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1/25/2021

BOARD OF APPEALS

Hearing #20-11

17 SENECA ROAD SPECIAL PERMIT DECISION

The public hearing of the Acton Zoning Board of Appeals was held on Wednesday, December 16th, 2020 on the petition of the owners of the Seneca 17 Trust of Leo and Jane Bertolami Leo Bertolami for a Special Permit under Section 8.1.5 of the Acton Zoning Bylaw to build a proposed 2 car garage/bonus room on a non-conforming lot.

17 Seneca Road is a non-conforming lot due to insufficient lot area and insufficient frontage in Residence 2 (R-2) zoning district. A minimum 20,000 square feet is required, and 17 Seneca Road has 19,264 square feet with 150 fees are required for frontage, but the lot has 145 fees frontage.

On December 16, 2020, Paul Kirchner from Stamski & McNary, on behalf of owner/Applicant Leo and Jane Bertolami of Seneca 17 Trust, petitioned the Zoning Board of Appeals to proposed building garage connected to the existing house. The proposed 2 car garage will also have a living space above as part of the extension.

Zoning Bylaw Section 8.1.4 allows for an existing single family dwelling on a non-conforming lot to be increased by 15% in gross floor area. The requested Net Floor Area of the proposed structure on the lot exceeds this threshold. Therefore, the proposed reconstructed dwelling and new barn requires a special permit under Section 8.1.5.

The existing building floor area is net floor area of the existing dwelling is 2,549sq. ft. Under Section 8.1.4 the 15% permitted by right is 382.35 square feet. The proposed new dwelling is an increase of 1,013 square feet to 3,562 sq. ft, which represents an increase of 39.7% of the floor area.

The property is located at 17 Seneca Road, Map E2/Parcel 146 and is in the R-2 residential zoning district. The proposed new dwelling(s) meets all required property setbacks.

Due to COVID-19 concerns, the hearing was conducted virtually with all participants following the Town's remote access guidelines.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member, Scott Robb, Member, Kristen Guichard, Interim Planning Director. Also present was the petitioner, Paul Kirchner of Stamski & McNary.

Mr. Kozik opened the hearing, explained how the Board procedurally operates and asked the Petitioner to begin.

The application was distributed for departmental review and comments on November 30, 2020 and comments prior to the December 16, 2020 hearing.

The Acton Engineering Department provided a written memo saying while the proposed construction does not appear to be on any recorded easements and does not appear to be located within the 100-year floodplain area. The Engineering Department said a street cut permit is required for all new driveway and utility connections. They also said the Applicant should submit a permit for Land Disturbance to show whether this project is exempt or not.

The Acton Planning Division provided a written memo with the following comments and findings, conditions and limitations as follows: 1. A clear indication of the allowed expansion in square feet and percent. 2. That any future additional expansion requires an amendment of the special permit (or a new special permit). 3. That the Petitioner must record the decision at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the site. 4. That all taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full before the issuance of a building permit. 5. That the special permit conditions have been stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the Bylaw. 6. That the Town of Acton may elect to enforce compliance with the special permit using all powers available to it under the law. 7. That other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by the decision. 8. That the Board reserves its right and power to modify or amend the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion

There being no additional questions from the board or the public, at 8:10 pm, Mr. Hoffman moved, Mr. Robb seconded and the board unanimously (3-0) voted to close the public hearing. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye.

The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.1.5 and 10.3.5.

Acton Zoning Bylaw 8.1.5 States:

In all other cases, the Board of Appeals may, by special permit, allow such construction 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.

Acton Zoning Bylaw 10.3.5 States:

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 the 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.*

During deliberation, the board agreed that the project met the conditions of Zoning Bylaws 8.1.5 and 10.3.5 and voted to approve the revised plan as presented with conditions prior to issuing the building permit. At 7:43pm Mr. Hoffman moved, Mr. Robb seconded and the Board unanimously (3-0) voted to approve the special permit. The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing, finds that:

The Petitioner seeks a Special Permit under Section 8.1.5 of the Acton Zoning Bylaw to construct a 2 car garage with a bonus room on the second floor reconstruct and expand a single story structure on a non-conforming lot. The property is located at 17 Seneca Road, Map/Parcel E2-146.

1. The proposed reconstructed and expanded dwelling is not more detrimental to the neighborhood.
2. The proposed reconstructed and expanded dwelling meets the mandatory findings of section 10.3.5 of the Acton Zoning Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously (3-0) to **Grant** the Special Permit with the following Conditions:

- The proposed construction shall be executed substantially as presented in the most recent plans submitted during the December 16, 2020 meeting.
- The owner/applicant shall apply for a street cut permit.
- The Applicant should submit a permit for Land Disturbance to determine whether or not the permit is needed for this site.

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, Chairman

Adam Hoffman

R. Scott Robb

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva K. Szkaradek, Town Clerk

Date

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, Chairman

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Adam Hoffman

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Eva K. Szkaradek, Town Clerk

Date