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**TOWN OF WINCHESTER
BOARD OF APPEALS**

2021 OCT 25 AM 10: 25

Petition No. 3947
71 Nelson Street

TOWN CLERK
TOWN OF WINCHESTER

PETITIONER: Gerald and Leyla Kimball

REPRESENTATIVE: Keith H. Smith

APPLICATION FOR: The petitioner seeks a special permit under Section 3.5.3 and Section 9.4 of the Winchester Zoning By-Law and Chapter 40A, Section 9, of the Massachusetts General Laws, to add a second story to a first story structure of the house at 71 Nelson Street that is closer to the side property line than permitted by right.

DATE OF HEARING: Scheduled for August 19, 2021. Continued and heard on September 2, 2021.

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

DECISION: Granted

VOTE: Unanimous

CONDITIONS:

- a. Include corner boards on the addition that match the corner boards of the existing house.
- b. Include a real bracket between the underside of the cantilevered portion of the second-story addition and the wall below to provide a visual indication of support for the cantilevered portion. The bracket should not be merely a small extension of the wall and should be in keeping with the scale and design of the house.
- c. Align the proposed windows over the first-story windows or center the proposed windows.

FACTS: The petitioner asks for a special permit to add a second story to a 12-foot by 12-foot one-story structure at the rear of the house at 71 Nelson Street. Because the house is in an RG district under the Zoning By-law, the setback at the side of the house where the one-story structure and the proposed second story addition are located is required to be at least 10 feet (Table of Dimensional Requirements). The actual setback is only 6.4 feet and therefore non-conforming.

The house was constructed in 1870. The one-story structure, built in the 1960's, is out of character with the existing structure. The proposed second-story addition will have a gabled roof pitched to match the original house roof. The house, like other houses in the neighborhood, is vinyl sided.

The neighborhood is densely built and includes houses of various ages, sizes, and styles, many of which appear to have been constructed before the enactment of the Zoning By-law and have non-conforming setbacks from the lot boundaries. Additions and improvements have been made to some of the houses.

The petitioner proposes to match the materials, windows, trim, and siding of the new second story addition to the materials of the existing house and to make the patterns and proportions of the windows consistent with those of the existing house.

**DOCUMENTS
CONSIDERED**

Forms 2, and 2F

Plot plan (May 20, 2021)

Assessor's map (May 25, 2005)

Architectural drawings (May 4, 2021) and revision

Photographs provided by the petitioner

Written answers to questions posed by one of the members of the Board of Appeals through the clerk to the petitioner

Winchester Planning Board (August 18, 2021)

Winchester Design Review Committee (August 4, 2021)

Winchester Historical Commission (July 26, 2021)

Winchester Conservation Commission (July 19, 2021)

DISCUSSION:

Section 3.5.3 of the Zoning Bylaw empowers the Board of Appeals to grant special permits with respect to nonconforming structures. Section 9.4.2 of the Zoning Bylaw lists the criteria for granting special permits. Section 10 of the Zoning Bylaw defines "special permit." These sections are quoted in part below, with emphasis added. Discussion points by the Board of Appeals are interleaved with the quotations and are presented in italicized type.

Section 10

"SPECIAL PERMIT. A use authorized by special permit is a use that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, area, location or relation to the neighborhood would promote the public health, safety, welfare, order, comfort, convenience, appearance, prosperity, or general welfare

The Board of Appeals finds that the proposed addition would promote the public prosperity and general welfare by maintaining and enhancing one house that is an integral part of the housing stock in the neighborhood.

Section 3.5.3

"The Board of Appeals may grant a special permit to reconstruct, extend,

alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. ..."

Because the proposed second-story addition is in the rear of the house and its design (including the gable roof) is more visually sympathetic to the design of the original house than was the first-floor structure, the Board of Appeals determines that the project is not substantially more detrimental to the neighborhood than the existing non-conforming structure.

Section 9.4.2

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.

Although the proposed second-story addition may impose certain adverse effects on the next-door neighbor, it is a small addition located at the rear of the house, and the Board of Appeals finds that it has no significant adverse effect on the town or the 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 buildings in the neighborhood, including the house at 71 Nelson Street, are relatively small houses of a variety of ages, scale, and materials. The materials of the proposed second-story addition will match the materials, windows, trim, and siding of the existing house. And the patterns and proportions of the windows are to be consistent with those of the existing house.

The Board of Appeals finds that the building forms and materials are 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):

The change of the roof line to a gable roof with a pitch like that of the existing house will add character to the neighborhood to the extent that it is visible.

c. Patterns and proportions of windows are consistent;

See 4.a. above.

5. Adequacy of proposed screening and buffering;

The screening and buffering, unchanged by the proposal, will be as adequate as in the existing conditions.

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 Conservation Commission does not have jurisdiction.

2. The Planning Board recommended favorable action and recommended that the existing shed located on the property line should be relocated to be in conformance with setback requirement (3.3.2.4).

The Board of Appeals has not imposed this condition as it is not related to the project being proposed.

3. The Historical Commission found no adverse effect on a historical or cultural resource.

4. The Design Review Committee recommended unfavorable action and made the following suggestions:

a. The corner boards on the existing house should be shown on the plans and matching corner boards should be included on the addition.

b. The cantilevered portion of the proposed second story addition should have a post or wall extension to anchor it. It need not be structural but aesthetically it is needed for balance.

c. Proposed windows should align or be centered over the first story windows.

d. Rooflines are close but do not align. Show cornice boards and investigate extending existing roof line.

Items a, b, and c will be imposed as conditions. With respect to item b, the applicant will include carved brackets to visually indicate support for the cantilevered portion of the second story.

Subsequently the Design Review Committee recommended that the bracket added to aesthetically balance the cantilevered portion of the proposed second-story addition be a distinct element and not a continuation of the wall as shown on the revised design. The Design Review Committee recommended favorable action with two conditions: a. Make the bracket decorative, in keeping with the scale and design of the house. b. Make it a real bracket, not just a small extension of the wall.

DECISION:

A special permit is granted under section 3.5.3 and Section 9.4 of the Winchester Zoning By-Law and Chapter 40A, Section 9, of the Massachusetts General Laws, to permit the petitioner to add a second story to the first story structure at the rear of the house at 71 Nelson Street according to the submitted plans and subject to the conditions stated above.

BOARD OF APPEALS, BY:

David L. Feigenbaum

David L. Feigenbaum

DECISION DATED:

10/22/21