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BOARD OF APPEALS

BOARD OF APPEALS

Hearing # 11-12

DECISION ON PETITION FOR REVIEW OF THE DECISION  
OF THE ZONING ENFORCEMENT OFFICER REFUSING  
TO ALLOW A BUILDING PERMIT TO CONSTRUCT AN  
ADDITION AT 50 POPE ROAD

The Acton Board of Appeals (the "Board") held a duly noticed public hearing on October 3, 2011, with regard to the Petition of R. Douglas Shaw, GS Holdings LLC to review the Decision of the Zoning Enforcement Officer through letters dated July 22, 2011 and September 6, 2011, refusing to approve a building permit application to construct an Addition to a Single Family Residence at 50 Pope Road. Map F-5/Parcel 49.

Present at the hearing were Ken Kozik, Chairman; Jon Wagner, Board Member; Richard Fallon, Alternate Board Member; Scott Mutch, Zoning Enforcement Officer, and Board Secretary Cheryl Frazier. Also present were the petitioner Douglas Shaw, his counsel Sherrill Gould, and abutters and interested parties.

Mr. Mutch, the Zoning Enforcement Officer, explained his letters by stating the lot in a residential zoning district is nonconforming for two reasons: 80,000 square feet is required and this lot only has 24,627 square feet; and 200 square feet of frontage is required, and this lot has 166.7 square feet. He went out and took photographs and work was already being done on the property. His view of the project is that section 8.3.6 of the zoning bylaw allows for the

tear down of the existing structure on a nonconforming lot but the rebuilding is limited to the floor area ratio of what was there previously. The previously existing structure, a one story Cape Cod home, was roughly 1142 square feet. The new proposed structure will be in excess of 3000 square feet.

Mr. Mutch believes a portion of the original structure may be saved, but that the intent was to circumvent Section 8.3.6 of the bylaw which is why the building permit was denied. He agreed that Section 8.3.2 of the bylaw would apply if section 8.3.6 did not.

Sherrill Gould, attorney for the petitioner, stated that he does not intend to raze the structure, but took the roof off with the verbal approval of the building inspector, and it is his intention to gut the previous structure, keep the walls, and add a garage on one side and a family room on the other side. Petitioner's position is that this is a change, extension or alteration of a pre-existing nonconformity such that this should be treated under section 8.3.2 of the zoning bylaw. Attorney Gould believed this situation to be similar to the case of Gale v. Zoning Board of Appeals of Gloucester, 80 Mass. App. Ct. 331 (2011).

Chairman Kozik pointed out that under section 8.3.6.4 of the zoning bylaw an addition with the same floor area ratio as before could be built and then two years later a further addition could be applied for.

Board Member Wagner asked the Zoning Enforcement Officer why he viewed this as a razing and rebuilding rather than a change, extension or alteration. Mr. Mutch said when he went out to the site and photographed it, a lot of the structure was already gone, and without any demolition plans submitted as part of the permit application there was no way of telling what was going to happen, so from his perspective it was a razing of the home.

Mr. Mutch stated that the proposed footprint of the new structure was approximately 80 feet by 40 feet. The footprint of the previous structure was approximately 34 feet by 24 feet. Board Member Fallon asked how many walls would remain standing. The petitioner, Douglas Shaw, stated that three walls would remain and one would be removed for the family room.

The proposed height is 32 feet, in compliance with the zoning bylaw.

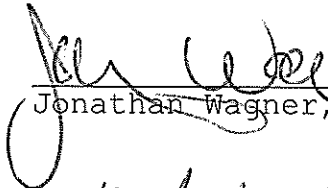
One abutter, Mr. Lemire, asked several questions. Another abutter e-mailed a comment stating opposition to the plan to increase the size of the structure.

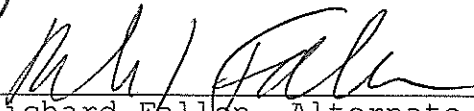
Chairman Kozik asked for a motion to overturn the Zoning Enforcement Officer, which motion was made and seconded. Then the Board voted unanimously 3-0 **not** to overturn the Zoning Enforcement Officer, such that the decision embodied in his letters dated July 22, 2011 and September 6, 2011, was upheld.

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.

**ACTON BOARD OF APPEALS**

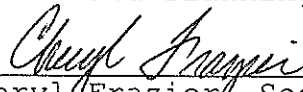
  
Kenneth F. Kozik, Chairman

  
Jonathan Wagner, Member

  
Richard Fallon, Alternate

Dated:

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on November 22, 2011.

  
Cheryl Frazier, Secretary  
Board of Appeals