



Town of Winchester
BOARD OF APPEALS
Town Hall 71 Mt. Vernon Street, Winchester, MA 01890
Phone 781-721-7115 Fax 781-721-9935
Janine L. Viarella, Clerk

April 20, 2022

Re: Decision No. 3951 - 44 Clark Street, Winchester,
MA

Pursuant to Chapter 40A, Section 15 of the Massachusetts General Laws, you are hereby notified that the Board of Appeals has denied Mark Donnellan a Special Permit under Sections 3.5.5, 3.5.7 and 9.4 of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws so as to be permitted to demolish a pre-existing non-conforming single family dwelling located on a lot which does not meet the lot area, lot frontage and lot width requirements and to construct a new single family dwelling that will be located closer to the front and side property lines than permitted as of right. The property is located in the RG (General Residence) zoning district and contains 6,181 square feet.

Appeals from this decision, if any, must be made pursuant to Chapter 40A, Section 17 of the Massachusetts General Laws and must be filed within twenty (20) days after the date of filing of this decision in the Office of the Town Clerk.

Janine L. Viarella
Clerk, Board of Appeals

/jv

TOWN OF WINCHESTER
BOARD OF APPEAL
Decision No. 3951
44 Clark Street

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TOWN CLERK
TOWN OF WINCHESTER

Name of Petitioner: Mark Donnellan

Application For: Special Permit from Section 3.5.5, 3.5.7 and 9.4 of the re-codified Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws so as to be permitted to demolish a pre-existing non-conforming single family dwelling located on a lot which does not meet the lot area, lot frontage and lot width requirements and to construct a new single family dwelling that will be located closer to the front and side property line than permitted as of right. The property is located in the RG-6.5 (General Residence) zoning district and contains 6,181 +/- square feet.

Date of Hearing: November 18, 2021, December 16, 2021 and January 20, 2022.

Board of Appeal: David Feigenbaum, Robert Tedesco and Dorothy Simboli.

Decision: Denied

Vote of the Board: 2 in favor, 1 opposed

Plans submitted: The following documents were submitted in connection with the petition for this Special Permit:

- a. Plot Plan entitled "Plot Plan in Winchester, Mass." Scale 1" = 20' dated August 10, 2021, prepared by Keenan Survey, 8 Winchester Place, Suite 208, Winchester, Mass, consisting of one sheet.
- b. Site Plan Scale 1" = 10' entitled "Site Plan 44 Clark Street in Winchester, Massachusetts (Middlesex County) prepared for Mark Stephen Development, LLC" and dated October 11, 2021, prepared by Frederick W. Russell, PE, 154 Aldrich Road, Wilmington, MA 01887, Sheet No. 1 of 1 and Stormwater Analysis prepared by Frederick W. Russell, PE, dated October 11, 2021.
- c. Proposed Plans Scale ¼" = 1" entitled "44 Clark St Project" dated August 25, 2021, prepared by Daus - Haberle Design, Peter Daus-Haberle, 63 N. Hancock St., Lexington, MA 02420, consisting of 7 of 12 drawings.

- d. Assessors Map 39 Plan Scale 1" = 100' dated May 25, 2006, showing Lot 44 as Lot 55-59.
- e. Board of Appeals Forms 2 and 2F
- f. Neighbor petition in support (8 signatures)
- g. Photos

Facts:

Petitioner owns the locus at 44 Clark Street, a single-family dwelling which predates the Zoning By-Law. The existing dwelling built in 1890 is pre-existing non-conforming as to the front yard setback which is 9.6 feet where 20 feet is required, as to the left side yard set back which is 9.8 feet to the property line where 10 feet is required, and as to the right yard setback which is 5.6 feet where 10 feet is required (predates the yard set-back requirement).

The proposed dwelling would utilize the existing foundation and extend or rebuild the existing back addition with a new foundation. The front footprint of the dwelling would remain the same with regard to both the width and depth of the existing structure so that there would be no increase in nonconformity of the pre-existing non-conforming front yard setback and right and left side yard setbacks.

The Petitioner proposed to rebuild the dwelling consistent with the existing dwelling being classic colonial architecture, except taller, with a height of approximately 28'3" of side elevation and 27'9" on front elevation (existing height is approximately 21'2") and with an extension/addition on the rear of the structure. The Petitioner had earlier represented that the proposed height was approximately 28'6". The existing single car driveway was intended to be extended to accommodate two cars, parked in tandem.

The Historical Commission minutes from October 25, 2021 noted that they had imposed a twelve-month demolition delay on the proceedings during their September 13, 2021 meeting but lifted the delay during their September 27, 2021 meeting. The basis for the lifting of the delay was not detailed. The minutes from the October 25, 2021 meeting indicated that not one of the commissioners strongly supported the demolition and rebuild as described on the Petitioner's Proposed Plans. Commissioner Clemson stated "the historical significance of the property was derived from its contribution to the cohesive historic architecture of the street" and "the new construction would not fit into the historic built environment" and "the construction of the proposed property would have an adverse effect on the historic or cultural resources of the town." Chair LeMenager expressed dismay that the Petitioner had written that the property was not historically significant even though it was, and that the Petitioner's "assessment of the historical value of the property was contrary to the Historical Commission's ruling." The Commission's minutes also stated that it was "important that the ZBA understood the Historical Commission's position that the property at 44 Clark Street was historically

significant." Commissioner Boswell indicated that she was not comfortable lifting the delay and did not want to recommend favorable action to the ZBA. Neither Commissioner McCarthy nor Commissioner Carlisle made a motion. Commissioner Carlisle acknowledged that the concerns raised were legitimate. The Historical Commission also submitted a PDF of an MHC Area Form from 2007 supporting the historical merit of 44 Clark Street. Without explanation to their vote, and despite the concerns detailed above, the Historical Commission voted 4 in favor and 2 opposed, with 1 absent.

The Design Review Committee minutes from November 3, 2021 voted favorable action, 5-0 for the Special Permit noting Clark Street was an area of transition given the eclectic mix of small, medium sized and larger dwelling in the neighborhood. The Design Review Committee also noted that the neighbors supported the new construction and that the proposed design was compatible with the evolving community.

The Engineering Department noted in its Memorandum dated October 25, 2021 multiple recommendations and requirements including but not limited to clean-out on roof drain connections, stabilization of construction entrance, CB inlet protection, how future owners are to be notified about the presence of stormwater management and to update drain inlet protection distance from 50 feet to 200 feet. Engineering also noted that the property was within 200 feet of a water resource and complete filings as required by the Conservation Commission.

The Fire Department had no objections to the proposed addition.

The Planning Board minutes dated November 16, 2021 voted favorable action 5-0, conditioned on the Engineering Department's recommendation that the Conservation Commission determine if the property is within the Commission's jurisdiction with regard to its distance to Horn Pond Brook and to align the front windows and center the entryway so that the front façade was symmetrical. The minutes also noted that a landscape plan was not presented and was needed, and also discussed grade changes, restrictions thereof and infiltration system given the additional 185 square feet of additional impervious surface.

The Conservation Commission confirmed by email to the Building Department that the property lies within the Conservation Commission jurisdiction and would require the filing of a Notice of Intent. At the time of this decision, the Conservation Commission had not yet made its decision. The hearing was scheduled for February 8, 2022.

Discussion:

Pursuant to Section 3.5.5 of the re-codified Zoning By-Law, this Board may grant a Special Permit to enlarge or extend an existing non-conforming one or two-family dwelling where the proposed modifications "will not be substantially more detrimental than the existing nonconforming structure to the neighborhood." Petitioner seeks to demolish and rebuild an existing non-conforming structure by constructing an addition that will be closer to the front property line and side property lines than permitted as of right.

Given the discussion of Section 9.4.2 below and the failure of the Petitioner to obtain Conservation Commission approval, the Board has not determined whether the location of the structure on this property constituted a condition pre-existing to the applicable requirements of the Zoning By-Law and whether the proposed demolition, rebuild and addition and modifications to the property would not be substantially more detrimental to the neighborhood than the existing non-conforming structure.

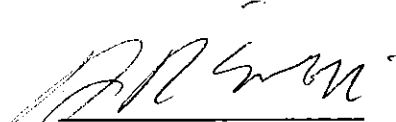
Under Section 9.4.2, the re-codified By-Law requires that this Board shall consider and address how the following criteria have an effect on this petition:

1. Community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character, including historic resources and social structures;
5. Adequacy of proposed screening and buffering;
6. Impacts on the natural environment; and
7. Potential fiscal impact, including impact on town services, tax base and employment.
8. Impacts on Historic Resources, as defined in Section 10 of the Bylaw.

This Board finds that the subject property and neighborhood has historical significance and that the proposed demolition and rebuild, especially given the increased height of over 7 feet would have a significant impact on Town's Historic Resources, including a further impact the surrounding neighborhood and the Town of Winchester, in general.

Thus, Petitioner's request for a Special Permit to demolish and rebuild the existing non-conforming structure is hereby denied.

Board of Appeals



Dorothy R. Simboli

April 20, 2022

Date of Decision