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**MINUTES OF THE HEARING ON THE PETITION FOR
A SPECIAL PERMIT, 12 ELM STREET**

HEARING #13-02

A public hearing of the **Acton Board of Appeals** was held on **Monday, June 17, 2013 at 8:00 pm** in Room 126 of the Acton Town Hall on the petition of Sheryl Fox for a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning by-law to allow an addition to the existing home on a non-conforming lot. The property is located at 12 Elm Street. Map E2/Parcel 228.

Present at the hearing was Ken Kozik, Chairman; Jonathan Wagner, Member; Richard Fallon, Alternate; Scott Mutch, Zoning Enforcement Officer; and Cheryl Frazier, Board of Appeals Secretary. Also present at the hearing was petitioner Sheryl Fox.

Ken Kozik asked the petitioner to begin. Sheryl Fox said she is here tonight to ask the Board to consider her application to put an addition on her house.

Ken said her house meets all the required setbacks with the exception of the minimum lot frontage of 150 square feet. She wouldn't need to go before the board for a special permit, but her addition is increasing the size of the structure by greater than 15% of floor area.

Ken asked Zoning Enforcement Officer, Scott Mutch, for comments. Scott said the existing home is approximately 3,552 square feet and 15% of that would be 532 square feet. He thinks the addition is 1100 square feet total. He said there are multiple additions which include an expansion of a pantry, a new storage room on the back of the garage, a new porch, and an expansion of the family room, kitchen and new basement. Those added all together exceed 15% and thus require a special permit from the Board.

Ken asked the petitioner if she had a building permit. She said they have a partial permit to do the porch on the front, the pantry, and the storage room on the garage. In addition, a foundation is already in place without the necessary building permit so she is seeking relief after the start of construction of the proposed expansion that exceeds the 15% increase of the existing floor area.

Ken said in looking at Section 8.1.5 of the bylaw when you're proposing to do something that's greater than 15%, the board can issue a special permit to allow the construction, alteration or change, where it determines either the proposed modification **does not increase** the non-conformity or if the board can't make that determination then the proposed modification **does increase** the non-conformity, it will not be substantially more detrimental to the neighborhood than the existing structure on the non-conforming lot.

Rick Fallon asked the petitioner why she feels it is not more detrimental to the neighborhood. She said you can't even see the addition in the back from the road and you wouldn't even know it's there. The enlargement of the kitchen and the new family room throws it over the 15%. Her impression is that their non-conforming because they don't have enough frontage and their not looking to increase the width of their house so she doesn't see how that increases the non-conformity. The length is being increased but not the width. Jon Wagner asked after the addition is built in the back how much square footage is there to the rear lot line. Scott responded there would be a significant amount more than the zoning by-law requires.

Ken asked Scott if there were any wetland issues. Scott said he would defer that question to Tom Tidman of Natural Resources but he believes that if Tom signed off on the building permit there aren't any issues.

Ken asked if Scott had any more input. Scott said the Planning Department has no objections to what is being proposed.

Ken moved to close hearing 13-02. The hearing was closed.

During public deliberations, Ken questioned whether the Board could grant a special permit AFTER work had been initiated since the intent of the bylaw is to grant relief BEFORE work is initiated. Rich and Jon had no problem issuing a special permit AFTER construction had been initiated while Ken maintained that the Board could not issue a special permit to someone who had initiated work and failed to obtain a building permit for the initiated work prior to seeking relief from the Board.

The Board voted **2 to 1** in favor of **GRANTING** the **SPECIAL PERMIT** for the construction of the family room and the basement.

The Board voted **3 to 0** that the proposed expansion or modification **does not increase the non-conformity**.

The Board voted the **proposed modification is not more substantially detrimental** to the neighborhood. **The Board voted 2 in favor with Jon Wagner abstaining.**

Richard Fallon to write the decision.

Respectfully submitted,



Kenneth F. Kozik
Chairman, Board of Appeals



Cheryl Frazier, Secretary, Board of Appeals