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BOARD OF APPEALS

Hearing #21-09

**DECISION ON PETITION FOR A GRANT
OF A SPECIAL PERMIT
WITH RESPECT TO
38 NASH ROAD**

A public hearing of the Acton Board of Appeals was held remotely by video and teleconference on Tuesday, July 6, 2021, and again on Tuesday, August 3, 2021, on the petition of David Greenhalgh for a SPECIAL PERMIT for construction of an addition on a nonconforming lot in excess of 15% (Zoning Bylaw Section 8.1.5). The property is located at 38 Nash Road (Map/Parcel G2-146).

Present at the remote 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; Alicia Burak, Administrative Assistant. Also present was the applicant, David Greenhalgh.

Applicable Bylaws:

8.1.3 Reconstruction of Single- and Two-FAMILY residential STRUCTURES on Nonconforming Lots – A lawful Single-FAMILY Dwelling on a nonconforming LOT may be reconstructed for Single-FAMILY residential USE on the same lot; and a lawful Two-FAMILY Dwelling on a nonconforming LOT may be reconstructed for Two-FAMILY residential USE on the same lot; in both cases subject to the following conditions and limitations:

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

Petitioner David Greenhalgh explained that he was requesting a special permit under Section 8.1.5 of the Zoning Bylaw to allow for a first-floor addition and a second-floor 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 12,500 square feet. The required frontage in the R-2 Zoning District is 150 feet; the property in question only has 100 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, as noted above. Therefore, the proposed expansion requires a special permit under Section 8.1.5.

More specifically, the existing gross floor area of dwelling in issue is 2,469 ft², and therefore a maximum expansion of 15%, or 370.35 ft², is permitted by-right under the Bylaw. The applicant is requesting a special permit for 719 ft², a 29.12% increase.

Board members questioned the petitioner with respect sizes of adjacent properties. The petitioner explained that the proposed expansion and resulting size of the dwelling would not be out of place in comparison to adjacent properties.

The Planning Division of Acton had no objection to granting the requested special permit.

The Health Division of Acton submitted comments stating that the home is permitted for three bedrooms only, that some of the labeled rooms were illegible on the submitted drawings and that it appeared two of the rooms meet the definition of a bedroom (i.e. closets within the room), which would place this property over their permitted flow.

The petitioner stated that none of the proposed rooms are bedrooms and that none of the proposed rooms will feature closets.

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:

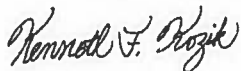
1. Petitioners seek a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw for construction of an addition on a nonconforming lot in excess of 15%. The property is located at 38 Nash Road (Map/Parcel G2-146).
2. Petitioner's proposed reconstruction is consistent with the Master Plan.
3. Petitioner's proposed reconstruction is in harmony with the purpose and intent of this Bylaw.
4. Petitioner's proposed reconstruction will not be more detrimental or injurious to the neighborhood in which it is to take place.
5. Petitioner's proposed reconstruction is appropriate for the site in question.

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

- (a) the proposed construction shall be built substantially in accordance with the Plans submitted with the Petition and contained in the file; and
- (b) the proposed addition shall not increase the number of bedrooms currently permitted at three, as articulated by the Health Division in its email of May 17, 2021, which is on file with the Town of Acton.

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

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