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TOWN CLERK, ACTON



DECISION #13-03

DECISION ON THE PETITION FOR SPECIAL PERMIT FOR 171 MAIN STREET

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, August 5, 2013 on the Petition of Keith Villa for a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws to allow a 234 square foot deck to be built on an existing home on a nonconforming lot for property located at 171 Main Street. Map G2A/Parcel 34.

Present at the hearing were Kenneth Kozik, Chairman; Jonathan Wagner, Member and Richard Fallon, Member. Also present were Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; and the Petitioner.

Kenneth Kozik opened the hearing and read the contents of the file. The file contained the Petition with a plan showing the proposed deck and a copy of a 3/20/2013 letter from Zoning Enforcement Officer Scott Mutch to the Petitioner explaining why a building permit for the proposed deck could not be approved without a **SPECIAL PERMIT** under Section 8.1.5 of the Zoning Bylaws.

The Petitioner explained that six years ago he had filed for and had been granted a building permit to build a deck containing 234 square feet, had removed the existing deck and laid the footings (which were approved by the appropriate inspector); but that he had not been able to complete the deck for financial reasons. He now is able to complete the deck; but he has been advised that the current Bylaws prohibit him from doing so because the property is a nonconforming lot and the proposed deck constitutes an "extension, alteration or change", which under current Bylaws cannot exceed 207 square feet (i.e. 28 square feet less than the proposed size of 234 square feet).

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 (which references and incorporates Section 8.1.4) of the Zoning Bylaws to build a 234 square foot deck on an existing home on a nonconforming lot.

2. The site is located in an R-2 Residential District.
3. The site is a nonconforming lot because the lot (a) has 100 foot frontage when 150 foot frontage is required under present Zoning Bylaws, and (b) contains 10,008 square feet when 20,000 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 lot complies with all applicable yard requirements and does not increase the size of the existing structure by more than 15% (i.e. 207 feet for the present structure).
5. The proposed deck constitutes an extension, alteration or change on a lot that does not conform to applicable yard requirements and increases the size of the structure by more than 15%; and therefore is not allowed under said Section 8.1.4.
6. 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”.
7. The proposed addition of a 234 square foot deck is a modification that will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.
8. The proposed modification 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.

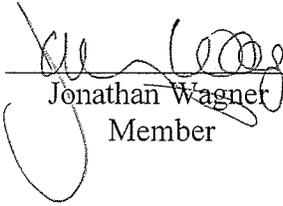
Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **SPECIAL PERMIT** subject, however, to the following **condition**:

The proposed addition of a 234 square foot deck shall be built substantially in accordance with the Plans submitted with the Petition and contained in the file.

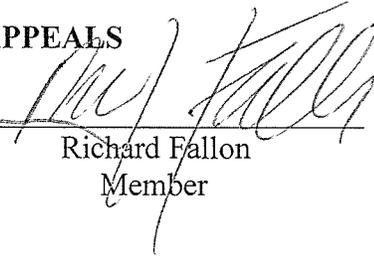
TOWN OF ACTON BOARD OF APPEALS



Kenneth Kozik
Chairman

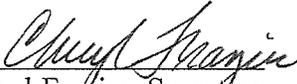


Jonathan Wagnet
Member



Richard Fallon
Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on September 10, 2013.


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.