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BOARD OF APPEALS

Hearing #20-04

**DECISION ON PETITION FOR A GRANT OF A VARIANCE
WITH RESPECT TO GARAGE
3 WOOD LANE, ACTON MA**

A public hearing of the Acton Board of Appeals was held on Thursday, April 23, 2020, at 6:45 PM on the petition of Jim and Carol Nagle for a VARIANCE under Section 10.5 of the Acton Zoning Bylaw for the construction of a new garage. The first step would be to demolish an existing 440 Square foot dilapidated garage and replace it with new one car garage, designed in the same style of existing house.

The property is located at 3 Wood Lane, R-2 zoning district (Map/Parcel F3-A-58).

The applicant is requesting variance relief from Section 5 of the Zoning Bylaws to construct the proposed new garage within +/-3.8 feet from the rear of the property line, and +/-3.7 from the side from of the property line, where a 10 foot setback is required for both dimensions.

Due to COVID-19 concerns, the meeting 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, Roland Bartl, Planning Director, Kristen Guichard, Senior Town Planner, Robert Hummel, Assistant Town Planner, and Vivian Birchall, Land Use Administrative Assistant. Also present were the petitioners, Jim and Carol Nagle and their architect engineer, Christian Lancieux.

Applicable Bylaw(s):

10.5.5.1 That owing to circumstances relating to the soil conditions, shape, or topography of the LOT or STRUCTURES in question and especially affecting such LOT or STRUCTURES but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner.

Variance Hearing #20-04 3 Wood Lane

10.5.5.2 That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. In deciding whether the requested variance nullifies or substantially derogates from the intent or purpose of this Bylaw, the Board of Appeals shall consider whether the granting of such variance is consistent with the Master Plan.

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

Mr. Jim Nagle and Ms. Carol Nagle explained they are seeking relief from the minimum side yard and rear yard setbacks as indicated in Section 5 – Table of Standards of the Zoning Bylaw which calls for 10'-0" rear and side yard setbacks.

The petitioners explained their desire to tear down their dilapidated garage and construct a new garage in the same style of their house, approximately within the same foundation of the existing footprint

The existing garage is a nonconforming structure as shown on the survey documents submitted with the petitioners' application. The new proposed garage does not meet the minimum 10-foot setbacks required by the Zoning Bylaw, and so an application for a Variance Grant was submitted.

The petitioners said they would like to replace a new garage with a new structure similar in appearance with the historic style of their house. The Historic District Commission approved the appearance of the proposed new construction and supports the proposed location to maintain the overall fabric of Acton.

Mr. Kozik referred the petitioners to the wording of Sections 10.5.5.1 and 10.5.5.2 of the Zoning Bylaw, reproduced above, and provided a general discussion of what the petitioners needed to demonstrate to the Board in order to be granted a variance.

In response, the petitioners argued that their lot was unique because the topography was different than the surrounding lots due to its declining nature of the lot and the various levels throughout the entire property. Specifically, they couldn't relocate the construction of the proposed new garage to a more favorable location for the required footage. Thus, the petitioner concluded that a literal enforcement of the provisions of this Bylaw would involve substantial hardship both financially and otherwise, to the Zoning Board.

The Board asked the petitioners whether or not they would consider moving the proposed construction to another location, or even slightly pivoting the proposed construction so as to meet Zoning Bylaw setbacks, which would not require a Variance? The petitioners said that there are no other locations on the lot where the new structure could be built because of septic issues or the downhill slant of their property making the construction prohibitable.

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

During deliberation, the Board discussed the evidence presented by the petitioners and reviewed the requirements of Zoning Bylaws 10.5.5.1 and 10.5.5.2. The Board agreed with the uniqueness of the petitioners' lot based on its topography and the declining slope making prohibitive in relocating the garage. Thus, the Board voted unanimously (3-0) to GRANT the Variance.

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 VARIANCE under Section 5 of the Acton Zoning Bylaw for the construction of an 860 square foot garage in the location shown on the plans dated 2/25/2020. The property is located at 3 Wood Lane, zoning district R-2 (Map/Parcel F3-A-58).
2. There are unique circumstances relating to the topography of the lot in terms of various levels and a declining pitch that was subject of this hearing relative to lots or structures generally in the zoning district in which it is located.
3. Because of these circumstances, literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner.
4. The approval of such Variance is consistent with the Master Plan.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **VARIANCE**.

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

R. Scott Robb

Under Bylaw Section 10.5.7, any rights authorized by a variance which are not exercised within one year from the date of the grant of such variance shall lapse and may be reestablished only after notice and a hearing under Section 10 of the Bylaw.

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