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TOWN OF ACTON  
PLANNING DEPARTMENT

**BOARD OF APPEALS**

Hearing #20-10  
Decision on Remand

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

The Acton Board of Appeals (hereinafter, the “Board”) issues this Decision on Remand after holding an advertised public hearing in accordance with the Remand Order in the Land Court case *Leo Bertolami Trustee of Applewood Realty Company, et al. v. Kenneth F. Kozik Member of the Acton Zoning Board of Appeals, et al.*, Civil Action No. 21MISC000291, dated November 18, 2021 (the “Case”). The subject property is located at 62-64 Pope Road and is shown on the Acton Town Atlas as parcel Map/Parcel F5-43 & F5-46 (hereinafter, the “Site”).

The Board opened the public hearing on December 7, 2021 via video conference at 8:01 PM. That Public Hearing was continued until January 4, 2022. During the Public Hearing, the Board acknowledged the proposed plans for the dormer above the garage and the sunroom addition remain unchanged from the Board’s previous review. The Board also heard testimony from the applicant (through counsel), Town Counsel, and two members of the public. The Board closed the public hearing on January 4, 2022. Board members Ken Kozik (Chair), Adam Hoffman, and Scott Robb were present throughout the hearing.

Based on the Remand Order issued by the Land Court in this Case, the Board was directly to hold a new public hearing on the applicant’s application for an amended Special Permit. The Board understands that this Remand Order was issued at the request of the parties to the Case, after the parties (the Town through its Select Board) had executed a Settlement Agreement. That Settlement Agreement requires the issuance of this Special Permit Amendment, provided the proposed plans have not changed since the Board’s prior review.

The minutes of the hearing and submissions on which this Decision is based upon may be viewed in the Planning or Town Clerk’s offices at Acton Town Hall.

**1     EXHIBITS**

- 1.1 The Board's original decision.
- 1.2 The Land Court's Remand Order , dated November 18, 2021 (the Remand Order).
- 1.3 Settlement Agreement, dated November 22, 2021.
- 1.4 Letter of Apology from L. Bertolami, dated November 18, 2021.

## **2 BOARD ACTION**

After the public comments, including comments from the plaintiff and after reviewing the exhibits, the Board reiterates its findings made in its Decision on Hearing #20-10 Amendment 1.

The Board finds that, there are no changes in this amendment and it remains in derogation of the Town's Master Plan and Town's Zoning Bylaw. Neither the applicant's admission to unlawfully expanding the structure at the Site without a special permit, the apology to this Board for doing so, or the mitigation costs in lieu of violation fines changes their original determination that the proposed reconstruction is not consistent with the Master Plan and is not in harmony with the purpose and intent of the Town's Zoning Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and the Settlement Agreement and based upon the above findings, voted unanimously to **DENY** the Amendment to the special permit.

## **3 APPEALS**

The Land Court retains jurisdiction in the case and has given instructions to all parties on how they should proceed if either of them are aggrieved by this Remand Decision. With respect to any other persons, appeals, if any, shall be made pursuant to M.G.L., c. 40A, § 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk

### **TOWN OF ACTON BOARD OF APPEALS**



\_\_\_\_\_  
Kenneth F. Kozik  
Chairman



\_\_\_\_\_  
Adam Hoffman



\_\_\_\_\_  
Scott Robb