attached two car single story garage. The petitioners said the footprint of the existing home will not change and they are keeping some of the existing walls which will be stripped down to bare studs during construction.

The petitioners said the new construction and existing building all meet required zoning setbacks.

There is also a 6'x10' detached shed located on the property which does not currently meet Zoning Bylaw setbacks. The petitioners agreed to relocate/remove the shed, which they said was there when they purchased the home.

The application was distributed for departmental review and comments prior to the June 9 hearing. The Acton Water District (AWD) supplied a written memo saying any new fixtures and appliances must meet efficiency standards as outlined in the District's "*Rules and Regulations*". The AWD noted the property is currently served via a ¾" copper line and recommends upgrading to 1" high-density polyethylene line, which is current specification. The AWD feels this is necessary due to the proposed higher demand as a result of the proposed new construction. If an irrigation system is to be installed (nothing appears on submitted drawings), it must be registered with the AWD and this would reiterate the need to upgrade the service line.

The Acton Health Division (AHD) provided a written statement saying it appears the proposed garage will be directly on top of the septic tank, and very close to the pump chamber and leach field. The petitioners will need to determine how close each septic system component will be to the new garage. Depending on what is found, the garage or septic system may have to be relocated.

There being no additional questions from the board or the public, Mr. Hoffman moved, Mr. Robb seconded to close the public hearing. The vote was unanimous (3-0). The hearing closed at 8:03pm

Mr. Kozik asked the petitioners if they felt the proposed construction added to the non-conformity of the lot? The petitioners said they did not feel the proposed construction added to the lot's non-conformity.

The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.1.5 and 10.3.5.

Acton Zoning Bylaw 8.1.5 States:

*In all other cases, the Board of Appeals may, by special permit, allow such construction 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.*

Acton Zoning Bylaw 10.3.5 States:

*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 the 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.*

During deliberation, the Board discussed the project's consistency with the master plan, whether it complied with the bylaws, and whether it was appropriate for the site in question. After Board discussion, Mr. Hoffman moved and Mr. Robb seconded to grant the special permit, with conditions that the project be built substantially as presented at the meeting. The motion carried unanimously (3-0).

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

1. The Petitioner seeks a Special Permit under Section 8.1.5 of the Acton Zoning Bylaw to add a second story, mudroom and attached single story two car garage to an existing single story home. The proposed new construction adds 1,450 sq. ft, which is 77.12% more Gross Floor Area than is currently allowed by the Zoning Bylaw. The property is located at 6 Elm Court, Acton, MA, Map/Parcel E2-235.
2. The proposed second story, mudroom and attached garage are not more detrimental to the neighborhood.
3. The proposed garage with attic meets the mandatory findings of section 10.3.5 of the Zoning Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the

above findings, voted unanimously (3-0) to **Grant** the Special Permit with the following Conditions:

- The proposed construction shall be executed substantially as presented in the most recent plans used during the June 9, 2020 meeting.
- The petitioners shall move/remove the 6'x10' shed on their property to meet current Zoning Bylaw setbacks.

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


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R. Scott Robb

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Kenneth F. Kozik, Chairman

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Adam Hoffman

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*R Scott Robb*

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R. Scott Robb