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TOWN OF WINCHESTER
BOARD OF APPEALS

2022 AUG 18 PM 2:27

Petition No. 3971
113 Church Street

TOWN CLERK
TOWN OF WINCHESTER

PETITIONER: Lauren and Trevor Dean

APPLICATION FOR: Special Permit under Section 3.5.5 of the Winchester Zoning By-Law to construct an addition that will be located closer to the side property line than permitted as of right.
Site Plan Review under Section 9.5.1(5) of the Winchester Zoning By-Law to construct an addition where the total floor area of the house and the garage is greater than 5,000 square feet. The property is located in the RDB (Single Residence) zoning district and contains 15,886 +/- square feet.

DATE OF HEARING: Heard and decided on July 28, 2022.

BOARD OF APPEALS: David Feigenbaum, Robert Tedesco, and William McGonigle

VOTE: David Feigenbaum, Robert Tedesco, and William McGonigle in favor.

DECISION: The Special Permit is granted and the Site Plan is approved effective as of the date when the following conditions have been met.

CONDITIONS:

1. Completion of the work. All construction, reconstruction, substantial exterior alteration or addition shall be carried out only in conformity with the application (including all forms, drawings, and exhibits) and other materials, statements, and representations on the basis of which this decision has been made.
2. Submission to the Building Commissioner/Zoning Enforcement Officer of a signed certificate of the applicant and/or contractors confirming the completion and compliance with these conditions.
3. All of the conditions set forth in writing by the Engineering Department in its letter of July 28, 2022, including the following:
 - a. The Engineering Department shall be notified a minimum of 48-hours prior to installation of the sub-surface infiltration system.
 - b. Applicant shall provide an as-built plan and certification by the engineer of record confirming the infiltration system was

installed per the approved plan prior to the issuance of a Certificate of Occupancy permit.

c. As-built plans and O&M plans shall meet requirements as described in 5.8.d of the Sewer and Storm Drain Regulations <https://www.winchester.us/DocumentCenter/View/136/Public-Sewer-and-Storm-Drain-Regulations-PDF?bidid=>

d. Upon completion of work, the engineer of record for the project shall certify that:

"Based on site observations by myself or an employee under my direct supervision and/or based on information provided by a registered land surveyor, I hereby certify that all grading, stormwater management systems, water, sewer and other utilities have been constructed in substantial conformance with the approved plans, except as noted herein. I further certify that the drainage and stormwater management system, as constructed, will operate (1) as designed by the engineer of record and (2) as approved by the Town."

e. Applicant shall record the As-Built Plans and O&M Plan at the Middlesex County Registry of Deeds within thirty (30) days of completion of the project."

f. Civil Plans to be updated to include a stabilized construction entrance.

g. Plans to be updated and approved by the Engineering Department prior to the issuance of a Building Permit."

**MATERIALS
CONSIDERED:**

The Board received the following documents:

- Form 1 (Zoning Application checklist)
- Form 2 (Application for Zoning Hearing)
- Form 2F (Special Permit (Nonconforming Single and Duplex Residential Structures))
- Form 2I (Site Plan Approval)
- 3-D Video Dean 0329 Existing
- 3-D Video Dean 0329 Exterior
- Plot Plan by Edward J. Farrell, Professional Land Surveyor dated May 3, 2022
- Plans by Guy Dixon, AIA (D-1.1, A-1.1, A-2.1, A-2.2)
- Existing Condition photos (EX.1, EX.2, EX.3)
- 3D Views by Guy Dixon, AIA (3D-1, 3D-2, 3D-3)
- Geo_GSA Drainage/Grading plan (C-0, C-1)
- Geotec_Report 6.2.2022
- Landscaping Plan, Layout and Materials Plan (L-1) by Olmsted Design
- Massachusetts Cultural Resource Information (32 pages)

- Memo from Beth Rudolph, PE – Town Engineer and Bryan Manter, PE – Assistant Town Engineer dated July 28, 2022
- Design Review Committee – Meeting minutes July 6, 2022
- Planning Board comments 7/27/22
- Historical Commission comments 7/11/22
- Conservation Commission comments dated 7/6/22
- Fire Department comments dated 7/6/22
- Photos (11 pages with list key)

**REPORTS
RECEIVED:**

Historical Commission. Found no adverse impact on a historic or cultural resource.

Town Engineer.

“...
...

- The Engineering Department shall be notified a minimum of 48-hours prior to installation of the sub-surface infiltration system.

...

- 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.

- As-built plans and O&M plans shall meet requirements as described in 5.8.d of the Sewer and Storm Drain Regulations
<https://www.winchester.us/DocumentCenter/View/136/Public-Sewer-and-Storm-Drain-Regulations-PDF?bidId=>

- Upon completion of work, the engineer of record for the project shall certify that:

“Based on site observations by myself or an employee under my direct supervision and/or based on information provided by a registered land surveyor, I hereby certify that all grading, stormwater management systems, water, sewer and other utilities have been constructed in substantial conformance with the approved plans, except as noted herein. I further certify that the drainage and stormwater management system, as constructed, will operate (1) as designed by the engineer of record and (2) as approved by the Town.”

- Applicant shall record the As-Built Plans and O&M Plan at the Middlesex County Registry of Deeds within thirty (30) days of completion of the project.”

“...
...

- If the Zoning Board of Appeals approves the Special Permit request for 113 Church Street the Engineering Department recommends a condition be

made for the Civil Plans to be updated to include a stabilized construction entrance.

Plans to be updated and approved by the Engineering Department prior to the issuance of a Building Permit."

Design Review Committee

"- The additions are in the rear of the building so will not be visible from the street.

- The pitches of the proposed roofs are very shallow and may have issues with draining in winter conditions.

...

Favorable action with one condition:

- Study the new roofs for steeper pitches over the proposed mud room and family room.

Conservation Commission. No jurisdiction.

Planning Board.

"The property is located in the RDB zoning district and contains 15,886 square feet. The house was built in 1895 and is a Contributing Resource as part of the Wedgemere Historic District.

... The Board determined that the additions would not significantly impact the look of the house from the street, and that the materials and finishes seem to match well the existing structure's design.

... The Board voted 5-0 to recommend favorable action on the Special Permit.

... The Board voted 5-0 to recommend favorable action on the Special Permit [sic. - Site Plan]."

DISCUSSION
Application of
Legal Criteria

The texts of relevant sections of the Winchester Zoning Bylaw are set forth below followed by the analysis of the Board of Appeals with respect to the proposed project.

Site Plan Review

Section 9.5.7

"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;

The applicant provided photographs of other houses in the vicinity. The character, materials and scale of the proposed additions minimize

unreasonable departures from the character, materials, and scale of the buildings in the vicinity.

2. Minimize any adverse effect on any historic resource;

The house is a contributing resource to the Wedgmore Historic District described on Form A of the Massachusetts Historical Commission. Although the proposed additions may be considered to have an adverse effect on the historic resource, in particular in respect of the pitch of the roof as noted by the Design Review Committee, the adverse effect has been minimized.

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 accepted the applicant's assertions that this criterion is not applicable.

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

Based on the report of the Engineering Department, the proposed project provides adequate stormwater management consistent with the functional requirements of the rules and regulations.

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

The Board accepted the applicant's assertions that this criterion is not applicable.

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

The Board accepted the applicant's assertions concerning this criterion.

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

The Board accepted the applicant's assertions concerning this criterion.

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;

The Board accepted the applicant's assertions concerning this criterion.

9. Minimize glare from headlights and lighting intrusion;

The Board accepted the applicant's assertions that this criterion is not applicable.

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;

The Board accepted the applicant's assertions that this criterion is not applicable.

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

Except for provisions of the Zoning Bylaw covered elsewhere in this discussion, the Board did not consider this factor.

Special Permit

"9.5.2 Criteria

Unless otherwise specified in Section 3.5 or elsewhere in this bylaw, 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. In addition to any specific factors that may be set forth in this bylaw, 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 Board accepted the apparent assertion by the applicant that no community needs are served.

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

The Board accepted the applicant's assertion that this factor is not applicable.

3. Adequacy of utilities and other public services;

The Board accepted the applicant's assertion that there are no relevant effects.

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;

While noting the roof pitch issue raised by the Design Review Committee and that the only study of this issue by the applicant was to conclude that an alternative roof pitch would be more expensive, the Board finds the building forms and materials 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); and

The Board accepted the applicant's assertions regarding architectural features.

c. Patterns and proportions of windows are consistent;

The Board accepted the applicant's assertions regarding the windows.

5. Adequacy of proposed screening and buffering;

The Board accepted the applicant's assertions regarding screening and buffering.

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

The Board accepted the applicant's assertions regarding impacts on the natural environment.

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

The Board accepted the applicant's assertion that there would be no fiscal impacts.

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

Although the proposal will impact the historic resource represented by the house, the Board finds the impact acceptable.

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

Non-conforming structures

"3.5.3 Nonconforming Structures.

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. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

1. Reconstructed, extended, or structurally changed; and

2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent."

The Board considers the proposal not to be substantially more detrimental than the existing nonconforming structure to the neighborhood.

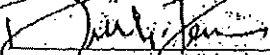
"3.5.5 Nonconforming Single and Duplex Residential Structures.

Nonconforming single and duplex residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

In any other case, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood."

The Board considers the proposal not to be substantially more detrimental than the existing nonconforming structure to the neighborhood.

BOARD OF APPEALS, BY:



David L. Feigenbaum

DECISION DATED:

8/17/2022