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BOARD OF APPEALS

Hearing #18-01

DECISION ON PETITION FOR A GRANT OF A SPECIAL PERMIT WITH RESPECT TO 90 SCHOOL STREET

A public hearing of the Acton Board of Appeals was opened on Monday, April 9, 2018, at 8:00 PM in the Acton Town Hall on the petition of Douglas Shaw for a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw for the reconstruction of a larger structure on a non-conforming lot. The property is located at 90 School Street (Map/Parcel H3/A-17).

Present at the hearing were Ken Kozik, Chairman, Jonathan Wagner, Member and Adam Hoffman. Member. Staff present was Katelyn Huffman, Board of Appeals Secretary. Also in attendance were numerous members of the public.

Applicable Bylaws:

8.3.4 Restoration - If a nonconforming STRUCTURE, or a STRUCTURE on a nonconforming LOT that cannot be built on under the requirements of Section 8.1, is damaged by fire, flood or similar disaster to an extent greater than 50% of its fair market value before it was damaged, it shall not be rebuilt or reconstructed without a special permit from the Board of Appeals. No such special permit shall be granted unless the application for such special permit is filed within two years from the date on which the damage occurred and the Board of Appeals finds that 1) such rebuilding or reconstruction will not be detrimental to the neighborhood, and 2) to the extent possible the STRUCTURE will be rebuilt.

8.1.4 Extensions, alterations or changes of Single- and Two-Family Dwellings on Nonconforming Lots – One or more extensions, alterations or changes to a single or two-family residential STRUCTURE on a nonconforming LOT shall be deemed not to increase any nonconformity and shall not require special permits under Section 8.1.5, provided that such extensions, alterations or changes comply with all applicable yard requirements and in total do not increase the size of the STRUCTURE by more than 15 percent of the GROSS FLOOR AREA in existence on April 1, 2012 or the date that LOT became nonconforming, whichever is later.

8.1.5 In all other cases, the Board of Appeals may, by special permit, allow such reconstruction of, or extension, alteration or change to a Single- or Two-FAMILY residential STRUCTURE on a nonconforming LOT, including the reconstruction anywhere on the lot of a larger structure than otherwise allowed under Section 8.1.3, where it 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.

10.3.5 Mandatory Findings by Special Permit Granting Authority – Except for a Site Plan Special Permit, the Special Permit Granting Authority shall not issue a special permit unless without exception it shall find that the proposed USE:

10.3.5.1 Is consistent with the Master Plan.

10.3.5.2 Is in harmony with the purpose and intent of this Bylaw.

10.3.5.3 Will not be detrimental or injurious to the neighborhood in which it is to take place.

10.3.5.4 Is appropriate for the site in question.

10.3.5.5 Complies with all applicable requirements of this Bylaw.

Mr. Kozik opened the hearing, read the contents of the file and explained how the Board procedurally operates. The Board's file in the matter included comments from members of the public, the Historic District Commission, and various Town departments including Planning, which had attached a Land Court decision and Plaintiff legal brief in Case No. 17 MISC 000115 (MDV); Leon Charkoudian v. Wilbraham Zoning Board of Appeals; and John Charkoudian, March 8, 2018.

Mr. Kozik then asked if petitioner was present. The petitioner was not present and, at the written request of the petitioner, the hearing was continued to May 7, 2018. No matters of substance were heard and no deliberations took place.

A continued public hearing of the Acton Board of Appeals was opened on Monday, May 7, 2018, at 7:30 PM in the Acton Town Hall. Present at the hearing were Ken Kozik, Chairman, Jonathan Wagner, Member and Adam Hoffman, Member. Staff present included Roland Bartl Town Planner, and Katelyn Huffman, Board of Appeals Secretary. Also in attendance were numerous members of the public.

Mr. Kozik opened the hearing and asked if petitioner was present. The petitioner was not present and, at the written request of the petitioner, the hearing was continued to June 4, 2018. No matters of substance were heard and no deliberations took place.

A continued public hearing of the Acton Board of Appeals was opened on Monday, June 4, 2018, at 7:45 PM in the Acton Town Hall. Present at the hearing were Ken Kozik, Chairman, Jonathan Wagner, Member and Suzanne Buckmelter, Alternate Member. Staff present included Roland Bartl Town Planner, and Katelyn Huffman, Board of Appeals Secretary. Also in attendance were numerous members of the public.

Mr. Kozik opened the hearing and asked if petitioner was present. The petitioner was not present and provided no oral or written communication to the Board regarding his unexplained absence.

With no input received from this petitioner or his representative over the course of three scheduled meetings, Mr. Kozik made a motion to close the public hearing. Mr. Wagner seconded

the motion. The Board unanimously voted to close the hearing.

The Board of Appeals, after considering the absence of communication from the petitioner and the documents contained in the file, finds that:

1. The Petitioner seeks a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw for the reconstruction of a larger structure on a non-conforming lot. The property is located at 90 School Street (Map/Parcel H3/A-17).
2. The petitioner or his representative has made no attempt to participate in multiple scheduled hearings before this Board.

Therefore, the Board of Appeals, upon considering the above, voted unanimously to **DENY** the **SPECIAL PERMIT**.

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.

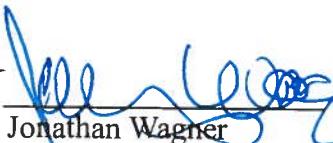
TOWN OF ACTON BOARD OF APPEALS



Kenneth F. Kozik



Suzanne Buckmelter



Jonathan Wagner