

Winchester Zoning Board of Appeals
September 21, 2023, Meeting
Minutes

Present:

David Feigenbaum, Dorothy Simboli, Gerard Marino, Mark Andersen, and Harout Ghazarian
31 Albamont Road (4988)

Mr. Feigenbaum made a motion to accept the applicant's requested withdrawal without prejudice (Petition 3998). Approved unanimously (Feigenbaum, Simboli, Marino in favor).

7 Wedgemere Avenue (4004)

The applicant's lawyer, Bill Proia of Riemer & Braunstein, distributed a letter concerning the site plan review criteria under section 9.5.7 of the Zoning Bylaw. The applicant is seeking a site plan approval under section 9.5.1(5) because the proposal triggers the 5000 square foot area criteria. Mr. Proia's client would like to replace an existing detached garage with a new detached garage, adding 657 square feet to bring the total building area on the property to 5642 square feet. The Planning Board, Historical Commission, and Design Review Committee have made favorable recommendations, Mr. Proia stated.

Mr. Feigenbaum then made a motion to approve the site plan proposed in Petition 4004. Approved unanimously (Feigenbaum, Simboli, Marino in favor).

19 Hancock Street (3988)

Mr. Feigenbaum reopened the hearing. The petitioners are seeking a special permit under sections 4.5 and 9.4 to divide the existing property into two nonconforming lots, preserve the house on one of the lots, and build a new house on the other lot.

Daniel Belknap, the applicant, reported that he had attempted to get the engineering department to reconsider their previous recommendation on his proposal, but to no avail. He is now holding off on his project until the 53G peer reviewer has issued his report. After that, the next step will be to ensure the preservation restriction satisfies the Board. He is also waiting for comments on the restriction from the town counsel on behalf of the select board. Mr. Feigenbaum pointed out that until the 53G expert has reported, nothing would be done about the preservation restriction, in order to defer the time and expense of town counsel's review. Mr. Feigenbaum stated that this matter will not be voted on at the next meeting.

Mr. Feigenbaum made a motion to continue petition 3988 to the October 19 meeting. Approved unanimously (Feigenbaum, Marino and Simboli in favor).

75 Bacon Street (4002)

Jonathan O'Donnell, the applicant, is requesting a special permit for his driveway entrance on Cottage Street to be moved a short distance and to be paved wider than 10 feet. He claimed that the current layout requires more asphalt than his proposal would take and that it would be more

aesthetically pleasing and practical for the driveway to go straight into the garage on the Cottage Street side rather than having unneeded space for cars to turn around in.

Mr. O'Donnell provided three drawings and described features of his proposal and his reasons for requesting the relocation of the driveway entrance. The driveway entrance on Cottage Street is currently 18 feet 6 inches wide and the proposal shows a narrower entry width of 14 feet 6 inches. Mr. O'Donnell responded to questions posed by Ms. Simboli including about Mr. O'Donnell's communication with neighbors regarding his proposal and the positive feedback he got. Mr. Feigenbaum expressed his gratitude for Mr. O'Donnell having consulted the neighbors but noted that the Board's role is to act in the best interests of the town broadly rather than just the interests of the neighbors.

Ms. Simboli then made the case for granting a special permit as permitted by the Bylaw and there was discussion about the favorable aspects of the proposal relative to the existing conditions.

The Board members then had an animated discussion about whether and why the applicant was required to apply for the special permit given that he is narrowing his driveway entrance and about the history and intention of the bylaw provision and its later amendment. There was some confusion regarding current bylaw; Mr. Andersen clarified to Mr. Ghazarian that when a Winchester home has two driveway entrances, neither can have an apron greater than ten feet.

Ms. Simboli again stated reasons why it made sense for the Board to approve the special permit given the nature of the proposal. Mr. Feigenbaum raised the disadvantage of allowing a driveway entrance wider than 10 feet given the quiet nature of Cottage Street. Additional discussion followed.

Mr. Marino made a motion to approve petition 4002. Approved unanimously (Feigenbaum, Simboli, and Marino in favor).

158-162 Swanton Street (4000)

The Board had previously decided to allow the petition seeking to demolish two pre-existing non-conforming residential structures and replace them with three townhouses in a single conforming structure with non-conforming use.

The draft decision written by Mr. Murray, the applicant's lawyer, was taken up for consideration.

Ms. Simboli expressed her interest in making sure the correct Bylaw sections had been applied as the basis for the decision, including 3.5.2 (regarding use), 3.5.3 (regarding structure type), 3.5.7, and 4.2.5. Mr. Andersen said he would officially submit the decision to the Clerk and confirmed that the petitioner has met the requirements for 4.2.5.

87-89 Cross Street (3993)

Present:

Mario Covino of 87-89 Cross St LLC,

Lynne Sweet of LDS Consulting,

Jonathan Silverstein of Blatman, Bobrowski, Haverty & Silverstein LLC, and Jay Talerman,

Winchester Town Counsel, of Mead, Talerman, & Costa LLC

The Board had previously voted to approve the requested Comprehensive Permit. The purpose of the discussion was to review and resolve any issues raised by the decision drafted by Mr. Talerman and circulated prior to the meeting. Mr. Andersen offered to take the initiative on the next phase of the project (if passed by the board).

Ms. Simboli expressed concern about issues relating to this 40B that may come back to the Board to sort out after the permit has been approved. Ms. Simboli doesn't believe the matter of 87-89 Cross St needs to come back in front of the board except for state mandated reasons or major changes to the project. She emphasized the need for making the application process for small developers easier.

A discussion ensued about the extent to which full plan sets and other documents would need to be provided to the Board by the developer in the future, the extent to which the Board would have the authority to review and approve them, and whether the Board would even wish to do so. This led to comments by Mr. Talerman concerning section 17 and section 3 of the draft decision and how they would be applied to information to be provided to the Board, the Town Engineer, and the Building Commissioner and reviews and approvals to be done.

Mr. Talerman emphasized the importance of having a mechanism through which the Board ensures that developers/property managers are following the terms of their permit after the permit has been granted, arguing against deleting a line that the Board debated removing in section 12.

Ms. Simboli compared the language in provision 12 to its equivalent in the Waterfield Development's original language, which she said simply states that the town hire a management company subject to town approval. Ms. Simboli believes that the financial details of this proposal (and similar ones) should not be a matter of public record in the interest of making the process user-friendly for smaller developers. In response, Mr. Talerman suggested changing the language to require just his review and remove the "competent party" language, while still including the "not to be unreasonably withheld" language in reference to the hiring process for property management. This led to further discussion about the public or private nature of the management agreement and how it should be handled and monitored under the decision.

Mr. Talerman stated that he wants to make sure the language regarding management in the application is consistent with what is in the final permit. Ms. Simboli raised the prospect of the final permit including redacted financial terms. Mr. Talerman expressed a feeling of indifference to this prospect. Mr. Andersen stated that his indifference is indicative of the fact that any financial dealings between Mr. Covino and a property manager are not priority issues for the board.

There was discussion of how much of the management contract and other information would be provided to the Board to assure that the applicant is abiding by the terms of his building permit. The redaction of financial information from reports made to the town was also discussed.

The applicant's request to demolish the existing building now rather than later to save money was discussed. Mr. Feigenbaum urged that the building not be demolished until a building permit is issued. An animated discussion followed until it became clear that Ms. Simboli and Mr. Marino would not support Mr. Feigenbaum's suggestion, and he then withdrew it.

After some discussion about the language in the decision that characterizes the nature of the neighborhood associated with the project, the Board agreed upon the language “in a mixed-use area between two commercial structures at the edge/end of a residential neighborhood.”

Mr. Feigenbaum initiated a discussion of the reference in section 4 to the historic nature of the existing building, after which it was decided to use the phrase “historic resource” in the decision.

There was discussion about what future information would be provided to the Board by the applicant and how it would be distributed. The Board proposed that it not be burdened by receiving materials on paper.

The 30-day extension provision of section 3 was discussed at length and it was eventually agreed to set a flat 60-day period for the engineering dept. to review the plans instead of 45 days plus a 30-day extension language. There was also discussion prompted by Ms. Simboli of the desirability of not causing the applicant an aggregate delay of 90 days, including the 60-day approval period plus requiring the pre-construction meeting 30 days before start of construction.

There was discussion related to section 18 about which information would be provided to the select board and the Board of Appeals.

On section 21c, Mr. Talerma suggested that any enforcement action to compel the completion of any unfinished infrastructure could be best handled by the board as opposed to the engineer or building commissioner due to such an action being rooted in policy. He strongly suggested the board take on this task in case the building commissioner does not. Mr. Ghazarian noted that this language was not in the original document. Mr. Feigenbaum expressed interest in having the board receive the proper updates to ensure that all necessary infrastructure is in place.

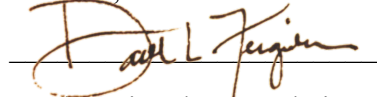
There was discussion of section 26 with respect to the need for a waiver of fees for consulting services and the value of not burdening the applicant with large fees triggered by the town’s decision to hire expensive engineering consultants.

Mr. Feigenbaum made a motion to accept the proposed draft decision for the comprehensive permit as circulated that morning and with changes that Mr. Talerma will make consistent with the evening’s discussion. Unanimously approved (Feigenbaum, Simboli, and Marino in favor).

Waiver of Site Plan Review

Mr. Feigenbaum introduced his proposed form (previously circulated to the Board) to be submitted by applicants whose proposals were subject to waiver of site plan review when smaller than 500 square feet. The form provides for reduced initial submission requirements, although the Board reserves the right to request additional information up to and including all the information required for a full application for site plan review. The board agreed unanimously to accept the proposed form.

David Feigenbaum made a motion to adjourn the meeting. Approved unanimously (Feigenbaum, Simboli, and Marino in favor).

A handwritten signature in brown ink, appearing to read "David L. Feigenbaum", written over a horizontal line.

David Feigenbaum, Chair

Date: November 6, 2023