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**TOWN OF WINCHESTER
BOARD OF APPEALS**

2022 JAN 13 AM 11:10

Petition No. 3948
33 Dunster Lane

TOWN CLERK
TOWN OF WINCHESTER

PETITIONER: Marcos J. Silva and Lucas D. Silva

APPLICATION FOR: Site plan approval under Section 9.5.1(6) of the Winchester Zoning By-Law to construct a new single-family dwelling at 33 Dunster Lane having a total floor area greater than 3,600 square feet.

DATE OF HEARING: Heard on and continued from meetings on August 19, 2021, September 2, 2021, September 16, 2021, and October 21, 2021. Decided on November 18, 2021.

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

DECISION: Site Plan Approval is granted. The Site Plan Approval shall not be effective unless and until the petitioner has met the conditions listed below has and carried on the construction in conformity with the application and the site plan submitted by the petitioner, all as confirmed by the Building Commissioner/Zoning Enforcement Officer at final inspection and prior to the issuance of a certificate of occupancy.

VOTE: Mark Waterbury and Robert Tedesco in favor. David L. Feigenbaum against.

MATERIALS CONSIDERED: Forms 2 and 2D (July 15, 2021)
Hydrocad Calculations of H-Star Engineering (June 28, 2021)
Drainage and Erosion Control Analysis of H-Star Engineering (June 28, 2021)
Landscape plan (July 1, 2021)
Revised landscape plan (September 20, 2021)
Revised landscape plan (September 24, 2021)
Architectural and structural plans (June 29, 2021)
Revised architectural and structural plans (September 15, 2021)
Revised architectural and structural plans (November 10, 2021)
Revised architectural and structural plan and site plan (November 19, 2021)
Assessor's maps
Plot plan by H-Star Engineering (June 28, 2021)
Plot plan (July 7, 2021)

Revised plot plan by H-Star Engineering (August 28, 2021)
Engineering Department memoranda (July 21, 2021, and August 31, 2021)
Design Review Committee minutes (August 4, 2021)
Conservation Commission notice of jurisdiction (August 11, 2021)
Conservation Commission Order of Conditions (October 5, 2021)
Historical Commission minutes (July 26, 2021)
Planning Board report (August 18, 2021)
Email request for additional information (August 7, 2021)
Email exchange with neighbors (ending October 5, 2021)

THE LAW:

Section 9.5.1(6) of the Zoning By-law requires site plan approval from the Board of Appeals before commencing new construction or expansion of one or more buildings resulting in floor area equal to or greater than 3,600 square feet in the RG-6.5 zoning district.

Section 9.5.7 requires that new building construction 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 meet the criteria discussed below.

Section 9.5.8 requires that "in the event that the Board of Appeals approves a site plan under these provisions, any construction, reconstruction, substantial exterior alteration or addition shall be carried on only in conformity with any conditions, modifications and restrictions subject to which the Board shall have made its findings and determination, and only in conformity with the application and site plan on the basis of which the finding and determination are made."

**REPORTS
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Design Review Committee. The Design Review Committee recommended unfavorable action for the following reasons.

- a. The proposal is an unreasonable departure from the character, materials and scale of buildings in the vicinity, so does not meet the requirements in 9.5.7.1 of the Zoning ByLaw.
- b. DRC objects to the garage, which protrudes from the front of the house and is closer to the street than the front of the house. DRC recommends pushing the garage back behind the front façade of the house.
- c. There is no continuity in the proportion of the windows and window mullions.
- d. Front façade is busy with too many different roof lines and window types.

c. A significant number of large trees were removed from the property. Landscape plan should include deciduous and evergreen tree plantings of a density similar to the original condition: 9.5.7.11.

f. Proposed plants should be organized to create useable outdoor spaces and to screen views of neighboring properties: 9.5.7.11."

Historical Commission. The Historical Commission had issued a demolition delay on October 7, 2019. The delay expired and the existing house was demolished. At its meeting of July 26, 2021, the Historical Commission found that the plans as submitted have no adverse impact on a historical or cultural resource with the condition that the garage of the constructed property not extend past the porch or façade of the house.

Planning Board. At its August 17, 2021 meeting, the Planning Board recommended favorable action "with two conditions ...

1. The design [should] not prioritize the garage, by, for example aligning the garage with the main façade.

2. ... [L]andscaping [should be used] to mitigate the views of the neighbors.

..."

Conservation Commission. The conservation commission issued an Order of Conditions on October 5, 2021.

Disability Access Commission. The Disability Access Commission made no recommendation and 35 days have elapsed under section 9.5.5 of the Zoning By-law since the application and site plan were sent to the Commission.

DISCUSSION:

The petitioner proposes to build a new house at 33 Dunster Lane (in the RG-6.5 zoning district) that has a floor area greater than 3,600 square feet.

The specific location of the new house is on a residential street on which other houses of various styles, sizes, and ages are located. The proposed use of the land is for a single-family dwelling under the Table of Use Regulations. The design of the house, grading, egress points, and other aspects of the project are shown in the most recent architectural and site plans dated November 19, 2021, which were provided following the closing of the hearing on November 18, 2021, and reflect revisions to meet the conditions imposed by the Board.

In connection with successive sessions of the hearing, the petitioner presented successive versions of architectural and structural plans and landscape plans in response to comments of members of the Board. The changes of the successive versions included adjustments to the rooflines, the window placements, and the location of the front of the garage relative to the façade of the house. At the final session of the hearing, the Board decided to condition the grant of site plan approval as indicated in items a.

and b. in the list of conditions below. After the final session, the petitioner submitted revised drawings conforming to those conditions.

**Application of
criteria:**

The criteria for granting site plan approval and the Board's analysis (*in italics*) of each of them are as follows:

1. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity;

The Board pointed out respects in which the proposed house did not minimize unreasonable departure from the character of buildings in the vicinity. The petitioner responded by revising the plans for the house to the satisfaction of the Board and subject to the conditions below.

David Feigenbaum thought the entrance of the garage should be placed farther back and closer to the façade on which the front door is located, and for that reason, he voted against site plan approval.

2. Minimize any adverse effect on any historic resource.

An existing house was demolished at 33 Dunster Lane. A hearing on an application for a demolition permit was held by the Historical Commission on October 7, 2019, a delay was imposed because the house was deemed an historic resource, and the house was demolished prior to the hearing before this Board. Other than observing the demolition delay, there is no evidence before this board whether the petitioner took steps to minimize any adverse effect on any historic resource.

3. Minimize the volume of cut and fill, the number of removed trees six (6) inches in caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, soil erosion;

The board did not consider this criterion beyond any consideration that may have been given by the Conservation Commission.

4. Provide adequate stormwater management and other utilities consistent with the functional requirements of the Planning Board Subdivision Rules and Regulations;

The Board relied on the Engineering Department and Conservation Commission with respect to this criterion.

5. Maximize pedestrian and vehicular safety, both on the site and egressing from it;

Because of the residential context on a quiet street and the nature of the proposed house, this criterion does not appear to be of concern.

6. Provide adequate access to each structure for fire and emergency service equipment;

This criterion does not appear to be of concern.

7. Minimize obstruction of scenic views from publicly accessible locations;

Because of the location and nature of the proposed house, this criterion does not appear to be of concern.

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;

This criterion was not considered.

9. Minimize glare from headlights and lighting intrusion;

Because of the residential context and the nature of the proposed house, this criterion does not appear to be of concern.

10. Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;

This criterion does not appear to be relevant.

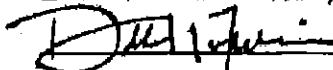
11. Ensure compliance with the provisions of this Zoning Bylaw, including parking, signs, landscaping, and environmental standards.

This criterion was not considered.

CONDITIONS:

- a. Addition of windows to the side wall of the garage as shown in the drawing set of MF Engineering & Design, Inc., dated November 19, 2021.
- b. Addition of arbor vitae or equivalent plants to screen the sides of the house from the abutting properties as shown in the drawing set of MF Engineering & Design, Inc., dated November 19, 2021.
- c. The conditions stated in the October 5, 2021, Order of Conditions of the Conservation Commission.
- d. The requirements stated in the August 31, 2021, memorandum of the Engineering Department.

BOARD OF APPEALS, BY:



David L. Feigenbaum

DECISION DATED:

1/13/22