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BOARD OF APPEALS

BOARD OF APPEALS

Hearing # 13-02

DECISION ON THE PETITION OF SHERYL FOX FOR A SPECIAL PERMIT TO ALLOW AN ADDITION AT 12 ELM STREET

The Acton Board of Appeals (the "Board") held a duly noticed public hearing on June 17, 2013, with regard to the Petition of Sheryl Fox for a **Special Permit** under Section 8.1.5 of the Zoning By-law to allow an addition to the existing home on a nonconforming lot. The property is located at 12 Elm Street. Map E-2/Parcel 228.

Present at the hearing were Ken Kozik, Chairman; Jonathan Wagner, Board Member; Richard Fallon, Alternate; Scott Mutch, Zoning Enforcement Officer; and Board Secretary Cheryl Frazier. Also present was the petitioner Sheryl Fox.

The petitioner stated that she was requesting the Board to consider her application to put an addition on her house. Chairman Kozik stated that the house meets all the required setbacks except minimum lot frontage. The reason why a special permit is needed is that the addition will increase the size of the structure by more than 15% of the floor area.

Mr. Mutch, the Zoning Enforcement Officer, stated that the existing home is approximately 3,552 square feet, and 15% of that is 532 square feet. The addition would total 1100 square feet. There are multiple additions in the plans, including an expansion of a pantry, a new storage room on the back of the garage, a new porch, an expansion of the family room, kitchen, and basement. Added together these exceed 15% of current floor area and thus require a special permit.

Chairman Kozik asked if there were a building permit already issued; petitioner stated they had a permit to do part of the work, such as front porch, pantry and storage room, which did not add up to 15% of the current floor area. While the digging of the additional basement area did not require a building permit per the Zoning Enforcement Officer, the foundation did require a permit, and apparently that work had been done without a building permit by mistake of the contractor.

Chairman Kozik pointed out that Section 8.1.5 of the Zoning By-law allowed the Board to issue a special permit to allow such extension, alteration or change where it determines either the proposed modification does not increase the nonconformity, or if it does increase the nonconformity, the change will not be substantially more detrimental to the neighborhood than the existing structure on the nonconforming lot.

Board alternate Fallon asked the petitioner why she believed the alterations were not more detrimental to the neighborhood. She pointed out that the additions in the back which put the alterations over the 15% amount could not be seen from the road, and the alterations did not increase the width of the house, that is, with regard to the nonconforming frontage there was no change as to house's width. Board member Wagner asked how much square footage there would be to the rear lot line after the addition is built, and the Zoning Enforcement Officer stated that there would remain a significant amount more than the zoning requirement.

Chairman Kozik asked Zoning Enforcement Officer Mutch if there were wetland issues, and Mr. Mutch replied that Mr. Tidman of Natural Resources had signed off on the building permit. Mr. Mutch also stated that the Planning Department had no objections to the proposal.

After the hearing was closed, during public deliberations Chairman Kozik questioned whether the Board could grant a special permit after work thereon had been initiated, *i.e.*, the foundation. Board member Wagner and alternate Fallon believed that while that factor could be considered, it was not an absolute bar.

The Board voted 2 to 1 in favor of **Granting the Special Permit** for the construction of the family room and the basement, the work to be done in accordance with plans submitted in conjunction with this hearing. Chairman Kozik voted in the negative.


The Board voted 3 to 0 that the proposed expansion does not increase the nonconformity.

The Board voted 2 in favor, 1 abstaining, that the proposed modification is not substantially more detrimental to the neighborhood than the existing structure. Board member Wagner abstained.

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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 July , 2013.

Cheryl Frazier, Secretary
Board of Appeals