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ACTON, MA

BOARD OF APPEALS

Hearing #21-08

**DECISION ON PETITION TO GRANT
A SPECIAL PERMIT
WITH RESPECT TO
31 MOHEGAN ROAD**

A public hearing of the Acton Board of Appeals was held via video conference on Tuesday, July 6, 2021, at 7:30 PM, on the petition of Robert and Barbara Schmitz, for a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw to construct an entry way and covered steps as well as a second-story expansion of an existing single family residential dwelling located on a non-conforming lot. The subject property is classified as a nonconforming lot due to insufficient lot area and frontage. The required lot area in the R-2 Zoning District is 20,000 square feet; the property in question only has 18,791 square feet. The required frontage is 150 feet; the property in question only has 107.99 feet of frontage. The existing structure and proposed additions comply with the side, rear and front yard setbacks.

Zoning Bylaw Section 8.1.4 allows for extensions or alterations by-right if they do not increase the overall size of the structure by more than 15% of the existing Gross Floor Area. The overall requested expansion in total exceeds this threshold. The existing gross floor area of the dwelling is 3,282 sq. ft. The proposed construction would add 1,028 sq. ft., which is a FAR increase of 31.32%. Therefore, the proposed expansion requires a special permit under Section 8.1.5. All numbers have been certified by an architect.

The property is located at 31 Mohegan Road, Map/Parcel E2-13, in a residential R-2 zoning district.

The application was distributed for departmental review and comments on May 13, 2021.

The Planning Department submitted a memorandum with the application details and no additional comments.

The Engineering Department submitted a memorandum stating the proposed construction does not appear to be on any recorded easements, nor does it appear to be located within the 100-year floodplain area.

The Fire Department submitted a memorandum stating they have no issues with the proposed construction.

The Land Use Department-Health Division submitted a memorandum stating the proposed work studio meets the definition of a bedroom and would place the total bedroom count to 4. This property is allowed 3 bedrooms only. Alterations must be done to this room, to remove the closet. Also, the proposed septic allows for 3 bedrooms and 4 "other" rooms. This property would require a three bedroom need restriction and the alterations noted above to allow for health approval.

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, Kaila Sauer, Assistant Planner and Alicia Burak, Administrative Assistant. The petitioners, Robert and Barbara Schmitz, of 31 Mohegan Road were present as well as their architect, Jeff Kehm.

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.

The petitioners and their architect explained that the proposed additions to this property will occur at the front and new second level of the existing home.

First floor renovations include a small 11 sq. ft. extension to an existing secondary front entry and new covered steps for the primary entry.

The proposed second-floor addition includes a master bedroom, bedroom/office, laundry room and bathroom, and falls within the existing footprint of the home.

The Board reminded the petitioners that some changes would be required per the Health Division, before they will approve the project.

Chairman Kozik asked if there were any additional public comments. Public comments were neither submitted during the hearing nor in writing prior to the meeting.

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 to construct an entry way and covered steps as well as a second-story expansion of an existing single family residential dwelling located 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 non-conforming structure.
3. Under Acton Zoning Bylaw 10.3.5.1, Petitioners' proposed construction is consistent with the Master Plan.
4. Under Acton Zoning Bylaw 10.3.5.2, Petitioners' proposed construction is in harmony with the purpose and intent of the Acton Zoning Bylaw.


Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **AMENDMENT** to the **SPECIAL PERMIT** with the following conditions:

1. The proposed construction should be completed as substantially presented during the July 6, 2021 hearing.
2. The petitioner complies with the changes required by the Health Division for their approval as noted above.

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
Member

Scott Robb
Member

- 6, 2021 hearing.
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