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TOWN CLERK
ACTON

DECISION #17-08

DECISION ON THE PETITION OF JIM LEE, 29 MOHEGAN ROAD

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, October 2, 2017 on the application of Dana McKiel of Integrity Building Design, Inc. submitted on behalf of Jim Lee, the property owner, for a **SPECIAL PERMIT** under Section 8.1.5 and Section 10.3.5 of the Zoning Bylaws to allow alterations which would extend an existing single family dwelling on a nonconforming lot at 29 Mohegan Road, Map/Parcel E2-219.

Present at the hearing were Kenneth Kozik, Chairman; Jonathan Wagner Member; and Adam Hoffman, Member. Also present were Katelyn Huffman, Board of Appeals Secretary; Roland Bartl, Planning Director, and Dana McKiel of Integrity Design representing the Petitioner.

Chairman Kozik opened the hearing and read the contents of the file. In addition to the application (which included architectural plans), the file contained an Interdepartmental Communication from Robert Hummel, Assistant Town Planner stating that the lot is a nonconforming lot in two respects, i.e. the present frontage is 108 feet whereas 150 square feet is required under present Zoning Bylaws and the present lot size is 17,913 square feet of area whereas 20,000 square feet of area is now required. The proposed extension would comply with all rear, side and front yard setback requirements.

The Gross Floor Area of the existing house is 2,854 square feet. Section 8.1.4 of the Zoning Bylaws permits as a matter of right extensions or alterations which increase the size of the existing structure by 15%, which in this case would be 446.1 square feet of additional space. Since the proposed alterations increase the Gross Floor Area by 849.75 square feet (an increase of approximately 28.6%), the proposed alterations constitute an "extension, alteration or change" of an existing dwelling on a nonconforming lot requiring a Special Permit under Section 8.1.5 of the Zoning Bylaws.

Chairman Kozik asked the Petitioner to explain his reasons for seeking the Special Permit. Mr. McKiel explained that the purpose of the Special Permit was to permit the construction of a second floor addition on the existing house and to convert the existing sunroom to a bedroom, all of which would provide more useful living space for the owner and his family.

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

1. The Applicant seeks a SPECIAL PERMIT under Section 8.1.5 of the Zoning Bylaws (which references and incorporates Section 8.1.4) to allow alterations and an extension of an existing single family dwelling on a nonconforming lot that will increase the size of the existing structure by more than 15%.
2. The site is located in an R-2 Residential District.
3. The site is a nonconforming lot because the present frontage is 108 feet whereas 150 square feet is required under present Zoning Bylaws and because the present lot size is 17,913 square feet of area whereas 20,000 square feet of area is required under present Zoning Bylaws.
4. Section 8.1.4 of the Zoning Bylaws permits an extension, alteration or change of a structure on a nonconforming lot if the proposed construction does not increase the size of the existing structure by more than 15% of the Gross Floor Area.
5. The Gross Floor Area of the present structure is 2,854 square feet; and under Section 8.1.4 the Petitioner is entitled to increase the size of the existing structure by approximately 446.1 square feet.
6. Since the proposed construction consists of 849.75 square feet of Gross Floor Area, it exceeds the allowable square footage increase by approximately 28.6% and constitutes an extension, alteration or change on a nonconforming lot that increases the size of the existing structure by more than 15% of the Gross Floor Area. Therefor the proposed addition is not allowed under said Section 8.1.4.
7. Section 8.1.5 of the Zoning Bylaws provides that “in all other cases” such extension, alteration or change of a structure on a nonconforming lot may be permitted by SPECIAL PERMIT if the Board 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”.
8. The proposed modification is an extension, alteration or change to a single family residential STRUCTURE that will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.

9. The proposed modification 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 proposed modification shall be constructed substantially in accordance with the most recently submitted plans and which were presented at the hearing on October 2, 2017.
- 2. A deed restriction limiting the dwelling to three (3) bedrooms shall be recorded at the Middlesex South District Registry of Deeds prior to the issuance of a building permit.
- 3. The existing shed shall be demolished or removed to a different location on the lot so that it complies with current zoning setback standards as shown in the Table of Standard Dimensional Regulations.

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


Kenneth Kozik
Chairman


Jonathan Wagner
Member


Adam Hoffman
Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on Oct. 27, 2017.


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.