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TOWN OF WINCHESTER

BOARD OF APPEALS

Decision No. 3945

53 Lawson Road

2021 JUL 28 PM 3: 52

TOWN CLERK

TOWN OF WINCHESTER

Name of Petitioner: Scott C. and Heather B. Penna

Application For: Site Plan Review under section 9.5.1 of the Winchester Zoning By-Law so as to demolish the existing single-family dwelling and construct a new single-family dwelling where the total floor area of the building will be greater than 5,000. The petitioner also seeks a Site Plan Review under Section 9.5.1 (7), of the Winchester Zoning By-Law so as to change the slope over 6% of the existing grade of an area more than 500 square feet. The property is located in the RDB (Single Residence) zoning district and contains 19,360 +/- square feet.

Date of Hearing: July 15, 2021

Board of Appeal: Robert Tedesco, Mark Waterbury, and Mark Regan

Decision: Granted

Vote of the Board: 3-0

Conditions: The following conditions apply to the grant of this Special Permit:

1. Construction of the proposed addition shall be in substantial conformity with the plans and information submitted with the petition, including the following:
 - a. Form 2 Application for Zoning Hearing dated June 9, 2021.
 - b. Form 2D Special Permit Site Plan Review dated June 9, 2021.
 - c. Existing and Proposed Plot Plan, dated June 9, 2021, Keenan Survey 8 Winchester Place, Suite 208 Winchester, MA 01890
 - d. Town of Winchester Assessors Map 117 dated May 25, 2006
 - e. Permitting Screen Planting Titled L3.01, TerraInk, Inc. 7 Central Street Suite 150 Arlington, MA 02476, dated July 23, 2020.
 - f. Stormwater Analysis and Calculations by Patriot Engineering, Inc. 35 Bedford Street, Suite 4 Lexington, MA 02420, dated June 4, 2021.
 - g. Site Plan of Land- titled C1.01, dated June 4, 2021, by Patriot Engineering.

- h. Nine -page set of plans prepared Space Craft 5 Raymond Street Lexington, MA 02421 (dated June 1, 2021) including the following:
 - i. Z1 – Proposed front Entry Perspective
 - ii. Z2 – Proposed Streetscape
 - iii. Z3 – Proposed Building Height
 - iv. Z4 – Proposed First Floor Plan
 - v. Z5 – Proposed Second Floor Plan
 - vi. Z6 – Front Elevation
 - vii. Z7 – Right Side Elevation
 - viii. Z8 – Left Side Elevation
 - ix. Z9 – Rear Elevation
2. All representations made by the petitioners at the public hearing and not memorialized are hereby incorporated into the decision.
 3. Petitioner required to apply for a curb cut. The curb cut shall be no wider than 20 feet and meet Zoning By-Law Section 5.1.10.
 4. At the completion of the project the petitioner shall provide an as-built plan and certification by the engineer of record confirming the system was installed per the approved plan prior to the issuance of a Certificate of Occupancy.
 5. The Conservation Commission must determine if the Order of Conditions issued for the property needs to be amended. If the Order of Conditions has substantial amendments requiring changes to the location of the buildings or other structures, or significant redesign of the stormwater remediation and infiltration plans, and if the Winchester Town Engineer is not satisfied with the petitioner's response to the amended Order, then the petitioner must come before the ZBA for a Site Plan Review.

Facts:

The petitioner owns the existing single family wood framed dwelling located at 53 Lawson Road. Petitioner proposes the demolition of the existing house and replacement with a new larger house (greater than 5000 square feet).

Petitioner has applied for a Site Plan Approval under section 9.5.1 so as to demolish the existing single-family dwelling and construct a new single-family dwelling where the total floor area of the building will be greater than 5,000 square feet. Additionally, Site Plan Approval under section 9.5.1 as to change the slope over 6% of the existing grade of an area more than 500 square feet is also requested.

The ZBA approved the Site Plan to construct a new single-family dwelling where the floor area is greater than 5000 square feet in Petition 3902 for 53 Lawson Road on August 14, 2020.

The Historical Commission reviewed the petition on July 12, 2021, and voted for favorable action 4-0 with no conditions, finding no adverse effects on a historic or cultural resource.

The petition was reviewed by the Winchester Planning Board (dated July 13, 2021) and recommended unfavorable action, 4-0, because the excessive size of the house, and in particular its width, represent an unreasonable departure from the scale of the buildings in the area. The Board decision took into consideration the following points: 1. That the proposed design, being resubmitted to reflect raising the house to be above the newly identified high-level ground water elevation, is substantially the same as the previous design; 2. That the previous Planning Board voted similarly for the same reason. This Planning Board agreed with the previous Planning Board decision

The application was reviewed by the Winchester Conservation Commission on June 30, 2021 and noted that the property has an Order of Conditions from the Conservation Commission. Order to return to the Commission with changes so Commission may determine whether an amendment to the order is necessary.

The petition was reviewed by the Winchester Design Review Committee (dated July 7, 2021) and they voted for favorable action 5-0 noting that the design had previously been approved by the ZBA and that this application is to raise the house to avoid the high ground water with reducing the ceiling height in the basement.

The petition was reviewed by the Engineering Department on July 7, 2021. They made comments on: Landscaping Plans (2 comments), Site Plan of Land by Patriot Engineering (10 comments), Stormwater Analysis and Calculations (4 comments) and General (1 comment).

The petition was reviewed by the Engineering Department on July 14, 2021 commenting on the petitioner's response to the previous Engineering comments. They stated that the Property has an Order of Conditions from the Winchester Conservation Commission. Order requires Owner to return to the Conservation Commission with changes to determine whether an amendment to the Order will be necessary. Engineering concluded that: (1) If installed and maintained properly, the infiltration system should mitigate increased stormwater runoff on the site, (2) Applicant will be required to apply for a curb-cut. Curb-cut shall be no wider than 20 feet and meet Zoning Bylaw Section 5.1.10 and (3). Engineering request the following condition, at completion of the project, the applicant shall provide an as-built plan and certification by the engineer of record confirming the system was installed per the approved plan prior to the issuance of a Certificate of Occupancy permit.

A number of neighbors spoke at the meeting in support of the petition and two neighbors sent in written support for the petition.

Discussion:

Petitioners sought and were granted a Site Plan review to demolish the existing dwelling at 53 Lawson Road and build a structure greater than 5000 square feet on August 14, 2020 by the ZBA. The Decision was the result of multiple iterations with the ZBA and review by the Planning Board, Design Review Committee, The Historic Commission, Engineering and Conservation Commission. The Scale, Mass, Stormwater Management, Historic effects and Design were approved by the ZBA subject to the Order of Conditions and the plans submitted.

The design, as approved, would have situated the foundation below the High-Water Table. This would potentially create a significant long term structural defect in the building, with the foundation subject to the stresses of the rising water table.

The petitioner seeks to address this issue by raising the proposed slab elevation above the High-Water Table, the proposed elevation of the slab would be about 3.6 feet higher than the previous approved plans. The ridge height would be raised correspondently by a similar amount. The Landscape plan would be modified to create raised flat beds around the newly raised structure.

We are reviewing this petition based on the changes made from the Decision 3902 dated August 14, 2020. The mass of the building, the location, the landscaping, the Design and the historic significance were addressed in the prior decision. We are examining the petition based on changes to the Stormwater Analysis and Remediation, grade changes around the structure, and height of the overall structure on the lot.

New construction of one or more buildings resulting in floor area equal to or greater than 5,000 square feet in RDB-10 zoning district requires a Site Plan Review from the Board of Appeals. Change in the slope of greater than 6% over 500 square feet requires a Site Plan Review from the Board of Appeals.

Site Plan Approval shall be granted only upon determination by the Board that the plan meets the following standards. The Board may impose reasonable conditions at the expense of the applicant to implement these standards. New building construction and other site alterations shall be designed, after considering the qualities of the specific location, the proposed land use, the design of the buildings, grading, egress points, and other aspects of the development, so as to:

1. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places;
2. Minimize any adverse effect on any Historic Resource;
3. Minimize the volume of cut and fill, the number of removed trees six inches in caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, soil erosion, and threat of air and water pollution;
4. Provide adequate storm water management and other utilities consistent with the functional requirements of the Planning Board Subdivision Rules and regulations;
5. Maximize pedestrian and vehicular safety both on the site and egressing from it;

6. Provide adequate access to each structure for fire and emergency service equipment;
7. Minimize obstruction of scenic views from publicly accessible locations;
8. Minimize visual intrusion by controlling the visibility of parking, storage, utilities such as HVAC systems and transformers, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
9. Minimize glare from headlights and lighting intrusion;
10. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances; and
11. Ensure compliance with the provisions of this Zoning Bylaw, including parking, signs, landscaping and environmental standards.

The discussion of Site Plan Approval will focus on Items, 1, 3, 4 and 11 as the standards that are most critical to this proposal. The remaining items were addressed in the original approval or were not material to this Decision.

Item 1. The change in height of the dwelling of 3.7 feet does not present a meaningful departure from the originally approved structure. The garage will remain at the original height and minimize the perceived height of the building. The overall height remains about 5 feet below the dimensional limits for building height.

Item 3. The submitted plans for the "raised house" include raised areas around the foundation. The slope of these areas will remain essential level, with small retaining walls creating the bed area. The prior and approved slope was level (zero degrees) and the new slope will retain that level. Because the level does not change, we do not view the section 9.5.1 (7) to be applicable, and therefore find the filling around the foundation does not constitute a change of grade in this property. Further the intent of section 9.5.1 (7) was to create a review process for changing the slope of yards, often through large walls, terraces and fences, that created dramatic visual and drainage impact to neighbors. This change does not impact any neighbors' views or create unsightly boundaries.

Item 4. The petitioner has worked with the Town Engineer to satisfy the stormwater management plan, infiltration design and storage. Engineering Department has approved the plans that were presented. At the completion of the project the petitioner shall provide an as-built plan and certification by the engineer of record confirming the system was installed per the approved plan prior to the issuance of a Certificate of Occupancy.

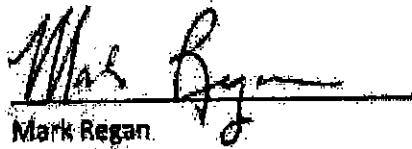
The Conservation Commission must determine if the Order of Conditions issued for the property needs to be amended. If the Order of Conditions has substantial amendments requiring changes to the location of the buildings or other structures, or significant redesign of the stormwater remediation and infiltration plans, and if the Winchester Town Engineer is not satisfied with the petitioner's response to the amended Order, then the petitioner must come before the ZBA for a Site Plan Review.

Item 11. Petitioner required to apply for a curb cut. The curb cut shall be no wider than 20 feet and meet Zoning By-Law Section 5.1.10.

Taking into account the various conditions set by the Board and plans submitted by the petitioner, the **criteria for the Site Review have been met.**

Thus, the Petitioners' requests for Site Plan Review of their proposals to construct a new single-family dwelling where the total floor area of the building will be greater than 5,000 square feet is **granted**, subject to the above-described conditions and limitations. Petitioner's request for a site plan review for a change in slope of greater than 6% over 500 square feet is **granted**.

Board of Appeals


Mark Regan

Date of Decision: July 27, 2021