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**TOWN OF WINCHESTER  
BOARD OF APPEALS**

2021 SEP -7 AM 10: 15

Decision No. 3944

9 York Road, Winchester, Massachusetts 01890

TOWN CLERK  
TOWN OF WINCHESTER

**NAME OF PETITIONER:** Gerard Marino

**APPLICATION FOR:** The Petitioner is seeking a Special Permit under Section 4.2.5 and Section 9.4.2 of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9, of the Massachusetts General Laws to be permitted to construct dormers that will be greater than 50% of the width of the roof plane.

**DATE OF HEARING:** July 15, 2021

**BOARD OF APPEALS:** David L. Feigenbaum, Mark Waterbury, and Robert Tedesco

**DECISION:** Granted

**VOTE OF BOARD:** Unanimous

**CONDITIONS:** None

**FACTS:** The petitioner asks for a special permit to build three dormers on the top half-story at the front façade of the house at 9 York Road. The top half-story contains an attic served by a staircase that is more confined and utilitarian than the existing staircase below it, which extends between the first floor and the second floor. The petitioner apparently believes that the attic is not now habitable but will be habitable once the proposed work is done.

The proposed center dormer is taller and wider than the two proposed side dormers. This center dormer will enclose a staircase from the second floor to the attic that is designed to replicate the size, design, and configuration of the staircase from the first floor to the second floor. The walls enclosing the staircase at the proposed dormer will be vertical extensions of the walls that enclose the existing staircase between the first floor and the second floor. This configuration will maintain the structural integrity of the portion of the house that includes the center dormer and will provide a more open passage and entrance to the attic. The proposed center dormer also will resolve a building code violation related to the headroom available on the existing staircase between the second floor and the attic.

The total width of the three proposed dormers on the front façade is more than 50 percent of the width of the roof plane. If the center dormer were

instead exactly as wide as the two side dormers, the total width would not exceed the 50 percent.

Although there are several beneficial features of the proposed design, the petitioner emphasized that only one feature—the insufficient headspace—is the basis for the request for a special permit.

The petitioner concedes that other configurations of the dormer would be possible to resolve the headroom issue. Yet the petitioner asserts that those alternatives would not be centered on the roof plane and therefore less satisfactory visually than the presented option. He also contends that if the two side dormers were narrowed so that in combination with the wider center dormer they would meet the 50 percent limitation, they would be too narrow to allow easy access to the windows.

Other houses in the neighborhood have dormers shown in pictures submitted in support of the petition. However, of the six examples involving dormers above the second floor of a house, three of them had arrangements of three identical dormers and met the 50% limitation, two of them had two identical dormers and met the 50% limitation, and the fifth one had a configuration that was unclear because a tree obstructed the view.

**DOCUMENTS  
CONSIDERED**

Forms 1, 2, and 2C

Center Dormer Study D (April 16, 2021)

Photographs

Winchester Planning Board (July 13, 2021)

Winchester Design Review Committee (July 7, 2021)

Winchester Historical Commission (July 12, 2021)

Winchester Engineering Department (June 25, 2021)

Winchester Conservation Commission (June 30, 2021)

**DISCUSSION:**

Section 9.4.2 of the Winchester Zoning Bylaw (quoted below, with emphasis added) lists the criteria for granting a Special Permit in this case. Discussion points of the Board are interleaved within the quotation of 9.4.2 and presented in italicized type.

A. "... 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 petitioner did not present any evidence of the beneficial impacts or the adverse effects on the town or neighborhood. Presumably one beneficial impact is in maintaining or enhancing the value of the house at 9 York Road and by implication the values of nearby houses in the neighborhood. Another beneficial impact may be in retaining the*

*symmetry of the top half-story, which may not be achieved by alternative designs. One adverse impact is in creating a third floor of habitable living space by an exterior feature that is large and doing so in a neighborhood in which many houses retain traditional one-and-a-half story and two-story configurations. In that sense, the proposal can be viewed as adversely impacting the consistent appearance and feel of this older Winchester neighborhood.*

B. "... 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 petitioner did not present any evidence of community needs being served and there do not appear to be any.*

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

*There do not appear to be any impacts of the proposal with respect to this criterion.*

3. Adequacy of utilities and other public services;

*There do not appear to be any impacts of the proposal with respect to this criterion.*

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 proposal is moderately incompatible with the prevailing scale and character of dormers on other houses in the neighborhood and in that respect represents an adverse impact on the neighborhood character.*

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

*The dormers may add visual character to the neighborhood.*

c. Patterns and proportions of windows are consistent;

*The side dormers are consistent; the center dormer is inconsistent.*

5. Adequacy of proposed screening and buffering;

*There do not appear to be any impacts of the proposal with respect to this criterion.*

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

*There do not appear to be any impacts of the proposal with respect to this criterion.*

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

*There do not appear to be any significant impacts of the proposal with respect to this criterion.*

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

*The only information presented on this criterion was the determination of the Historical Commission of no adverse effect on a historical or cultural resource.*

C. If the SPGA disagrees with the recommendations of any other Town agencies or officials, it shall explain its position in its written decision."

1. The Engineering Department did not object to the proposal.
2. The Conservation Commission does not have jurisdiction.
3. The Planning Board recommended favorable action.
4. As noted above, the Historical Commission found no adverse effect on a historical or cultural resource.
5. The Design Review Committee recommended unfavorable action because the middle dormer is not in proportion to the rest of the house; and the proposal does not meet the by-law that was written specifically for a project such as this. The Committee recommended three smaller dormers and noted that an alternative stair location could be provided.

*The Board recognizes that the center dormer is not in proportion to the rest of the house and that alternative stair locations are possible, but accepts that the proposed center dormer design is appropriate to achieve the needed headroom, to be structurally sound, and to be symmetrically balanced as seen from the street. Section 4.2.5 sets a*

*limitation of 50% and allows that limitation to be exceeded based on a special permit.*

6. Taking account of the facts and the criteria applicable to this case, the Board considers it appropriate to grant a special permit.

**DECISION:**

A Special Permit is granted under Section 4.2.5 and Section 9.4.2 of the Winchester Zoning By Law in accordance with Chapter 40A, Section 9, of the Massachusetts General Laws, to permit the Petitioner to construct the three dormers shown on the submitted drawings entitled "9 York Dormers Option D" and dated April 14, 2021, and in which the total width of the three dormers on a single roof plane above the second story will exceed 50 percent of the width of that roof plane.

**BOARD OF APPEALS, BY:**



David L. Feigenbaum

**DECISION DATED:**

9/4/2021