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## BOARD OF APPEALS

Hearing #13-04

### DECISION ON PETITION FOR GRANT OF SPECIAL PERMIT WITH RESPECT TO 102 MAIN STREET, MAP H2A/PARCEL 72

A public hearing of the Acton Board of Appeals was held on Monday, August 5, 2013 at 8:00 PM in Room 126 of the Acton Town Hall on the petition of David Getsick, for a **SPECIAL PERMIT** under Section 8.1.5 of the Acton Zoning Bylaw to allow construction of a secondary means of egress to a non-conforming structure on a non-conforming lot. The property is located at 102 Main Street, Map H2A/Parcel 72.

Present at the hearing were Ken Kozik, Chairman; Jonathan Wagner, Member; Richard Fallon, Member, Cheryl Frazier, Board of Appeals Secretary and Scott Mutch, Zoning Enforcement Officer. Also present at the hearing were petitioner David Getsick and several abutters.

Chairman Kozik opened the hearing, read the contents of the file which included an IDC from the Town of Acton Engineering Department and the Town of Acton Planning Department, and plans for the project.

#### Petitioner's Presentation

Mr. Getsick explained to the Board that the house in question was erected in the 1860s and now includes first, second and third floor apartments. As state building codes changed over time, the property now requires a secondary means of egress from the second floor apartment.

Mr. Getsick acknowledged that the property is located in the South Acton Historic District and that the Town of Acton's Historical District Commission (HDC) had approved his proposed external stairway on the North side of the house, subject to HDC conditions.

Mr. Getsick is before this Board seeking a Special Permit under Section 8.1.5 because the unimproved structure is non-conforming as to front set back requirements and sits on a non-conforming lot, and the proposed improved, building code compliant, structure will be non-conforming as to front set back requirements and still on a non-conforming lot.

## Town of Acton By-Laws

*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, 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.*

## The Discussion

Asked about placement of the proposed staircase to the South or rear of the structure, Mr. Getsick explained, first, the position of the proposed staircase on the structure with respect to the street, as well as the curvature of the street, would result in the stairway been seen from most vantage points along the street, no matter which side the existing structure it would be added to. In addition, the structure abuts a pond to the rear, making construction of the proposed staircase a technological challenge. Finally, location of the proposed staircase on an interior of the structure was technologically difficult, if not impossible.

## The Finding

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 Acton Zoning Bylaw to construct an external staircase to an existing non-conforming structure on a non-conforming lot. The property is located at 102 Main Street, Map H2A/Parcel 72.
2. The existing building is nonconforming because it does not comply with present minimum front setback requirements specified in the Acton Bylaws.
3. The existing lot is non-conforming because it does not comply with present lot size requirements in the Acton ByLaws.
4. The proposed staircase will not increase the non-conformity of the structure and otherwise complies with the applicable requirements of the Zoning Bylaw.

5. The proposed staircase is consistent with the Master Plan.
6. The proposed staircase is in harmony with the purpose and intent of the Bylaw.
7. The proposed staircase is appropriate for the site and will not be more detrimental or injurious to the neighborhood than the existing nonconforming structure.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **SPECIAL PERMIT** subject to the following condition:

1. The staircase is to be erected substantially as shown in the plans submitted with the application.
2. The staircase is to be erected only upon the Town of Acton's Historical District Commission (HDC) approval.
3. The staircase is to be erected in compliance with any HDC conditions.

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*

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Kenneth Kozik, Chair

*Richard Fallon*

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Richard Fallon, Member

*Jonathan Wagner*

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Jonathan Wagner, Member

Dated: August 16, 2013

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on August 16, 2013.

*Cheryl Frazier*  
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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.