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BOARD OF APPEALS

Hearing #20-10 Amendment 1

**DECISION ON PETITION FOR A GRANT
OF A SPECIAL PERMIT AMENDMENT
WITH RESPECT TO
62-64 POPE ROAD**

A public hearing of the Acton Board of Appeals was held via video conference on Tuesday, May 4, 2021, at 8:30 PM, on the petition of Country Properties, LLC for a SPECIAL PERMIT AMENDMENT 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 62-64 Pope Road (Map/Parcel F5-43 & F5-46). This public hearing was a continuation of a public hearing held on April 6, 2021.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member and Scott Robb, Member. Staff present included Kristen Guichard, Planning Director and Zoning Enforcement Officer. Also present were attorney Louis N. Levine of D'Agostine, Levine, Parra & Netburn, P.C., Paul Kirchner of Stamski & McNary and Leo Bertolami of Country Properties, LLC.

Applicable Bylaws:

8.1.4 Extensions, alterations or changes of Single- and Two-Family Dwellings on Nonconforming Lots – One or more extensions, alterations or changes to a single or two-family residential STRUCTURE on a nonconforming LOT shall be deemed not to increase any nonconformity and shall not require special permits under Section 8.1.5, provided that such extensions, alterations or changes comply with all applicable yard requirements and in total do not increase the size of the STRUCTURE by more than 15 percent of the GROSS FLOOR AREA in existence on April 1, 2012 or the date that LOT became nonconforming, whichever is later.

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 and explained how the Board procedurally operates. Mr. Kozik then asked the petitioner to begin.

Mr. Levine explained that the petitioner is now seeking an amendment to a special permit that was granted in October 2020 by the Board of Appeals (the “Board”). The amendment requested is for an additional 560 ft² area above the garage, a 370 ft² sunroom and an additional 356 ft² basement area under the sunroof, for a total increase of size to the structure of 1,286 ft². Mr. Levine testified that the proposed amendment satisfied Acton Zoning Bylaw 8.1.5 in that it does not increase the nonconformity and it will not be substantially more detrimental to the neighborhood than the existing structure on the nonconforming lot.

When Mr. Levine completed his initial comments, Mr. Kozik summarized the matter as follows.

In 2020, the Board granted a special permit for the demolition and reconstruction of a single family home on the Lot. On November 17, 2020 the Applicant was issued a foundation only permit. Since that time, the Applicant proceeded to begin construction at his own risk without a building permit.

On February 15, 2021, the Zoning Enforcement Officer received an email from Zoning Board of Appeals member Adam Hoffman, alerting her to a potential violation of the Board’s 2020 special permit.

On February 18, 2021, the Zoning Enforcement Officer inspected the property and confirmed that one addition and a sunroom to the right of the house was constructed and that one wall of a dormered room above the garage was in active construction; both additions were not approved by the Board.

Following the inspection, the Applicant was informed of their option to either: (1) remove the additions that are in violation of the special permit, or (2) seek an amendment to the special permit with the Board. The Applicant indicated they would seek a special permit amendment.

The Building Commissioner issued a stop work order on February 19, 2021, allowing only construction for weatherproofing and safety measures until the issue was resolved.

On March 17, 2021, one month later, the Zoning Enforcement Officer received another email from Board of Appeals member Adam Hoffman inquiring if the Applicant had been given permission to proceed with construction. A determination was made by the Zoning Enforcement Officer that the Applicant continued construction, including the addition of clapboards, and confirmed that the Applicant had not been given permission to proceed with construction beyond weatherproofing.

Mr. Levine and Mr. Bertolami responded that the violation of the Special Permit that was detected on February 18, 2021, was due to Mr. Bertolami's mistake.

Mr. Levine and Mr. Bertolami responded that the continued violation of the Special Permit that was detected on March 17, 2021, was not a violation but work done to weatherproof the building.

Board member Hoffman challenged Mr. Levine and Mr. Bertolami about the weatherproofing, explaining that in his extensive building experience, he was of the opinion that the Applicant went well beyond what would have been required to weatherproof the building. The Planning Director agreed, as did Board members Mr. Robb and Mr. Kozik.

Board members also expressed concerns that the Applicant appeared to be attempting to expand on the original Special Permit and not seeking this amendment until being found in violation of the original Special Permit, not once, but twice. Mr. Levine and Mr. Bertolami disagreed and reiterated that the initial violation was purely a mistake and that the second violation was not a violation but work done to weatherproof the building.

With no further input, Mr. Hoffman made a motion to close the public hearing. Mr. Robb 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.
2. Under Acton Zoning Bylaw 8.1.5, Petitioners' proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing structure on the nonconforming.
3. Under Acton Zoning Bylaw 10.3.5.1, Petitioners' proposed reconstruction is not consistent with the Master Plan.
4. Under Acton Zoning Bylaw 10.3.5.2, Petitioners' proposed reconstruction is not in harmony with the purpose and intent of this Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **DENY the AMENDMENT to the SPECIAL PERMIT.**

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

Kenneth F. Kozik
Chairman

Adam Hoffman

Scott Robb

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

DocuSigned by:
Adam Hoffman
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Kenneth F. Kozik
Chairman

Adam Hoffman

Scott Robb

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TOWN OF ACTON BOARD OF APPEALS

Kenneth F. Kozik
Chairman

Adam Hoffman

DocuSigned by:
R Scott Robb
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Scott Robb