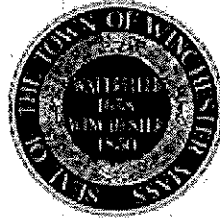


TOWN OF WINCHESTER**PUBLIC MEETING NOTICE and AGENDA REVISED**

Pursuant to MGL Ch. 30A, Sec. 18-25 All meeting notices and agendas must be filed and time stamped by the Town Clerk's Office and posted at least 48 hours prior to the meeting (**excluding Saturdays, Sundays and Holidays**) Town Clerk's staff requests submissions **72 hrs. prior** to the meetings to allow for processing time.

Board/Committee Name: Board of Appeals

Type Check one: In Person: Remote: Hybrid:

Link:

Date: November 16, 2023

Time: 7:00PM

Place: Select Board Meeting Room

Email: jviarella@winchester.us

Agenda:

- Review October 19, 2023 minutes
- Petition No. 3988 – 19 Hancock Street (continued from October 19., 2023)
- Review draft decision - Petition No. 4005 – 149 Highland Avenue
- Updates

If you need an accommodation pursuant to the American Disabilities Act, please contact the Town's ADA Coordinator, Michael Towne, at humanresources@winchester.us or (781) 721-7157.

Please submit posting: townclerk@winchester.us



CONTINUED TO NOVEMBER 16, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, FEBRUARY 16, 2023 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 3988 - That of 19 HANCOCK ST., LLC concerning the property at 19 HANCOCK STREET, WINCHESTER, MA. The petitioners are seeking a Special Permit under Section 4.5 and 9.4 of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws so as to be permitted to divide the existing property into two lots (Lots 15A and 15B) creating new non-conforming lots. Lot 15A will not meet the lot area, lot frontage and lot width requirements and the existing two-family dwelling will be located closer to the side property line than permitted as of right. Lot 15B will not meet the lot frontage and lot width requirements. The property is in the RG (General Residence) zoning district, Lot 15A contains 7,522 +/- square feet and Lot 15B contains 7,522 +/- square feet.

WINCHESTER BOARD OF APPEALS

Petition may be viewed at the Building Department during regular office hours or on the Board of Appeals web page www.winchester.us

DRAFT

**TOWN OF WINCHESTER
BOARD OF APPEALS**

DECISION

No. 4005
149 Highland Avenue

APPLICANT: Jack and Cynthia Greiner

APPLICATION FOR: Special Permit under Section 3.5.5 to construct additions that will be located closer to the front property line (Lincoln Street) than permitted as of right. The property is in the RDB (Single Residence) zoning district.

DATE OF HEARING: October 19, 2023

BOARD OF APPEALS: David Feigenbaum, Gerard Marino, Mark Andersen

VOTE: David Feigenbaum, Gerard Marino, and Mark Andersen in favor of granting the special permit.

DECISION: The special permit is granted subject to the following conditions.

CONDITIONS:

1. All work must be performed in accordance with all plans submitted with the application or amended during the hearing, including the revised elevations, and in accordance with all statements and representations made by the applicants with respect to this application and hearing.
2. As confirmed at the hearing, the front door will have an upper glass panel and the gas fireplace will be vented at the basement level.

MATERIALS CONSIDERED: The Board received the following documents and materials:

1. Form 2 (Application for Zoning Hearing)
2. Form 2F (Special Permit - Nonconforming Single and Duplex Residential Structures)
3. Existing and Proposed Plot Plan by Keenan Survey dated August 2, 2023
4. Photo's – 149 Highland Ave and Neighboring Properties – dEmois Architects (2 pages)
5. Landscape Plan L1.0 by dEmois Architects dated 8/28/23
6. Plans by dEmois Architects dated 8/28/23 (5 pages)
7. October 2, 2023 Historical Commission memorandum
8. October 4, 2023 Design Review Committee minutes
9. October 10, 2023 Planning Board memorandum
10. September 26, 2023 Engineering Department memorandum
11. September 18, 2023 Conservation Commission comments

12. Updated Elevation Plan A2.2 by dEmois Architects revised
10/11/23

**PRELIMINARY
MATTERS**

The applicants, Jack and Cynthia Greiner, are not the record owners. The record owners are Jack V. Greiner Trustee of the Jack V. Greiner Living Trust and Cynthia A M Greiner Trustee of the Cynthia A M Greiner Living Trust. Although the applicants did not submit the required document signed by the record owners authorizing them to pursue this application, the Board will treat this application as one by the record owners and treat the special permit as being granted to the record owners.

The formal petition and the applicant's Form 2F suggest that the front property line is along Lincoln Street rather than along Highland Avenue even though the street address of the lot is 149 Highland Avenue. In Section 10 of the Zoning Bylaw, the definition of FRONTAGE, STREET includes the following language (emphasis added):

“... When a lot is bounded by more than one street any one of them, but only one, may be designated as the frontage street by the owner, provided that the street meets the frontage requirement and that the principal permitted building on the lot is numbered on such frontage street. ...”

Although the frontage requirement would be met on either Lincoln Street or Highland Avenue, Highland Avenue is the frontage street because it is the street on which the lot is numbered.

In the discussion below, the Board therefore construes the front yard to be along Highland Avenue, and the yard along Lincoln Street to be a side yard.

DISCUSSION

The applicants propose to rebuild the garage, sunporch, and vestibule of their house at 149 Highland Avenue. The deck above the garage is to be reconstructed with a proposed partial roof, and the vestibule is to include a covered landing at the exterior stairs.

The Board received reports on the proposal from the following sources:

A. Historical Commission

The Historical Commission unanimously agreed that the project would have no adverse impact on the historical resources of the town. Two members expressed their preference for glass doors as opposed to double doors in the front.

B. Planning Board

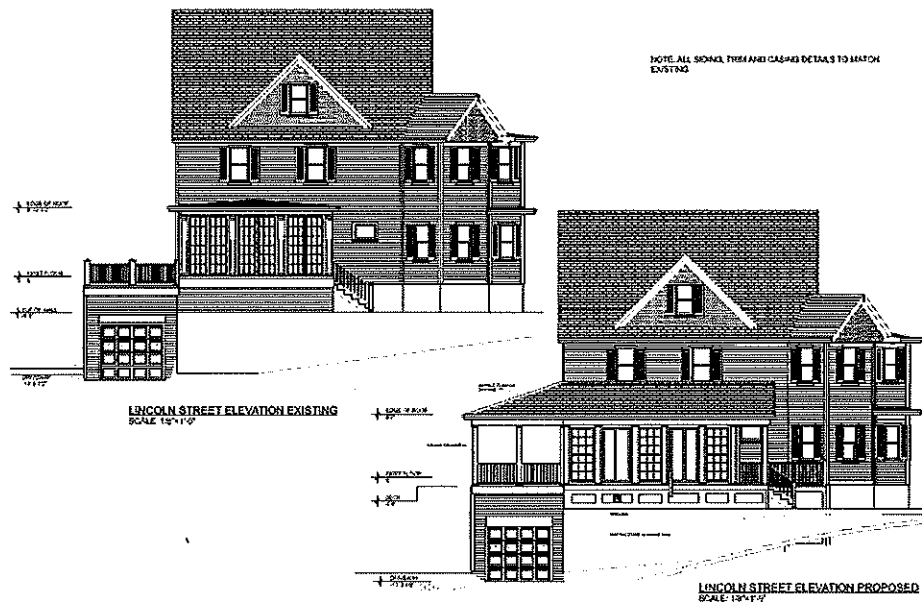
The Planning Board unanimously recommended favorable action.

C. Design Review Committee

Comments of members of the Design Review Committee suggested including a simpler roof, perhaps a hip roof; a door that is not too fancy; and diamond style shingling for the gable over the door, repetitive of the existing house gable. The design appeared too crowded, busy, and with too many vertical lines that still make it difficult to determine the front entry. The design could be simplified by venting the gas fireplace out the lower basement or from the roof to remove the wall vent facing the street, and by simplifying and widening the vertical wall panels.

The Committee voted unanimously to recommend favorable action with further simplification and study including the following conditions: vent the gas fireplace above or below, fewer muntins in the windows, glass on the front doors, and simplification of the paneling.

Apparently in view of comments by the Design Review Committee, the applicants submitted revised elevations:



D. Conservation Commission

The Conservation Commission reported that the proposal would impact the natural environment including removal of “several large *Euonymus alatus* (burning bush) screening Lincoln Street” and their replacement “with shrubs that are beneficial to the habitat”. In addition, two trees overgrowing the current entrance will be removed to expose the entry.

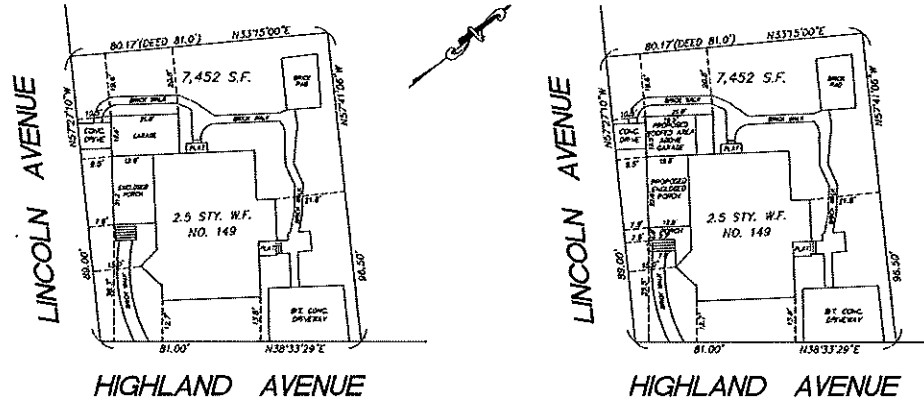
E. Engineering Department

The Engineering Department noted that the project will be too small to trigger review under the stormwater management provisions and therefore provided no comments.

THE LAW AND DISCUSSION:

In the RDB district, the minimum lot area, front yard setback, side yard setback, and rear yard setback are 10,000 square feet, 25 feet, 15 feet, and 15 feet.

The house is non-conforming because, according to the applicant's plot plan, the lot is 7452 square feet, the front yard on Highland Avenue is 12.7 feet, and the side yard along Lincoln Avenue is 7.9 feet.



Each quoted section of the bylaw below is followed by *italicized* comments that form part of this decision.

A. Section 3.5.5

Under Section 3.5.5, the house may be “reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure.” Nothing in the record before the Board suggests that the Building Commissioner made such a determination. Nevertheless, the final paragraph of Section 3.5.5 authorizes the Board “[i]n any other case, ... by special permit, [to] allow such reconstruction, extension, alteration, or [structural?] change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.” The Board has previously construed the phrase “in any other case” to refer to extensions of any existing non-conformity but not to the creation of a new non-conformity.

As the proposed work is at the side yard and front yard, where the house is already non-conforming, the special permit may be approved if the Board finds that “the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood”.

Under 3.5.5, the Board finds that the project has no adverse effects on the neighborhood.

B. Section 1.1 Purpose of the Zoning Bylaw.

C. Section 9.4.2 Criteria [for special permit].

“Unless otherwise specified in Section 3.5 or elsewhere in this bylaw, a special permit may be granted by the Special Permit Granting Authority (SPGA) only if it finds that the beneficial impacts of the proposed use or structure will outweigh its adverse effects on the town or the neighborhood in view of the particular characteristics of the site and of the proposal in relation to that site.”

The Board finds that the proposal will cause no adverse effects on the town or the neighborhood.

“In addition to any specific factors that may be set forth in this bylaw, the SPGA shall consider, and its written decision shall address, each of the following, as well as any recommendations by other Town agencies and officials:”

1. “Community needs which are served by the proposal;”

The Board finds no community needs served by the proposal.

2. “Traffic flow and safety, including parking and loading;”

The Board finds no impact on traffic flow or safety.

3. “Adequacy of utilities and other public services;”

The Board finds no impact on the adequacy of utilities or other public services.

4. “Impacts on neighborhood character, including the extent to which:

- a. Building forms and materials are compatible with the prevailing scale and character of buildings in the neighborhood;”

The Board finds the building forms and materials proposed in the revised plans and as part of the conditions of this special permit to be compatible with the prevailing scale and character of buildings in the neighborhood.

- b. “Architectural features add visual character to the neighborhood (for example, dormers, lintels, bay windows, open porches, chimneys); and”

The Board finds that the architectural features proposed in the revised plans and as part of the conditions of this special permit add visual character to the neighborhood.

- c. “Patterns and proportions of windows are consistent;”

The Board finds that the patterns and proportions of the windows proposed in the revised plans and as part of the conditions of this special permit are consistent.

5. “Adequacy of proposed screening and buffering;”

The Board finds the proposed screening and buffering along Lincoln Street to be adequate.

6. "Impacts on the natural environment, including, but not limited to, changes in topography, installation of retaining walls, or the removal of mature trees;"

The Board finds the removal of the trees to be acceptable.

7. "Fiscal impacts, including impact on Town services, tax base and employment; and"

The Board finds no fiscal impacts.

8. "Impacts on historic resources, as defined in Section 10."

The Board finds no impact on historic resources.

"If the SPGA disagrees with the recommendations of any other Town agencies or officials, it shall explain its position in its written decision. (FTM Art. 3, 11/6/2017.)"

CONCLUSION

Because the criteria have been met, the special permit is approved with conditions.

BOARD OF APPEALS, BY:

David L. Feigenbaum

DECISION DATED:
