



## BOARD OF APPEALS

Hearing #20-09

### DECISION ON PETITION FOR A SPECIAL PERMIT WITH RESPECT TO

**66 School Street, Acton, MA**

A public hearing of the Acton Zoning Board of Appeals was held on Tuesday, August 4, 2020 on the petition of Peter Lukacic & Sandra Mika for a Special Permit under Section 8.1.5 of the Acton Zoning Bylaw to construct a 1-1/2 story barn (total of 600 square feet) with a 20' x 20' foot print in the approximate location of the previously existing barn that had existed there until its collapse in 2017.

The Petitioners previously submitted an application and was denied a Variance, because the proposed setbacks for the new construction were in violation of the Acton Zoning Bylaw.

The Petitioners now seek relief from section 8.1.4 of the Acton Zoning Bylaw. With this new application, the Petitioners are requesting a special permit to construct the new barn in compliance with the 10 foot rear & side yard setbacks on a non-conforming lot.

66 School Street is a non-conforming lot due to insufficient lot area and insufficient frontage. A minimum of 20,000 square feet of lot area and 150 feet of frontage are required.

Additionally, the existing building floor area is 2,376 sq. ft. By right the property is entitled to an increase of not more than 15% of the existing gross floor area of the existing structure (+/- 356 square feet). The proposed new barn construction includes two floors and would add approximately 600 sq. ft. of floor area on the lot, which would be an increase of 25.2%.

The subject property is classified as a non-conforming lot in a R-2 zoning district. It is located at 66 School Street, Map/Parcel H3-A-13.

Due to COVID-19 concerns, the hearing was conducted virtually with all participants following the Town's remote access guidelines.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member, Scott Robb, Member, Robert Hummel, Assistant Town Planner. Also present were the petitioners, Peter Lukacic & Sandra Mika.

Mr. Kozik opened the hearing, explained how the Board procedurally operates and asked the Applicants to begin.

The Board was reminded by the Petitioners that they had previously submitted an application for a Variance to build the new barn. The Variance was denied, because the proposed new construction did not meet the 10 foot setbacks as required by the Acton Zoning Bylaw.

The Petitioners then decided to apply for a Special Permit under Zoning Bylaw 8.1.5 (required because their lot is non-conforming). The Petitioners explained how the newly submitted plans to construct a two-story barn were modified to meet all setbacks required by the Acton Zoning Bylaw.

The Petitioners provided new, detailed architectural drawings depicting the proposed barn construction. They explained how the new barn was designed to fit within the footprint of the previously collapsed barn. In addition to being on a non-conforming lot, the Petitioners explained that the new barn exceeds the gross floor area permitted by the Acton Zoning Bylaw, which required the Petitioners to apply for a Special Permit.

The application was distributed for departmental review and comments prior to the August 4 hearing. The Acton Water District (AWD) supplied a written memo saying the proposed construction had no impact on existing water service and, therefore, had no comment.

The Acton Building Division provided a written statement they had no concerns and that a complete code review would take place when a building permit application is submitted.

The Acton Engineering Department provided a written memo saying while the proposed construction does not appear to be on any recorded easements and does not appear to be located within the 100-year floodplain area, the plot plan is not stamped by a registered MA Land Surveyor.

The Acton Fire Department provided a written statement saying they have no issues with the proposed construction.

The Acton Health Division provided a written statement saying the property is on town sewer and so there are no setback issues, and they have no other comments.

The Acton Historic District Commission provided a written memo saying they are in support of the new barn construction.

There being no additional questions from the board or the public, at 8:20pm, Mr. Hoffman moved, Mr. Robb seconded and the board unanimously (3-0) voted to close the public hearing. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye.

The Zoning Board of Appeals has the authority to grant the requested special permit under Bylaw Sections 8.1.5 and 10.3.5.

Acton Zoning Bylaw 8.1.5 States:

*In all other cases, the Board of Appeals may, by special permit, allow such construction of, or extension, alteration or change to a Single- or Two-FAMILY residential STRUCTURE on a nonconforming LOT, including the reconstruction anywhere on the lot of a larger structure than otherwise allowed under Section 8.1.3, where it 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.*

Acton Zoning Bylaw 10.3.5 States:

*Mandatory Findings by Special Permit Granting Authority – Except for a Site plan Special Permit, the Special Permit Granting Authority shall not issue a special permit unless without exception it shall find that the proposed USE:*

- *10.3.5.1. Is consistent with the Master Plan.*
- *10.3.5.2. Is in harmony with the purpose and intent of the Bylaw.*
- *10.3.5.3. Will not be detrimental or injurious to the neighborhood in which it is to take place.*
- *10.3.5.4. Is appropriate for the site in question.*
- *10.3.5.5. Complies with all applicable requirements of this Bylaw.*

During deliberation, the Board discussed the project's consistency with the master plan, whether it complied with the Acton Zoning Bylaw, and whether it was appropriate for the site in question. The Board did not believe the proposed construction added to the lot's non-conformity. After Board discussion, Mr. Hoffman moved and Mr. Robb seconded to grant the special permit, with conditions that the project be built substantially as presented at the meeting including documents submitted by the Applicant at the August 4 hearing. The motion carried unanimously (3-0), at 8:22pm.

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 of the Acton Zoning Bylaw to construct a new, two-story barn where an existing barn collapsed in 2017. The proposed new construction adds 600 sq. ft., which is 25.2% more Gross Floor Area than is currently allowed by the Acton Zoning Bylaw. The property is located at 66 School Street, Acton, MA, Map/Parcel H3-A-13.
2. The proposed two-story barn is not more detrimental to the neighborhood.
3. The proposed two-story barn meets the mandatory findings of section 10.3.5 of the Acton Zoning Bylaw.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the

above findings, voted unanimously (3-0) to **Grant** the Special Permit with the following Conditions:

- The proposed construction shall be executed substantially as presented in the most recent plans used during the August 4, 2020 meeting.

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

**TOWN OF ACTON BOARD OF APPEALS**



Kenneth F. Kozik, Chairman

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Adam Hoffman  
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Adam Hoffman

DocuSigned by:  
  
R. Scott Robb  
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R. Scott Robb

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

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Eva K. Szkaradek, Town Clerk

Date