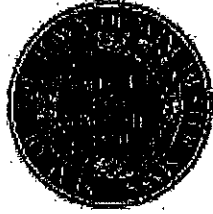


TOWN OF WINCHESTER

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TOWN CLERK
TOWN OF WINCHESTER



PUBLIC MEETING NOTICE and AGENDA

REMOTE PARTICIPATION
(Due to State of Emergency COVID-19)

Revised

Pursuant to MGL Ch. 30A, Sec. 18-25 All meeting notices and agendas must be filed and time stamped by the Town Clerk's Office and posted at least 48 hours prior to the meeting (excluding Saturdays, Sundays and Holidays) on www.winchester.us

Board/Committee Name: Board of Appeals
Date: April 27, 2022
Time: 7:00PM
Place: REMOTE PARTICIPATION - Zoom

Register in advance for this meeting:
<https://us02web.zoom.us/meeting/register/tZloc-Ctpz0uHtYGIex8oS0d41bzyt8aXgog>

After registering, you will receive a confirmation email containing information about joining the meeting.

Agenda:

- Petition No. 3955 – 65 Cambridge Street (continued from March 31, 2022)
- Review draft decision – Petition No. 3957 – 59 Holland Street



REMOTE PARTICIPATION PUBLIC HEARING CONTINUED TO APRIL 27, 2022 AT 7:00PM.

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a REMOTE PARTICIPATION PUBLIC HEARING on THURSDAY, MARCH 31, 2022 at 7:00 P.M. on the following matter:

PETITION NO. 3955 - That of WINCHESTER BOAT CLUB concerning the property at 65 CAMBRIDGE STREET, WINCHESTER, MA. The petitioners are seeking an appeal under Section 9.3.3(3) of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 8 and 15 of the Massachusetts General Laws from the Building Commissioner/Zoning Enforcement Officer's order dated January 3, 2022 requiring the Petitioner to remove arborvitaes planted along Everett Avenue. The property is located in the RDB (Single Residence) zoning district and contains 91,563 +/- square feet.

WINCHESTER BOARD OF APPEALS

Petition may be viewed at the Building Department during regular office hours or on the Board of Appeals web page www.winchester.us

Link to the meeting can be found on the Government Calendar and the Board of Appeals web page www.winchester.us

**TOWN OF WINCHESTER
BOARD OF APPEALS**

 **DRAFT**

**Petition No. 3957
59 Holland Street**

PETITIONER: Anthony Pioli and Seta Keusey

APPLICATION FOR: Special Permit from Section 3.5.5 of the Winchester Zoning By-law in accordance with Chapter 40A, Section 9 of the Massachusetts General Law so as to be permitted to construct an addition that will be located closer to the front property line than permitted as of right. The property is located in the RG (General Residence) zoning district and contains 7,595 +/- square feet.

More specifically: the Petitioners seek to remove their existing front porch/vestibule and replace it with a wider front porch. The existing front porch/vestibule is 11.5 feet from the property line. The proposed front porch is 0.9 feet further back from the property line, but still sufficiently close to require a Special Permit.

DATE OF HEARING: Heard on March 31, 2022. Decided on March 31, 2022.

BOARD OF APPEALS: David L. Feigenbaum (Chair), Robert Tedesco (Vice Chair), William McGonigle

DECISION: Special Permit granted. The Special Permit shall not be effective unless and until the Petitioner has met the conditions listed below.

VOTE: Unanimous, reliant upon the Petitioner adhering to the conditions below.

MATERIALS CONSIDERED:

Submitted by Petitioner:

- Form 2 (Rec'd Feb. 10, 2022)
- Form 2F (Dated Jan. 29, 2022)
- Jan. 31, 2022 Memo from Petitioners to Winchester, MA Planning Board Re: Drainage Plans for 59 Holland Street Proposal
- Jan. 31, 2022 Memo from Petitioners Re: Landscape Plans for 59 Holland Street Proposal
- Assessors Map (Map 51)
- Neighborhood Map
- Plot Plan
- Architectural Drawings

Submitted by Town:

- Feb. 23, 2022 Comments from Conservation Commission

- March 7, 2022 Historical Committee Board of Appeals Findings
- Design Review Committee Meeting Minutes from March 9, 2022
- March 30, 2022 Planning Board Recommendations
- March 31, 2022 Memo from Town Engineer and Assistant Town Engineer Re: Petition 3957

Other:

- Photographs of neighboring properties

THE LAW:

Section 3.5.5 of the Winchester Zoning By-Law ("WZB") (quoted below) lists the specific criteria for granting a Special Permit in this case:

Nonconforming Single and Two-Family Residential Structures.

Nonconforming single and two family 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:

1. Alteration to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient area, where the alteration will also comply with all of said current requirements.
2. Alteration to a structure which complies with all current setback, yard, building coverage, and building height requirements but is located on a lot with insufficient frontage, where the alteration will also comply with all of said current requirements.
3. Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements, where the alteration will also comply with all of said current requirements.

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.

Section 9.4.2 of the WZB (quoted below) lists the general criteria for granting a Special Permit:

Criteria. Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its

written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to 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 determination shall include consideration of each of the following:

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.

Finally, Section 10 of the WZB defines "Special Permit" as:

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. Such uses may be permitted in such zoning district as special permits, if specific provision for such special permits is made in this Zoning Bylaw.

DISCUSSION:

Here, the current porch/vestibule does not comply with the setback requirement but, due to being constructed many years ago (and prior to the Petitioners' ownership of the Property) has been grandfathered in.

The proposed porch will actually be further from the property line than the current porch/vestibule, but not so far back to comply with the setback requirement. Consequently, Petitioners require a Special Permit.

To grant this Special Permit, the Board must first determine that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. (WZB § 3.5.5.) Here, the Board found that the proposed modification was not substantially more detrimental than the existing structure to the neighborhood. Instead, and as discussed further below, the Board found the proposed modification of the new porch to be an improvement to the Property that respected and added to the character of the neighborhood in a beneficial manner.

The Board is also required to address the criteria set forth in WZB § 9.4.2. Each is addressed in turn:

- The adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.
 - The Board finds that any adverse effects of the proposed use will not outweigh its beneficial impacts to the town or neighborhood, in view of the particular characteristics of the site and of the proposal in relation to that site. Instead, the proposed modification presents little to no adverse effects. Consequently, its beneficial impacts will greatly outweigh any adverse effects.

- Community needs which are served by the proposal; Traffic flow and safety, including parking and loading; and Adequacy of utilities and other public services.
 - No evidence was presented on any of these criteria.
 - However, given the nature of the proposed modification, there do not appear to be any impacts of the proposal relevant to these criteria. Consequently, the absence of evidence related to these criteria was not determinative of the Board's ultimate decision.

- Neighborhood character, including historic resources and social structures.
 - The Board considered the architectural drawings presented by the Petitioners, photographs of other houses in the vicinity, and their personal experiences observing the neighborhood.
 - The Board found that numerous other houses in the neighborhood had similar front porches as the one proposed by Petitioners. Though the stylistic choices preferred by the Petitioners were not identical to all other similar porches in the neighborhood, the Board recognized that there was not one consistent style employed across all nearby porches. Instead, Petitioners' plans constituted a variation on a common theme and benefited the neighborhood's character as such.
 - Despite the overall beneficial nature of the proposed modification, the Board had concern with the proportion of the window positioned above the front door and gable of the proposed porch. Specifically, the Board requested, and set as a condition for grant of the Special Permit, that this window be modified to match the dimensions and style of the top 4x4 sash of the other two windows on the front face of the house.

- Adequacy of proposed screening and buffering; Impacts on the natural environment; and Potential fiscal impact, including impact on town services, tax base, and employment
 - The Conservation Commission submitted comments acknowledging that it did not have jurisdiction over this issue. Otherwise, no evidence was presented on any of these criteria.
 - However, given the nature of the proposed modification, there do not appear to be any impacts of the proposal relevant to these criteria. Consequently, the absence of evidence related to these criteria was not determinative of the Board's ultimate decision.

Finally, the Board finds that the proposed modification 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. While some houses might not benefit or beneficially contribute to the zoning district from a modification similar to the one proposed here, the Petitioners' proposed modification both improves the appearance of their Property and the general neighborhood.

CONDITIONS: As a condition for granting this Special Permit, the Board requires that the Petitioner modify the dimensions of the window positioned above the front door and gable of the proposed porch. Specifically, the Board requires that this window be modified to match the dimensions and style of the top 4x4 sash of the other two windows on the front face of the house.

BOARD OF APPEALS, BY:

William F. McGonigle

DECISION DATED:
