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## **BOARD OF APPEALS**

Hearing #19-06, Amendment #1

### **DECISION TO GRANT A SPECIAL PERMIT WITH RESPECT TO**

**12 Orchard Drive, Acton, MA**

A public hearing of the Acton Board of Appeals was scheduled to be heard on Tuesday, April 6, 2021 at 8:15pm on the petition of Patricia Agsten-Wildes & Ryan Wildes for a Special Permit amendment under Section 8.1.5 of the Acton Zoning Bylaw to allow for reconstruction of a larger structure on a non-conforming lot. The property is located at 12 Orchard Dr, Map-Parcel D2-183, in residential zoning district R-2.

Board of Appeals members present at the hearing included: Ken Kozik, Chairman, Adam Hoffman, Member, R. Scott Robb, Member; Robert Hummel, Assistant Town Planner, was in attendance as well as the Applicants.

The Applicants were granted a special permit by the Zoning Board of Appeals on May 6, 2019 (ZBA19-06) to raze the existing dwelling with a Net Floor Area of 2,150 sq. ft. and reconstruct a new 3,522 ft dwelling with the proposed Floor Area Ratio of .15. Due to the Covid pandemic, the Applicants are now requesting an amendment to build a smaller dwelling with a proposed Net Floor Area of 3,108 ft. The proposed Floor Area Ratio is .13. All numbers were verified by existing and proposed floor plans.

Floor Area Ratio: The ratio of the sum of the Net Floor Area of all Buildings on a Lot to the Developable Site Area of the Lot

The proposed dwelling meets rear, side yard setbacks, and maximum height as required under the Zoning Bylaw for the R-2 Zoning District.

Special Permit #19-06 -Amendment #1 -, 12 Orchard Drive

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. (Floor Area Ratio (FAR) is the Net Floor Area divided by the Developable Lot Area.) The requested Net Floor Area of the proposed structure on the lot exceeds this threshold, as noted above. Therefore, the proposed dwelling unit requires a special permit under Section 8.1.5.

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.*

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

The application was distributed for departmental review and comments on March 1, 2021:

- The Planning Division has no objection to granting the requested special permit.
- The Building Division has no comment at this time and will conduct a full code review when the building permit is applied for.
- The Engineering Department submitted comments noting street cut permits are required for utility connections and new driveways, and the site work may require a Land Disturbance permit.
- The Health Division submitted comments noting “the current septic system is designed for 3 bedrooms and may only have a total of 7 heated/habitable rooms before a deed restriction would be required by Title 5. Also, full foundation/crawl space must remain a minimum 10 feet away from the septic tank and 20 feet away from the leach field. From the current plans it looks like they should be all set with both of these items.”
- Acton Natural Resources submitted comments noting No Wetlands Protection Act filing will be required.

Mr. Kozik opened the hearing at 9:42pm, viewed the contents of the file, and explained how the Board procedurally operates.

The Applicants explained that they had been Granted a Special Permit by the ZBA in 2019 to raze an existing single-story dwelling and construct a new, two-story dwelling with attached garage on a non-conforming lot at 12 Orchard Drive. Unforeseen circumstances such as the Covid pandemic led the Applicants to rethink their plans and submit a petition for a Special Permit to construct a smaller dwelling than what was originally Granted.

The board reviewed the updated architectural drawings and supporting documents submitted by the Applicants.

Two abutters sent written letters stating their support for the proposed project. There were no objectors.

There being no questions from the board, Mr. Hoffman moved, Mr. Robb seconded to close the public hearing. The vote was unanimous (3-0). The hearing closed at 9:47pm.

After Board discussion (deliberation), Mr. Hoffman moved and Mr. Robb seconded to Grant the special permit amendment, with conditions that the project be built substantially as presented at the meeting. The motion carried unanimously (3-0), at 9:51pm.

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 Sections 8.1.5 of the Acton Zoning Bylaw to allow for the razing of an existing single-story dwelling and proposed construction of a new, two-story dwelling with attached garage. The property is located at 12 Orchard Drive, Acton, MA, Map/Parcel Map-Parcel D2-183.
2. The proposed two-story dwelling and attached garage are not more detrimental to the neighborhood.
3. The proposed two-story dwelling and attached garage meet the mandatory findings of section 10.3 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:

- Be built substantially as shown in the plans, received by the Planning Division on March 1, 2021, and on file for the April 6, 2021 ZBA meeting

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 Adam Hoffman

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R. Scott Robb

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2. The proposed two-story dwelling and attached garage are not more detrimental to the neighborhood.

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## TOWN OF ACTON BOARD OF APPEALS

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*Adam Hoffman*  
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Kenneth F. Kozik, Chairman

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Adam Hoffman

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## 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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R. Scott Robb