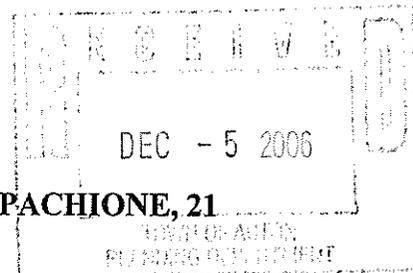
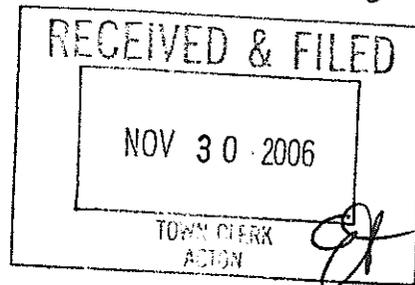


*Planning*



**DECISION #06-09**

**DECISION ON THE PETITION OF RICHARD CAPACHIONE, 21  
INDEPENDENCE ROAD**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, November 6, 2006 on the Petition of Richard Capachione for a **SPECIAL PERMIT** under Section 8.3.3 of the Zoning Bylaws to allow construction of an addition extending along a pre-existing nonconforming front yard setback located at 21 Independence Road. Map I3/Parcel 105.

Present at the hearing were Jonathan Wagner, Chairman; Kenneth F. Kozik, Member and Richard Fallon, Member. Also present were Garry Rhodes, Building Commissioner; Cheryl Frazier, Board of Appeals Secretary; the Petitioner and a neighbor.

Jonathan Wagner opened the hearing and read the contents of the file. The file contained a notation from the Planning Department stating that it had "no comments."

Mr. Capachione explained that the purpose of the Special Permit was to allow construction of a 2-level family room and additional bedroom. The existing house contains approximately 1,400 square feet of living space and the addition will contain approximately 400 square feet of living space. They have a growing family with 3 children and are in need of the additional living space. Because of the lot configuration and the fact that the septic system is directly behind the existing house in the rear yard, the only way that the addition can be built is to extend the house horizontally. The present structure, which is set back approximately 35' from the street at its closest point, is nonconforming because it does not comply with the present front yard setback requirement of 45' in an R-4 Residential District. The addition would extend horizontally from the existing structure and would be set back 36' from the street at its closest point, which would not increase the nonconformity. The height of the addition would not exceed the height of the existing house. The side yard and rear yard setbacks comply with current zoning requirements in an R-4 Residential District.

The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing, finds that:

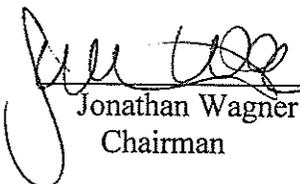
1. The Petitioner seeks a **SPECIAL PERMIT** under Section 8.3.3 of the Zoning Bylaw to allow construction of an addition extending along a pre-existing nonconforming front yard setback.
2. The existing building is nonconforming because it does not comply with present minimum front yard setback requirements in an R-4 Residential District.
3. The proposed addition will extend horizontally from the existing building and will be no further into the front setback area than exists presently; and therefor the addition does not increase the existing nonconformity.
4. The proposed addition otherwise conforms to all the dimensional requirements of the Bylaws.
5. The proposed addition is consistent with the Master Plan and is in harmony with the general purpose and intent of the Zoning Bylaws.
6. The proposed addition otherwise complies with the applicable requirements of the Zoning Bylaws.
7. The proposed addition is appropriate for the site and will not be more detrimental or injurious to the neighborhood than the existing nonconforming condition.

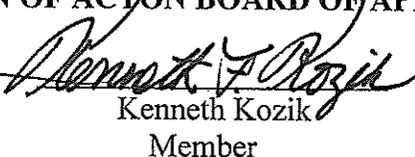
Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **GRANT** the **SPECIAL PERMIT** subject, however, to the following **condition**:

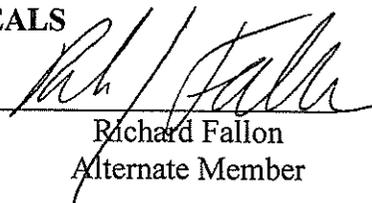
- A. The proposed addition shall be built substantially in accordance with the Plans submitted with the Petition and contained in the file.

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.

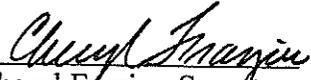
**TOWN OF ACTON BOARD OF APPEALS**

  
Jonathan Wagner  
Chairman

  
Kenneth Kozik  
Member

  
Richard Fallon  
Alternate Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on November 30, 2006.

  
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.