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TOWN OF WINCHESTER
BOARD OF APPEALS
Decision No. 3942
96 Cambridge Street

2021 JUL -8 AM 10: 57

TOWN CLERK
TOWN OF WINCHESTER

Name of Petitioner: Maggio Realty Trust

Application For: Appeal under Section 9.3.3 (3) of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 8 and 15 of the Massachusetts General Laws from the Building Enforcement Officer's March 29, 2021 letter denying a building permit to install a wider garage door and trim at 96 Cambridge Street. Also, petitioner is seeking a Variance from Section 3 Group VI (3) of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 10 of the Massachusetts General Laws so as to be permitted to widen the existing garage door from 12 feet to 18 feet to allow for storage of major recreation equipment. The property is located in RDA (Single Residence) zoning district and contains 24,790 square feet.

Date of Hearing: June 17, 2021

Board of Appeals: David Feigenbaum, Robert Tedesco and Mark Regan

Decision: (1) Affirm the Zoning Enforcement Officer's decision to deny a building permit to widen the existing garage door and trim
(2) Deny the Variance to widen the existing garage door from 12 feet to 18 feet to allow for storage of major recreation equipment.

Vote of the Board: 3-0

Support: The following support was provided for the determination:

1. Form 2 dated April 7, 2021.
2. Form 2A Appeal-Supporting Statement Requested Finding date April 7, 2021.
3. Form 2B Varlance-Supporting Statement Requested Finding date April 7, 2021.

4. Proposed Plot Plan dated May 3, 2019 by Keenan Survey 8 Winchester Place, Suite 208 Winchester, MA 01890.
5. Letter from Carvalho & Associates dated April 7, 2021, with attachments.
6. Photograph of the existing garage door to be widened from 12 feet to 18 feet.
7. Owner's narrative regarding requested relief.

Facts:

Petitioner owns the property at 96 Cambridge Street. The house was built in the last two years. An 18-foot wide, double-garage door was in the original plans for the house, and this was denied by the building department as a fourth garage space and door. The petitioner installed a 12-foot door at the opening of the two-car garage.

The Winchester Planning Board reviewed the petition on June 14, 2021 and recommended unfavorable action, 4-0 citing the fact that the property already has garage space and garage doors for 3 vehicles, the maximum allowed in the Table of Use Regulations cited above, and this lot does not contain unique conditions that would result in exceptional practical difficulties for storage of major recreational equipment in accordance with Section 3.3.3 of the Winchester Zoning By-Law.

The Winchester Conservation Commission reviewed the petition on May 17, 2021 and concluded that they had no jurisdiction.

The Winchester Design Review Committee and the Engineering Department reviewed the petition on dated June 9, 2021 and May 20, 2021, respectively, and stated that they had no comment.

Discussion:

- (1) Appeal of the Code Enforcement Officer's denial of the building permit to install an 18-foot-wide garage door and trim.

Section 3.0, Group VI- Accessory Uses, Item 3 limits the number of garage spaces per dwelling unit.

Private garage for not more than three (3) automobiles per dwelling unit, not more than one of which shall be a commercial vehicle of a light panel, small delivery or pick-up truck type.

Petitioner designed the new house with four garage spaces – 2 single-car upper garages and the lower garage addressed in this decision. The building department denied the fourth space on the original design. Although the space for four automobiles remained, petitioner modified the original design to a 12-foot door to meet the Building Code.

An average single-car garage door is 8-9 feet wide. A double (two-car) garage door is 12-18 feet wide, with the average double door 15-16 feet wide. An 18-foot-wide garage door is a large two-car garage door.

Widening the garage door to 18 feet would create a fourth private garage space. According to Petitioner, the interior of the garage is 21 feet wide. Petitioner also conceded that it would use all four garage spaces in various seasons.

Conclusion: The Zoning Enforcement Officer was correct in denying a building permit to widen the garage door as this would create a fourth private garage space.

(2) Petition for a Variance for an 18-foot-wide garage door.

Massachusetts General Laws Ch. 40A sec. 10 – Variances

(The ZBA may grant a) particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.

Petitioner is seeking a variance from the Zoning By-Law's Table of Use Regulations regarding accessory uses. Use variances are not expressly permitted by the By-Law. Therefore, this request for a variance must be denied.

Even if a variance were permitted, Petitioner's request for a variance for a fourth private garage space must meet the requirements listed above for a variance to be granted. However, Petitioner fails to meet the unique circumstance of the soil condition, shape or topography of the land that would be the initial requirement for the variance. The argument made regarding the slope of the property is not unique to this property, and in fact is the common topography of the adjacent lots. Hillside lots are common to Winchester zoning districts.

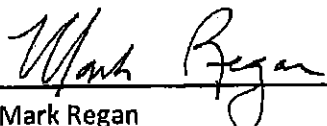
The hardship Petitioner presents is the inability to store major recreational vehicles. However, this hardship is an individual hardship based on the ownership of multiple vehicles, not based on the unique nature of the land. The hardship is related to the individual not the lot. That does not satisfy the requirement for a variance. Otherwise, any petitioner could seek a variance for their property based upon any personal hardship they felt could be resolved by permanently changing the property's zoning limitations.

As noted above, Petitioner argued that it would not use more than three garage spaces for cars at any time, but acknowledged that it would likely switch the use of the garages with the seasons. The upper garages have a more difficult slope in the winter, so the two lower garage spaces would likely be used then. That confirms that Petitioner would use all four garage spaces.

Conclusion: A use variance is not permitted in Winchester. In any event, Petitioner's request for a variance fails to meet the conditions required for a variance

Decision:

- (1) Affirm the Zoning Enforcement Officer's denial of the building permit to widen the garage door and trim from 12 feet to 18 feet.
- (2) Deny the variance to allow the accessory use of a fourth private garage space in a single dwelling unit.


Mark Regan

Board of Appeals

Date of Decision: July 7, 2021