

DECISION ON THE PETITION BY JOHN C. DAWLEY FOR A SPECIAL PERMIT FOR 5 HURON ROAD

HEARING # 09-05

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, December 7, 2009, at 7:30 PM in Room 126 on the petition of John C. Dawley for a **SPECIAL PERMIT** under Section 8.3.3 of the Zoning bylaw to allow a deck to be built 25'6" from the property line where 30' feet is required. The subject property is located at 5 Huron Road, Map D-2/Parcel 67.

Present at the hearing were Ken Kozik, Chairman; Jonathan Wagner, Member; Marilyn Peterson, Member; Scott Mutch, Zoning Enforcement Officer; and Cheryl Frazier, Board of Appeals Secretary. Also present at the hearing was John Dawley, Petitioner.

Ken Kozik opened the hearing, read the contents of the file and asked the petitioner to begin.

Jack Dawley, owner and resident of 5 Huron Road, began by stating that they had converted their screened porch to a family room in 1998. It was determined at that time that the screened porch had been built in violation of the setback requirements as set forth in the Acton Bylaws and that he would have to obtain a Special Permit from the Board of Appeals. The Board of Appeals granted the Special Permit on July 27, 1998, to allow the conversion of a legally nonconforming screened porch into a family room.

The petitioner explained that he is requesting the permit to build a deck over an existing bluestone patio. Since this construction will require the use of sonotubes, it is considered to be a structure under the Acton Bylaws. His intention is to continue the nonconforming use and build the deck within the existing nonconformity which is 25'6" from the property line on Algonquin Road.

Ken Kozik asked the petitioner how far back the deck would extend. John Dawley said he would be going out 14 feet. Jon Wagner asked the height of the deck and Mr. Dawley said it would be approximately 18 inches high. Since there was no plan submitted for the proposed deck the Board asked the petitioner what material would be used to build the deck. Mr. Dawley said wood or possibly a composite material or a combination thereof.

Ken Kozik asked Scott Mutch, Zoning Enforcement Officer, if he had any input in regards to this Special Permit application. Scott said the applicant was accurate in their

description of the proposed project and there was nothing further for him to add to the information.

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 a deck to be built 25'6" from the property line where 30' feet is required. The subject property is located at 5 Huron Road, Map D-2/Parcel 67.
2. The existing building is nonconforming because it does not comply with present minimum side setback requirements specified in the Acton Bylaws. Previously, a Special Permit was granted on July 27, 1998 to allow the conversion of a legally nonconforming screened porch into a family room.
3. The proposed deck will extend back from the existing structure and will infringe no further into the side setback area than exists presently; therefore, the proposed deck does not increase the existing nonconformity.
4. The proposed deck otherwise conforms to all the dimensional requirements of the Bylaws.
5. The proposed deck is consistent with the Master Plan and is in harmony with the general purpose and intent of the Zoning Bylaws.
6. The proposed deck otherwise complies with the applicable requirements of the Zoning Bylaws.
7. The proposed deck 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 to the following conditions:

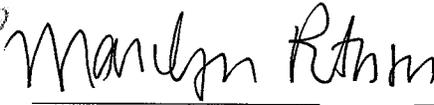
1. The proposed deck shall be built substantially in accordance with the information submitted with the Petition and contained in the file.
2. The deck shall at no point encroach further into the existing non-conforming setback of 25'feet 6" along Algonquin Road.
3. The deck shall be consistent with decks in and around that neighborhood.
4. The height of the deck shall not exceed 2'.

Any person aggrieved by this decision may appeal pursuant to the Massachusetts General Laws, Chapter 40A, Section 17, within twenty (20) days after this decision is filed with the Acton Town Clerk.

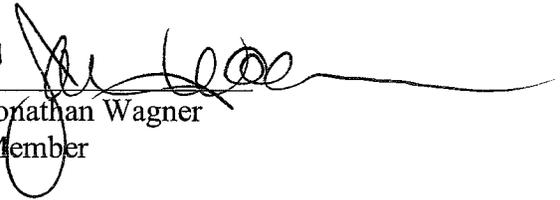
TOWN OF ACTION BOARD OF APPEALS



Kenneth Kozik
Chairperson



Marilyn Peterson
Member



Jonathan Wagner
Member

I certify that copies of the decision have been filed with the Acton Town Clerk and Planning Board on January 6, 2010.



Cheryl Frazier, Secretary
Board of Appeals

EFFECTIVE DATE OF SPECIAL PERMIT: No permit or modification, extension or renewal thereof, shall take effect until a copy of the decision has been recorded in the Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that 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 an appeal has been filed, it has been dismissed or denied.

This Special Permit must be exercised within 2 years of its effective date.