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ACTON BOARD
OF APPEALS

BOARD OF APPEALS

Hearing #23-01

**DECISION ON PETITION TO GRANT
A SPECIAL PERMIT
WITH RESPECT TO
31 FAULKNER HILL ROAD**

A public hearing of the Acton Board of Appeals was held on Tuesday, April 4, 2023, at 7:32 pm, on the petition of Chris Murray and Amy Holland for a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw to allow for an addition including a garage (with room above), mudroom and deck to an existing single-family residential dwelling located on a non-conforming lot.

The property is located at 31 Faulkner Hill Road, Map/Parcel H3-B-74, in a Residential (R-2) and Groundwater Protection District (Zone 3).

The subject property is classified as a non-conforming lot due to insufficient frontage. The required frontage for the R-2 Zoning District is 150 feet. The lot only has 144 feet of frontage. The existing structure and proposed additions comply with the side, rear and front yard setbacks. The existing structure's side setback is 55.2 feet, and the proposed structure's side setback is 16.9 feet.

The Gross Floor Area of the existing dwelling is 3,108 sq. ft. 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, or 466.2 sq. ft. in this case. The proposed new addition and deck would add an additional 2,302 sq. ft., which represents a 74.1% increase to the existing dwelling. Therefore, the proposed expansion requires a special permit under Section 8.1.5.

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 proposed additions meet rear, side yard setbacks, and maximum height as required under the Zoning Bylaw for the R- 2 and Zone 3 Districts.

The application was distributed for departmental review and comments on February 23, 2023.

The Planning Department has no technical concerns with the application.

The Building Division said the project must meet minimum code requirements set in 780 CMR 51.

The Fire Department has no concerns beyond the new structure meeting code.

The Health Division approves the plan as submitted.

No additional divisional/departmental written comments were submitted.

Present at the hearing were Ken Kozik, Chairman, Adam Hoffman, Member and Scott Robb, Member. Staff present included Kristen Guichard, Planning Director, Nora Masler, Assistant Planner, and Alicia Burak, Administrative Assistant. The applicants, Chris Murray and Amy Holland, were present as well.

Applicable Bylaws:

8.1.4 Extensions, alterations or changes of Single- and Two-Family Dwellings on Nonconforming Lots – One or more extensions, alterations or changes to a single or two-family residential STRUCTURE on a nonconforming LOT shall be deemed not to increase any nonconformity and shall not require special permits under Section 8.1.5, provided that such extensions, alterations or changes comply with all applicable yard requirements and in total do not increase the size of the STRUCTURE by more than 15 percent of the GROSS FLOOR AREA in existence on April 1, 2012 or the date that LOT became nonconforming, whichever is later.

8.1.5 In all other cases, the Board of Appeals may, by special permit, allow such reconstruction 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.

10.3.5 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 this 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.

Mr. Kozik opened the hearing and explained how the Board procedurally operates. Mr. Kozik then asked the petitioners to begin.

Chris Murray and Amy Holland presented their case. They said the primary reason for proposing the new addition was to provide garage space, useful space above the garage, and a mudroom connecting the main living space to the proposed garage. The new construction will require a full foundation, which will result in additional basement space.

The Board took turns questioning the applicants. Of note, was a discussion regarding how Gross Floor Area is calculated and reported by various Town of Acton Divisions. According to the March 30, 2023 Planning Department Memorandum, the Gross Floor Area of the existing dwelling is 3,108 sq. ft. as noted earlier. After reviewing photos, drawings and detailed plans of the existing dwelling, the Board determined that although the Town of Acton uses strict measurement to determine Gross Floor Area, standard conventions deemed the existing dwelling to be approximately 2,100 sq. ft. The Board noted that the mean square footage of an Acton home is approximately 2,400 sq. ft. (data source: Town of Acton).

Given the particularly large proposed increase in Gross Floor Area of the new construction, the Board asked the applicants whether or not they considered a smaller proposed addition, which would be closer to complying with Town of Acton Zoning Bylaws? The applicants said they did not consider any other alternatives other than what was submitted with their application, and presented at the Hearing. The Board expressed their displeasure with the applicants for not considering other alternatives.

Chairman Kozik asked if there were any additional public comments. Public comments were neither submitted during the hearing nor in writing prior to the meeting.

With no further input, Mr. Hoffman made a motion to close the public hearing at 7:59pm. Mr. Hoffman seconded the motion. The Board unanimously (3-0) voted to close the hearing.

The Board's deliberation concluded at 8:03pm with no additional comments.

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

1. Applicant seeks a SPECIAL PERMIT under Section 8.1.5 of the Acton Zoning Bylaw to allow for an addition including a garage (with room above), mudroom and deck to an existing single-family residential dwelling located on a non-conforming lot. The existing structure and proposed additions comply with the side, rear and front yard Zoning Bylaw setbacks. The FAR limit is exceeded by 74.1%. The property is located at 31 Faulkner Hill Road, Map/Parcel H3-B-74, in a Residential (R-2) and Groundwater Protection District (Zone 3).

2. Under Acton Zoning Bylaw 8.1.5, Applicants' proposed construction will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.

3. Under Acton Zoning Bylaw 10.3.5.1, Applicants' proposed construction is consistent with the Master Plan.

4. Under Acton Zoning Bylaw 10.3.5.2, Applicants' proposed construction is in harmony with the purpose and intent of the Acton Zoning Bylaw.

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

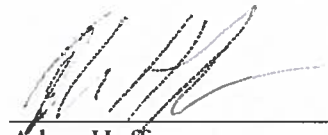
1. The proposed construction shall be completed as substantially presented during the April 4, 2023 hearing.

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



Adam Hoffman
Member



R. Scott Robb
Member