



Planning Department

TOWN OF ACTON
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MEMORANDUM

To: Zoning Board of Appeals **Date:** October 19, 2015
From: Roland Bartl, AICP, Planning Director *R. B.*
Subject: Special Permit #15-12
253A School Street – Construction of Addition on Nonconforming Lot in Excess of 15%
(Zoning Bylaw Section 8.1.5)

Location: 1st house on right on Pond Ridge Drive (private way); Street address is 253A School Street

Map/Parcel: H4-104

Petitioner: Michael and Beatriz Maimone

Owner: Michael and Beatriz Maimone

Zoning: Residence 2 (R-2)

Existing Gross Floor Area of Dwelling: 2,844 ft²

15% Permitted by-right: 426.6 ft²

Proposed Square Feet of New Construction Requested: 980 ft² (or 34.5%)

Hearing Date: November 2, 2015

Decision Due: January 31, 2016

The Maimones request a Special Permit under Section 8.1.5 of the Zoning Bylaw to allow for the expansion of an existing single family residential dwelling located on a non-conforming lot. The subject property is classified as a nonconforming lot due to insufficient frontage. The house is on Pond Ridge Road, which is a private access and utility easement. Because it is not a street as defined in the zoning bylaw it does not provide legal frontage. The lot's frontage on Parker Street cannot be considered legal frontage because of the presence of a pond between Parker Street and the house (access to the house over the lot's frontage is illusory, *Gates v. Planning Board of Dighton*, 48Mass. App. Ct. 394 (2000)), and because it has insufficient length (+/-80 ft.).

The existing Gross Floor Area is noted above. Zoning Bylaw Section 8.1.4 allows for extensions or alterations by-right if they do not increase the overall size of the structure by more than 15% of the existing Gross Floor Area. The overall requested expansion in total exceeds this threshold, as noted above. Therefore, the proposed expansion requires a special permit under Section 8.1.5. All numbers have been certified by an architect.

The proposed addition meets rear, side and front yard setbacks as required under the Zoning Bylaw for the R-2 Zoning District. The Planning Department has no objection to granting the requested special permit. The application was distributed for departmental review and comments on 10/8/15.

The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.1.5 and 10.3.5. If the special permit is granted, the decision should include findings, conditions and limitations as follows:

1. A clear indication of the allowed expansion in square feet and percent.
2. That any future additional expansion requires an amendment of the special permit (or a new special permit).
3. That the Petitioner must record the decision at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the site.
4. That all taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full before the issuance of a building permit.
5. That the special permit conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw.
6. That the Town of Acton may elect to enforce compliance with the special permit using any and all powers available to it under the law.
7. That other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by the decision.
8. That the Board reserves its right and power to modify or amend the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion.