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DECISION #15-03

DECISION ON THE PETITION OF ROBERT GUY DIXON, 172 NEWTOWN ROAD

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, February 2, 2015 on the Petition of Robert Guy Dixon for a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws to allow the addition of a sunroom and a three car garage to an existing single family dwelling on a nonconforming lot that will increase the size of the structure by more than 15%. Map D-3, Parcel 9-1.

Present at the hearing were Jonathan Wagner, Chairman; Richard Fallon, Member; and Fran Mastroianni, Alternate Member. Also present were Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; the Petitioner, and the owners of the property, Nicholas Lee Rich and Stephen Bertolami.

Chairman Wagner opened the hearing and read the contents of the file. In addition to the Petition (which included a plot plan, architectural plans for the new construction and pictures of nearby neighborhood homes), the file contained an Interdepartmental Communication from Scott Mutch, Zoning Enforcement Officer, which gave a detailed analysis of the current setbacks, current Gross Floor Area and proposed increase in Gross Floor Area of the new construction. Based on his analysis, Mr. Mutch concluded that the proposed new construction constituted an "extension, alteration or change" of an existing dwelling on a nonconforming lot which would increase the size of the structure by more than 15% and therefor required a Special Permit under Section 8.1.5 of the Zoning Bylaws.

The file also contained an Interdepartmental Communication from Evan Carloni of the Health Department which stated that the site would require a deed restriction "if there are 10 or more heated and habitable rooms".

Chairman Wagner asked the Petitioner to explain why he was seeking the Special Permit. The Petitioner explained that the purpose of the Special Permit was to allow the owners of the property to add a sunroom on to the rear of the present single family dwelling, convert the existing two car garage into living space and construct an entirely new three car garage.

connecting from and perpendicular to the new living space area (existing garage). He further explained that while the proposed construction was extensive, it was not out of character with many neighboring properties on Newtown Road and that the design of the new structures would be tasteful and visually pleasing. In response to questions relating to questions raised in Mr. Mutch's IDC Memo, the Petitioner responded that there was no basement area under any of the proposed construction and that the height would not exceed the height of the present garage (24 feet).

Chairman Wagner and Mr. Mutch then discussed why the property is nonconforming, what would be an allowable increase in the size of the structure and how much the proposed addition exceeded the allowable increase. Mr. Mutch explained that the site was nonconforming because the present minimum lot area is 100,000 square feet and the present site has 82,828 square feet, i.e. 17,172 square feet less than is presently required. With respect to the allowable increase in size of the existing structures, he explained that the present structure is 4,066 square feet and the Petitioner is entitled as a matter of right to increase the size of the structure by 610 square feet (15% more than the existing structure) under Section 8.1.4 of the Zoning Bylaws. Since the proposed construction comprises 1,822 feet, it exceeds the 15% allowable increase by 1,212 square feet.

Mr. Mutch was asked whether the setbacks were conforming and whether the proposed construction would impact setback compliance; and he stated that the property complied with all setback requirements presently and the proposed addition would not impact setback compliance.

The Board members discussed whether the proposed construction would increase the nonconformity of the lot. Board members Jonathan Wagner and Richard Fallon felt it would increase the nonconformity and Board member Fran Mastroianni felt it would not, while all Board members concurred that the proposed construction was not more detrimental to the neighborhood than the existing structure on the nonconforming lot.

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 (which references and incorporates Section 8.1.4) to allow the construction of sunroom and a three car garage to the existing single family dwelling on a nonconforming lot that will increase the size of the structure by more than 15%.
2. The site is located in an R-10/8 Residential District.
3. The site is a nonconforming lot because the site has an area of 82,828 square feet when 100,000 square feet 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 addition 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 4,066 square feet; and under said Section 8.1.4 the Petitioner is entitled to increase the size of the existing structure by 610 square feet.
6. Since the proposed construction consists of 1,822 square feet of Gross Floor Area, it exceeds the allowable square footage increase by 1,212 square feet 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 construction 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 construction 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**:

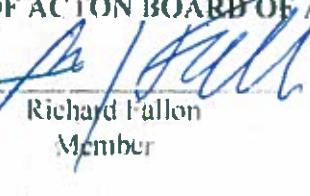
- (a) the proposed construction shall be built substantially in accordance with the Plans submitted with the Petition and contained in the file;

- (b) the proposed construction shall not exceed 24 feet in height (the current height of the existing garage);
- (c) the proposed construction shall comply with applicable Health Department rules and regulations, including but not limited to those matters referenced in the Health Department's Interdepartmental Communication filed in this matter.

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

 Richard Fallon
Member

 Fran Mastroianni
Alternate Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on March 31, 2015.


Cheryl Frazier, Secretary
Board of Appeals

EFFECTIVE DATE OF SPECIAL PERMIT: No Special Permit, or modification, extension or renewal thereof shall take effect until a copy of the decision has been recorded in Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, it has been dismissed or denied.

EXPIRATION DATE OF SPECIAL PERMIT: This Special Permit must be exercised within two (2) years of its effective date.