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DECISION #16-07

**DECISION ON PETITION FOR GRANT OF SPECIAL PERMIT WITH RESPECT TO
19 HENLEY ROAD**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, August 1, 2016 on the Petition of Tim and Maria Membrino for a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws to add an extra section of decking so they can exit a patio door onto the new deck structure. The house is located at 19 Henley Road.

Present at the hearing were Jonathan Wagner, Chairman; Ken Kozik, Member; and Adam Hoffman, Member. Also present were Katelyn Huffman, Board of Appeals Secretary; Roland Bartl, Town Planner, and Kristen Guichard, Assistant Town Planner. Also present at the hearing were Tim and Maria Membrino (petitioners), Matthew Mehler, Janet Adachi, Board of Selectmen Liaison; Ron Bayer, Jonathan Sides, Andrew Schlesinger, Peter Pelletier, Louis Levine, Joseph Levine and Don Johnson.

Chairman Wagner opened the hearing and read the contents of the file, which included all drawings and documents submitted when Special Permit #15-09 was granted. The file also included drawings showing the proposed new deck addition.

Chairman Wagner asked the Petitioner to explain why he was seeking the Special Permit. Peter Pelletier, the general contractor, explained the original plan submitted called for a patio door to be installed in the new 3-season porch. This door was scheduled to be placed on the same wall as the existing patio door that was in the kitchen area. Both patio doors would exit onto the existing deck. Due to changes in roof truss designs to accommodate the new energy codes and existing conditions, they could not install the proper header above the patio door that was planned to exit onto the existing deck. The solution reached during the framing process was to relocate the door to the gable end of the 3-season porch and extend the existing deck to the gable end. They are requesting a second special permit that would allow them to extend the deck along the back section of the house. They are looking for permission to add on the extra section of decking so that they would be able to exit the new patio door onto the new deck structure. The special permit request would allow them to exceed the 15% ground floor area restriction of Section 8.1.5 of the Acton Zoning by law.

Mr. Kozik inquired whether this was for a special permit amendment or an entirely new special permit. Tim Membrino, one of the applicants, replied that it was for whichever the Board found appropriate.

Peter Pelletier, the General Contractor, described the work already completed under the existing special permit and explained the reasons for the additional deck request now before the Board. In summary, new building code regulations require that the porch door must be in a different location where the homeowners now would like to add a deck.

Mr. Wagner asked what the difference is between this permit and the previous permit. Mr. Pelletier replied that the only difference was the addition of a deck.

The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing, finds that:


1. The Petitioner seeks a SPECIAL PERMIT under Section 8.1.5 of the Zoning Bylaws to allow the addition of a deck.
2. The property is located at 19 Henley Road.
3. The deck addition is nonconforming because it does not comply with present lot area and frontage requirements specified in the Acton Bylaws.
4. The proposed extension will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.
5. The proposed deck addition is:
 - (a) consistent with the Master Plan and is in harmony with the general purpose and intent of the Zoning Bylaws;
 - (b) appropriate for the site and will not be more detrimental or injurious to the neighborhood;
 - (c) otherwise complies with the applicable requirements of the Zoning Bylaws.


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**:


1. The deck addition footings shall comply with current Town of Acton Board of Health setback requirements.
2. The deck addition shall be erected substantially as shown in the plans presented on August 1, 2016.

Any person aggrieved by the decision may appeal pursuant to Massachusetts General Laws, Chapter 40A, Section 17 within twenty (20) days after this decision is filed with the Acton Town Clerk.


TOWN OF ACTON BOARD OF APPEALS


Jonathan Wagner
Chairman


Ken Kozik
Member


Adam Hoffman
Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on August 23rd, 2016.


Katelyn Huffman, Secretary
Board of Appeals

This decision, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the Town Clerk that (1) 20 days have elapsed after the decision has been filed in the office of the Town Clerk and (2) either no appeal has been filed or an appeal has been filed within such time, has been recorded with the Middlesex South County Registry of Deeds and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.