Planning Department

TOWN OF ACTON
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MEMORANDUM

To: Zoning Board of Appeals ***Date:*** July 1, 2015

From: Kristen Guichard, AICP, Assistant Town Planner KAG

Subject: **Tree removal request - Special Permit Decision #14-07 (54 Pope Road)**

The property owner of 54 Pope Road, John Durkin, inquired as to whether he could remove the failing trees in the front of his property at 54 Pope Road. Please see attached e-mail correspondence between myself and Dean Charter, Tree Warden, as well as Special Permit Decision #14-07. Mr. Charter determined that the remaining trees were either topped, dead or growing up into the utility lines and suggested replanting.

We advised Mr. Durkin to request an amendment from the Zoning Board of Appeals to Decision #14-07, condition (c) which specifically states:

> *"all existing trees on Pope Road frontage shall remain;"*

The Planning Department has no concerns with this request given the inspection and health of the existing trees as determined by the Tree Warden, but would recommend replacement trees and landscaping be added in the front of the property along Pope Road as shall be recommended by the Tree Warden.

RE: Durkin site, 54 Pope Road

Dean Charter

Sent: Tuesday, June 23, 2015 10:36 AM
To: Kristen Guichard; Planning Department
Cc: Andrea Ristine; Ryan Hunt

Hi Kristen,

Almost all the remaining trees are either topped, dead, or growing up into the utility lines. Basically overgrown scrub brush. I went out an marked a couple of stems that might grow up into decent trees with "do not cut" ribbons. I also spoke with the builder and explained the situation. I think the real answer is good replanting.

Regards,

Dean

From: Kristen Guichard
Sent: Tuesday, June 16, 2015 3:05 PM
To: Dean Charter; Planning Department
Cc: Andrea Ristine; Ryan Hunt
Subject: RE: Durkin site, 54 Pope Road

Hi Dean,

We have no problem with the removal of the White Pine which was designated as a hazard and is a safety concern.

The Decision is very specific and has no qualifier attached. What do you think about selective clearing of the small trees in the front to allow some to grow with more room? In your opinion would this improve their condition?

Thank you,
Kristen

Kristen Guichard, AICP
Assistant Town Planner
Town of Acton
472 Main Street
Acton, MA 01720
P: 978-929-6631

From: Dean Charter
Sent: Tuesday, June 16, 2015 2:46 PM
To: Planning Department
Cc: Andrea Ristine; Ryan Hunt
Subject: Durkin site, 54 Pope Road

This is to follow up on a conversation we had several weeks ago in regards to the landscaping and Board of Appeals decision in regards to the new construction at 54 Pope Road, being performed by John Durkin. The Decision noted that if possible existing trees at the front of the site should be preserved. Pursuant to a request from Mr. Durkin, I visited the site. All trees are located off the edge of the town ROW, and are not subject to MGL 87 Shade Tree Law, or the Scenic Roads Bylaw. All vegetation is privately owned. There is a row of small diameter Oak, Maple, and Pine trees, many of which have been topped due to utility line clearing in the past, or are leaning outwards towards sunlight over the roadway. None of these trees are significant or in very good condition. The only significant tree is a 30" DBH White Pine on the west side of the site, and it has a double top and is very prone to breakage. If fact, it has been identified and marked for removal as a hazard tree by Eversource Energy. In my opinion, the best route to follow is to remove all the trees and replant with several new, well shaped shade trees of an appropriate species, and in appropriate locations at the front of the site. I have so advised Mr. Durkin, and he has agreed to proceed along these lines.

Regards,

Dean

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OCT 27 2014
TOWN CLERK
ACTON

DECISION #14-07

DECISION ON THE PETITION OF LAURIE CROCKETT, 54 POPE ROAD

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, September 8, 2014 on the Petition of Laurie Crockett for a **SPECIAL PERMIT** under Section 8.1.3 and Section 8.1.5 of the Zoning Bylaws to allow an existing single family residential dwelling on a nonconforming lot to be razed and a new single family residential dwelling to be constructed which exceeds the size of the existing structure. Map F-5, Parcel 48.

Present at the hearing were Jonathan Wagner, Chairman; Richard Fallon, Member; and Adam Hoffman, Alternate Member. Also present were Scott Mutch, Zoning Enforcement Officer; Cheryl Frazier, Board of Appeals Secretary; the Petitioner, Laurie Crockett, Architect and the owners, John and Stacey Durkin. Also present were several interested parties.

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 and proposed setbacks, current and proposed gross Floor Area Ratio and an explanation as to why the Petitioner was proceeding under Sections 8.1.3 and 8.1.5 of the Zoning Bylaws. While the lot is nonconforming due to insufficient frontage and lot area, all setbacks fall comfortably within the present zoning requirements. Section 8.1.3 allows an existing dwelling to be razed and a new dwelling built to replace it as a matter of right so long as the Gross Floor Area Ratio of the new structure does not exceed the Gross Floor Area Ratio of the existing structure (and also complies with minimum yard and maximum height restrictions). Since the proposed new structure is larger than the existing structure (i.e. the Gross Floor Area Ratio is greater), a Special Permit under Section 8.1.5 of the Zoning Bylaws is required.

Chairman Wagner asked the Petitioner to explain why she was seeking the Special Permit. The Petitioner explained that the purpose of the Special Permit was to allow the owners of the property to raze the present single family dwelling and replace it with a new single family dwelling which would be consistent with neighborhood housing and would be a vast improvement over the deteriorating older structure. She stated that the existing dwelling was outdated and badly deteriorated; and it was more feasible and beneficial to the neighborhood to replace it with a new modern structure rather than to renovate it.

Chairman Wagner asked Mr. Mutch to review for the Board in what ways the property was nonconforming and how Sections 8.1.3, 8.1.4 and 8.1.5 of the Zoning Bylaws were related and applicable to the circumstances of this Petition. Mr. Mutch explained that the site was nonconforming because the present minimum lot area is 80,000 square feet whereas the present site has 22,651 square feet and the present minimum lot frontage requirement is 200 feet whereas the present site has 150 feet. With respect to setbacks, he stated that the proposed new construction conformed to all other current zoning requirements. He further explained that in his opinion the Petitioner was entitled as a matter of right under Section 8.1.3 to raze and rebuild the present structure so long as the Gross Floor Area Ratio was not increased; but because the Gross Floor Area Ratio of the proposed replacement dwelling exceeded the Gross Floor Area Ratio of the existing dwelling, then the following section of the Zoning Bylaws, Section 8.1.4, applies (i.e. "the sections are combined together"). Section 8.1.4 provides that an increase in Gross Floor Area Ratio that does not exceed 15% shall be deemed not to increase any nonconformity and shall not require a Special Permit. However, since the proposed increase in Gross Floor Area Ratio is greater than 15%*, then the next section of the Zoning Bylaws, Section 8.1.5 ("in all other cases") applies. Section 8.1.5 provides that such replacement construction may be allowed by Special Permit if the Board determines that the proposed replacement structure "does not increase the nonconformity, and if the proposed modification does increase the nonconformity, it will not be substantially more detrimental to the neighborhood than the existing structure".

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 8.1.3 and Section 8.1.5 of the Zoning Bylaws (which reference and incorporate Section 8.1.4) to allow an existing single family residential dwelling on a nonconforming lot to be razed and a new single family residential dwelling to be constructed which exceeds the size of the existing structure.

2. The site is located in an R-8 Residential District.

3. The site is a nonconforming lot because of insufficient lot area and frontage.

4. The site is conforming with respect to all other zoning requirements.

5. Section 8.1.3 of the Zoning Bylaws permits the razing of a single family dwelling on a nonconforming lot if the replacement structure does not exceed the Gross Floor Area of the existing structure.

* The Floor Area Ratio of the present structure is 3,575 square feet and the permissable increase in Floor Area Ratio authorized by Section 8.1.4 would be 4,111 square feet. Since the Floor Area of the proposed structure is 4,452 square feet, it exceeds the allowable increase of 15% by 341 square feet.

6. The Gross Floor Area of the proposed replacement structure exceeds the Gross Floor Area of the existing structure by 341 square feet.

7. Section 8.1.4 of the Zoning Bylaws permits a "extensions, alterations or changes" to a structure on a nonconforming lot if the proposed construction does not increase the size of the existing structure by more than 15% of the Gross Floor Area.

8. The Gross Floor Area of the existing structure is 3,575 square feet; and under said Section 8.1.4 the Petitioner is entitled to increase the size of the existing structure by 536 square feet.

9. The proposed new structure consists of 4,452 square feet of Gross Floor Area, which exceeds the allowable square footage increase by 341 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 replacement structure is not allowed under said Section 8.1.4.

10. Section 8.1.5 of the Zoning Bylaws provides that "in all other cases" such "reconstruction of, or extension, alteration or change in a single family or two family residential 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".

11. The proposed new structure will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.

12. The proposed new structure 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 new dwelling shall be built substantially in accordance with the Plans submitted with the Petition and contained in the file;

(b) all existing stone walls shall remain or shall be rebuilt if necessary;

(c) all existing trees on Pope Road frontage shall remain;

(d) the height of new structure shall not exceed the present zoning restriction of 36 feet.

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	Richard Fallon	Adam Hoffman
Chairman	Member	Alternate Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on October 27th, 2014.

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.