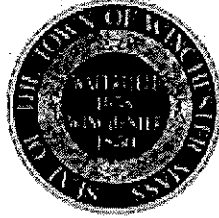


TOWN OF WINCHESTER



RECEIVED

By Town of Winchester at 1:27 pm, Sep 06, 2023

PUBLIC MEETING NOTICE and AGENDA

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**) Town Clerk's staff requests submissions **72 hrs. prior** to the meetings to allow for processing time.

Board/Committee Name: Board of Appeals

Type Check one: In Person: Remote: Hybrid:

Link:

Date: September 21, 2023

Time: 7:00PM

Place: Select Board Meeting Room

Email: jviarella@winchester.us

Agenda:

- Review August 17, 2023 minutes
- Petition No. 3988 – 19 Hancock Street (continued from August 17., 2023)
- Petition No. 3998 – 31 Albamont Road (continued from July 20, 2023)
- Petition No. 4002 – 75 Bacon Street (continued from August 17, 2023)
- Petition No. 4004 – 7 Wedgemere Avenue
- Review draft decisions – Petition No. 3993 – 87-89 Cross Street and Petition No. 4000 – 158, 160 and 162 Swanton Street
- Discuss proposed procedure for simplifying site plan review waiver

If you need an accommodation pursuant to the American Disabilities Act, please contact the Town's ADA Coordinator, Michael Towne, at humanresources@winchester.us or (781) 721-7157.

Please submit posting: townclerk@winchester.us



CONTINUED TO SEPTEMBER 21, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, FEBRUARY 16, 2023 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 3988 - That of 19 HANCOCK ST., LLC concerning the property at 19 HANCOCK STREET, WINCHESTER, MA. The petitioners are seeking a Special Permit under Section 4.5 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 divide the existing property into two lots (Lots 15A and 15B) creating new non-conforming lots. Lot 15A will not meet the lot area, lot frontage and lot width requirements and the existing two-family dwelling will be located closer to the side property line than permitted as of right. Lot 15B will not meet the lot frontage and lot width requirements. The property is in the RG (General Residence) zoning district, Lot 15A contains 7,522 +/- square feet and Lot 15B contains 7,522 +/- 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



CONTINUED TO SEPTEMBER 21, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, JULY 20, 2023 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 3998 - That of SUDHARSHINI THILLAIAMPALAM and MENAKA THILLAIAMPALAM concerning the property at 31 ALBAMONT ROAD, WINCHESTER, MA. The petitioners are seeking a Special Permit under Section 3.5.5 of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws so as to be permitted to construct additions that will be located closer to side and rear property lines than permitted as of right. The property is in the RDB (Single Residence) zoning district and contains 6,351 +/- 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



CONTINUED TO SEPTEMBER 21, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, AUGUST 17, 2023 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 4002 - That of JON and EMILY O'DONNELL concerning the property at 75 BACON STREET, WINCHESTER, MA. The petitioners seek a Special Permit from Section 5.1.10(1) of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws so as to be permitted to have the width of the driveway entrances greater than 10 feet. The property is located in the RDB (Single Residence) zoning district and contains 18,210 +/- 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



BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, SEPTEMBER 21, 2023 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 4004 - That of RICHARD GRIFFIN and CARLA CUCINATTI concerning the property at 7 WEDGEMERE AVENUE, WINCHESTER, MA. The petitioners are seeking Site Plan Review under Section 9.5.1(5) of the Winchester Zoning By-Law so as to demolish an existing detached garage and construct a new detached garage 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 15,970 +/- 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

WINCHESTER ZONING BOARD OF APPEALS
DECISION ON APPLICATION FOR
COMPREHENSIVE PERMIT

 **DRAFT**

APPLICANT: Mario Covino and 87-89 Cross Street, LLC (the “Applicant”)
PROPERTY: 87-89 Cross Street, Winchester, Massachusetts (the “Property”)
(Winchester Assessor’s Parcel 12-47-0)
DATE: _____, 2023

I. PROCEDURAL HISTORY

1. An original Application for a Comprehensive Permit (the “Permit”) was received by the Winchester Zoning Board of Appeals (the “Board”) on or about March 7, 2023. The Application is for nine (9) rental units in a single integrated structure (the “Building”) on the Property, which consists of .5 acres +/- . Two (2) of the units will be affordable to households earning up to fifty percent (50%) of the Area Median Income, in accordance with applicable state regulations and guidelines. The remaining seven (7) units will be rented at market rate units.
2. The Applicant proposes to be a limited dividend entity that will limit its profits in accordance with legal requirements. Accordingly, the jurisdictional requirements under 760 CMR 56.04(1)(a) will be satisfied if and when the Applicant executes a Regulatory Agreement and other related documents as referenced more fully in Section IV hereof.
3. The Applicant provided a project eligibility/site approval letter dated January 25, 2023 issued by the Department of Housing and Community Development (“DHCD”), currently know as the Executive Office of Housing and Livable Communities (EOHLC) thereby satisfying 760 CMR 56.04(1)(b). The approval is issued under the Local Initiative Program, which requires, and received, municipal support (by the Select Board).
4. The Applicant provided a copy of a deed to the property that is recorded with Middlesex Registry of Deeds in Book 7599, Page 47 thereby satisfying 760 CMR 56.04(1)(c).
5. The Board’s hearing on the Application was duly opened on April 20, 2023. Subsequent hearing sessions were held on May 10, 2023, June 1, 2023, June 29, 2023 and August 17, 2023. The hearing closed on August 17, 2023.
6. The Board notified all applicable local departments, boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their recommendations. Recommendations and submittals of any such board have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.

7. During the course of the public hearing, Town staff, boards and commissions; and local residents submitted oral and written testimony with respect to the Application. The Board considered the technical review of the Town Engineering department, but otherwise did not consider it necessary or desirable to require peer review of the reports of the Applicant's expert consultants due to the modest nature of the Project.
8. The Applicant provided various materials, reports and revised plans throughout the public hearing on the Application.
9. During the public hearing, the Applicant was represented by housing consultants at LDS Consulting Group, civil engineers at Engineering Alliance, Inc., a traffic engineer at Fuss & O'Neill and counsel with Blatman, Bobrowski, Haverty and Silverstein, LLC. The Board utilized the services of Town Counsel to assist in the process.

II. PROJECT AND PROPERTY DESCRIPTION

1. The project is described and shown in the Application package and various plans (hereinafter, the 'Plans'), including most notably, the following:

Site Plans entitled "Proposed Site Plan 87-89 Cross Street", as revised through June 1, 2023, prepared by Engineering Alliance, Inc.

Architectural plans entitled "Cross Street Townhouses", with Sheets A1.2-A1.4, dated March 2, 2023 and A1.1 and A2.1, dated by May 1, 2023, prepared by Harrison Mulhern Architects.

Landscape Plans prepared by James K Emmanuel Associates as revised through June 29, 2023.

Site Distance Figure dated February 24, 2023, prepared by Engineering Alliance, Inc.

Drainage Calculations and Stormwater Management Plan dated February 27, 2023 and revised June 23, 2023.

2. The Property is located in the Town's General Residential Zoning District.
3. Surrounding properties are improved with a variety of building types and uses. The Property is located on the edge of a residential neighborhood comprising predominantly single-family houses.
4. The Property is presently improved by a ~~multiple-unit~~ house, which is to be razed. The Winchester Historical Commission required a demolition delay of 12 months on the house by a prior owner under the Winchester Code of Bylaws Chapter XX, and the delay period has passed. Except for the waiver provided below in this Decision, the current owner would be required to seek another demolition permit and have the house reviewed again by the

Historical Commission.

5. The Applicant proposes to construct nine (9) rental townhouse units in the Building. Each of the units will have three bedrooms.
6. Public water and sewer are proposed for the Project. On-site subsurface infiltration will be used for storm water management.
7. The Applicant proposes that the two affordable units will be rented to households earning no more than 50% of the Area Median Income (AMI).

III. FINDINGS

1. According to EOHLC's calculation of the Subsidized Housing Inventory ("SHI"), as defined in 760 CMR 56.02, as of the date of the Application, less than ten (10%) percent of the Town's total housing stock constituted SHI eligible housing, as defined in 760 CMR 56.02.
2. The Board finds that the Town of Winchester has a continued need for affordable housing as required by GL. c. 40B, and the Project will provide two units of restricted affordable housing, along with seven other needed rental units.
3. The Board finds that the grant of waivers from local by-laws and regulations, as described more fully in Section IV hereof, is acceptable although the grant of any waivers will cause adverse impacts to local concerns, including the loss of a historic structure. Nevertheless, the Board finds that the local concerns that have been affected thereby do not outweigh the statutory requirements for affordable housing.
4. Notwithstanding the waivers to local bylaws and regulations and other adverse impacts to local concerns, the Board finds that the Project, as presently designed, and as conditioned by this decision, will be "consistent with local needs," as such term is contemplated under G. L. c. 40B.
5. The Board finds that the conditions imposed in the following section are necessary in order to properly address local concerns. The Board finds that such conditions will not render the project uneconomic. To the extent that such conditions do render the project uneconomic, the Board finds that the local concerns in imposing the same outweigh the statutory requirements for the affordable units that have been proposed.

IV. DECISION AND CONDITIONS

Upon Motion, duly seconded, the Board voted _ to __ ([members] approving) to grant a Comprehensive Permit to the Applicant for the proposed Project, subject to the following conditions which shall supersede the conditions of the original Comprehensive Permit and any amendment thereto:

1. Except as otherwise required by the conditions imposed by this Comprehensive Permit Decision or by the Final Site Plans, as defined below, the Project shall be developed, constructed and completed in conformance with the Plans, as revised during the public hearing. To the extent that this Decision or the Final Plans do provide otherwise, the Project shall also be developed, constructed and completed in all respects in conformity with such other requirements and with the Final Plans.
2. No demolition building permits may issue unless and until the Applicant provides the Board with written evidence of Final Approval by EOHLC under 760 CMR 56.04(7).
3. Final, fully designed site plans, architectural plans, stormwater plans and landscaping plans (together, the "Final Site Plans") shall be submitted to the Board, the Town Engineer and Building Commissioner no less than 45 days prior to the application for building permits for the commencement of construction of the Project. The Final Site Plans shall be of a quality and level of detail sufficient to allow the Board, the Town Engineer and the Town Building Commissioner to review, within the scope of their duties, the Final Site Plans for consistency with the Plans, the terms of this Comprehensive Permit Decision, legal requirements and industry standards. No construction shall commence and no building permits shall issue under this Comprehensive Permit until the Town's Engineer, has issued approval of the Final Site Plans as being in conformance with this Decision, said approval to be in writing. In making his determination whether the Final Plans can be approved and in generating any such itemization, the Town Engineer shall take account of any applicable comments provided by the Board or the Building Commissioner.. In the event that, after such consultation, the Town Engineer determines that the Final Site Plans cannot be approved, they shall provide the Applicant with prompt written notice containing an itemization of the revisions, corrections and/or modifications that must be made to the Final Site Plans in order to garner approval. If no written response or comments have been given to the Applicant by the Town Engineer concerning the Final Site Plans within forty-five (45) days after the Final Site Plan submission date, the Final Site Plans, as delivered, will be deemed to have been approved, provided that, for good cause shown, the Applicant shall allow a 30-day extension of such approval period. Nothing herein shall be construed to limit or otherwise affect the Building Department's authority and obligations under the State Building Code. The Final Site Plans shall include, but not be limited to, complete construction plans, final stormwater management plans, an erosion control plan, and all other plans described below or as may be reasonably determined in the discretion of the Town Engineer. The 45-day time period under this paragraph shall not commence if the Town Engineer notifies the Applicant in writing that the Final Site Plans are incomplete

and itemizing the aspects in which they are incomplete. After such notice the 45-day period shall commence only when the Town Engineer shall reasonably determine that the Final Plans are complete.

4. The Applicant shall perform a test pit within the footprint of the proposed infiltration system, to be witnessed by the Town Engineer, prior to submitting the Final Site Plans to the Town Engineer.
5. In the event that the actual site conditions vary from those envisioned during engineering design of the stormwater management and erosion control system, the Applicant shall redesign the system to account for the observed changes. The redesign shall be reviewed and approved by the Town Engineer prior to installation.
6. The Applicant shall be responsible for scheduling a pre-construction meeting with the Town Engineer or its assigned agent thirty (30) days before the commencement of work on the Project. During the construction of the Project, the Applicant shall be responsible for the scheduling of progress meetings with the Town Engineer or their assigned agent at a as directed by the Town Engineer to discuss the progress of construction. The Applicant's failure to schedule and attend such a meeting may be grounds for a stop work order.
7. The Applicant shall provide an as-built plan stamped by a Professional Land Surveyor registered in the Commonwealth of Massachusetts to the Town Engineer showing the project has been completed in accordance with the approved plans. The plan shall be accompanied by a certification from the Engineer of Record certifying that the stormwater management system was installed in accordance with the approved plans. Such report shall include a certification that the excavations of the proposed infiltration systems were inspected prior to backfilling. As built-plans shall be subject to the Town's Engineer's review and approval prior to the issuance of an occupancy permit.
8. The Applicant shall record the Operation and Maintenance plan for the stormwater management system with the Middlesex County Registry of Deeds prior to issuance of an occupancy permit. The Owner, Applicant, User, or any other person or agent in control of the property shall maintain all stormwater management facilities in good working condition and is a permanent responsibility of the Applicant or his successors and/or assigns.
9. The Applicant shall obtain a Street Opening Permit from the Department of Public Works (DPW) for relevant work and shall restore all trenches in accordance with DPW requirements.
10. The Applicant shall connect the Project, as revised, to the municipal water and sewer systems. However, no such connections shall be completed prior to the technical approval by the Town, in accordance with normally acceptable procedures. Such approval shall be based on technical requirements and shall not be unreasonably withheld.
11. To the extent that the Town may require an easement to any water or sewer lines on the

Property, the Applicant shall provide the same in a form deemed acceptable by Town Counsel.

12. The Applicant shall be responsible for day-to-day management of the Project but may contract with an outside agency for such management. Any such contract shall be subject to the Board's review and approval but only for ensuring that such contract contains provisions for the compliance with this approval.
13. With respect to each of the Applicant's requests for waivers from local by-laws and regulations listed in Exhibit A, the Board hereby decides as follows:
 - a. The Board approves all of the waivers to the requirements in the local by-laws and regulations only to the extent necessary in order to build the Project that is shown on the Plans and approved Final Site Plans.
 - b. No waivers are granted from requirements in local bylaws and regulations that are beyond the purview of G.L. c. 40B, §§20-23.
 - c. Waivers are granted from all local permit, connection or inspection fees, except for any such local fees that are imposed by the Commonwealth.
 - d. Any local by-law or regulation that is inconsistent with the Project as approved and not expressly waived hereunder shall be strictly enforceable.
 - e. Any subsequent revision to the Plans, including but not limited to revisions that are apparent in the Final Site Plans that require additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11). To the extent any such requested waivers are consistent in all material respects with the Plans and approved Final Site Plans, such approval by the Board may be deemed to be an insubstantial change under 760 CMR 56.05(11)(b).
14. The Applicant shall obtain approval by EOHLC of an affirmative fair housing marketing plan prior to the rental of any units and shall ensure that the Project complies with DHCD's fair housing requirements.
15. A lottery shall be established in a form approved by EOHLC to effectuate the rental of the Project's two affordable units. All events in the lottery process shall be reported promptly in writing to the Board, and to the Select Board.
16. Evidence of a fully executed and recorded Regulatory Agreement for the Project shall be provided to the Board, to the Select Board and to the Building Commissioner prior to the issuance of any demolition or building permits.
17. The Monitoring Agent for the Project shall be a qualified entity approved by EOHLC. The Applicant shall provide the Board and the Select Board with copies of any and all correspondence, documents and statements required by any Affordable Monitoring

Services Agreement, the Regulatory Agreement or any applicable laws or regulations to provided by the Applicant to the Monitoring Agent or from the Monitoring Agent to the Applicant. Copies of the fully executed Affordable Monitoring Services Agreement(s) for the Project shall be provided to the Board and Select Board prior to the issuance of occupancy permits.

18. The Applicant's profit for the Project shall not exceed limitations imposed by applicable law and as may be prescribed by EOHLC. The Board and the Select Board shall be provided with a copy of any and all limited dividend audits and certified cost/income statements, as well as any other public records that are shared by and between the Applicant and the Monitoring Agent.
19. The Applicant is responsible for the preparation and execution of any document that may be required by DHCD in order to have all of the units in the Project included on the Town's Subsidized Housing Inventory, with the cooperation of the Town as may be necessary to accomplish the foregoing.
20. All units shall be restricted as affordable in perpetuity and such restriction shall survive foreclosure. The Regulatory Agreement shall contain conditions that correspond to this requirement.
21. As security for completion of the infrastructure shown on the Final Site Plans, including but not limited to the driveway, stormwater management system, lighting, water and sewer lines, landscaping and utilities (collectively the "Infrastructure"), the release of occupancy permits for the Project shall be subject to the following restrictions:
 - a. No occupancy permit for a unit in the Building shall be issued until: the Infrastructure as shown on the Final Site Plans essential for such building, as approved by the Town Engineer or their designated agent, has been constructed or installed so as to adequately the Project, excepting final paving and any minor landscaping. The final infrastructure for the Project, including but not limited to the final course of pavement and landscaping, shall be installed prior to the occupancy of the last market rate unit in the Project.
 - b. Upon completion of all such Infrastructure for the applicable building, as described above, the Town Engineer shall inform the Building Commissioner accordingly, who may then release occupancy permits. No occupancy permit shall be issued without such authorization from the Town Engineer and such authorization shall be ineffective unless it is in writing.
 - c. Notwithstanding the procedures of this paragraph, the Board may institute an enforcement action in order to compel the completion of any infrastructure not completed by the Applicant.
22. During construction, the Petitioner shall maintain all feasible and reasonable means of dust control and shall collect all debris on a daily basis in accordance with best management

practices. No construction, deliveries or any other activities may occur on Sundays or on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve or Christmas Day. No construction may begin before 7:00 a.m. or continue past 6:00 p.m., unless approved in advance, in writing by the Board. Deliveries may be made after 6:00 a.m., until 6:00 p.m. Notwithstanding the foregoing, interior construction that doesn't generate excessive noise may occur on weekday evenings, until 7:00 p.m. Trucks and other equipment may not idle or warm up until 7:00 a.m. on approved construction days. The Applicant shall adhere to any and all local bylaws and state laws and regulations regarding noise.

23. Snow and ice removal shall be the responsibility of the Applicant. Snow and ice removal shall be undertaken as soon as is practicable after snowfall and shall not impede or obstruct the parking areas, driveway and hydrants.
24. As long as the Building continues to exist, the Applicant shall maintain landscaping on the Property of substantially the same character and quality as provided in the Final Site Plans.
25. To the extent permitted by law, the Town Engineer or its assigned agent may enter upon the property at reasonable times and in a reasonable manner to conduct periodic inspections as reasonably necessary to ascertain the status and nature of work at the site, ensure compliance with permit conditions including ongoing operations and maintenance of the stormwater management system, and provide reports to the Board as deemed necessary. In addition, the Applicant shall provide the Town Engineer or its assigned agent with any pertinent photographs, logs, data or other information that may be helpful in the monitoring process.
26. The reasonable fees for any services of outside consultants, as may be deemed reasonably necessary by the Town Engineer, to complete the inspections and reviews contemplated hereunder shall be paid by the Applicant in the manner prescribed by G.L. c. 44, §53G.
27. Except as may be otherwise required in this Permit, changes to the Project and the conditions contained herein shall be processed in accordance with 760 CMR 56.05(11), as may be amended or re-codified.
28. This permit shall not be valid until recorded with the Middlesex County Registry District of the Land Court and evidence of such recording is provided to the Building Commissioner and the Board of Appeals.
29. This Permit shall run with the land and be binding on the Applicant and any of its assignees and successors in interest at the Property or with respect to the Project. Any transfer of this permit prior to substantial completion of the Project or a phase thereof shall be subject to 760 CMR 56.05(12)(b).
30. This Permit shall expire if construction is not commenced within three years from the date it is filed by the Board with the Town Clerk, as provided in 760 CMR 56.05(13)(c). For purposes of this paragraph only, commencement of construction is defined as the

construction of the building foundation. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c)

31. Any finding, by any court of competent jurisdiction, that any condition hereof is unenforceable shall not otherwise affect the enforceability of the remainder of the conditions hereof.
32. Appeals of this Permit shall be made pursuant to G.L. c. 40B.

WINCHESTER ZONING
BOARD OF APPEALS

David Feigenbaum, Chair

Date: _____

TOWN OF WINCHESTER

BOARD OF APPEAL

Decision No. 4000

158-162 Swanton Street

 **DRAFT**

Name of Petitioner: Janarthanan Someswaranathan

Application For:

The Petitioner is seeking Special Permits under Sections 3.5.2, 3.5.3, 3.5.7, and 4.2.5 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 two pre-existing non-conforming residential structures, both of which are located on one lot, and both of which are non-conforming as to certain dimensional requirements, and to construct a new single structure, consisting of a three-family townhouse, that will comply with all setback, side yard, rear yard, open area, green space, hardscape, and building height requirements. In addition, the Petitioner is seeking Site Plan Review under Section 9.5.1(6) of the Winchester Zoning By-Law, so as to construct a new single structure, where construction will result in floor area equal to or greater than 3,600 square feet. The property is located in the RG (General Residence) Zoning District and contains 9,840 square feet.

Date of Hearings: July 20, 2023 and August 17, 2023

Board Conducting Hearing and Rendering Decision:

Dorothy R. Simboli, Gerard Marino, and Mark Andersen

Decision: Granted

Vote of Board: Unanimous

Limitations and Conditions:

The following conditions apply to the grant of Special Permits and Site Plan Review:

1. All work must be performed in accordance with all Plans submitted with the Application, or amended during the course of the hearings.
2. Construction of the new structure shall be in substantial conformity with the plans submitted with the Petition and prepared by DeCastro Nelson Associates, Inc. dated 8.9.2023, as follows:
 - (a) basement and first floor plan identified as A-1;
 - (b) second and third floor plan identified as A-2;
 - (c) front and rear elevations identified A-3 Alt.;
 - (d) side elevation identified as A-4;
 - (e) front entrance Site Plan identified A-5;
3. An existing conditions plan prepared by DeCastro Nelson Associates, Inc., dated 1.31.2023;
4. Plan showing proposed three-unit dwelling prepared by DeCastro Nelson Associates, Inc., dated 2.22.2023 and revised on 8.10.2023; and
5. Colored renderings depicting front, rear and side of proposed structure.
6. All representations made by the Petitioner at the public hearings and not memorialized are hereby incorporated into this Decision.

Facts:

The Petitioner proposes to demolish two existing residential structures on the Petitioner's property at 158-162 Swanton Street (the "Property"), a single lot located in the RG (General Residence) Zoning District. Placement of two residential structures on a single lot is a pre-existing non-conforming use under the Winchester Zoning By-Law (the "By-Law"). Both structures are in disrepair and are dimensionally non-conforming. The residential structure located along the Northerly lot line has a front yard of only 16.4 feet, whereas 20 feet are required under the By-Law. The residential structure located along the

Southerly lot line has a side yard of 11.9 feet, whereas 15 feet are required, and a rear yard of 2.2 feet, whereas 10 feet are required. Once the existing residential structures are demolished, the Petitioner plans to replace them with one structure, consisting of three residential units, which will comply with all setback, side yard, rear yard, open area, green space, hardscape, and building height requirements under the By-Law. The proposed structure is also subject to Site Plan Review because the Petitioner is seeking to build a new single structure, where construction will result in floor area equal to or greater than 3,600 square feet.

Discussion:

Pursuant to Section 3.5.2 of the By-Law, this Board may grant a Special Permit to change a non-conforming use if it determines that such change will not be substantially more detrimental than the existing non-conforming use to the neighborhood. Two residential structures on a single lot is a non-conforming use under the By-Law.

Pursuant to Section 3.5.3 of the By-Law, this Board may grant a Special Permit to change a non-conforming structure if it determines that the change shall not be substantially more detrimental than the existing non-conforming structure to the neighborhood. In addition to the non-conforming use of two residential structures on a single lot, the structures themselves are non-conforming, because neither structure complies with current setback requirements in the RG Zoning District.

Pursuant to Section 3.5.7 of the By-Law, this Board may grant a Special Permit to allow for reconstruction after voluntary demolition that would cause the new structure to be located other than on the original footprint.

Pursuant to Section 4.2.5 of the By-Law, this Board may grant a Special Permit to allow dormers to exceed 50% of the width of the roof plan. To the

extent that a finding is required under Section 4.2.5 regarding the front gables,¹ this Board finds that the Petitioner has met the requirements under said Section.

The proposed three-family townhouse, which fully conforms with front yard, side yard, rear yard, open space, green space, hardscape, and building height requirements, is not substantially more detrimental than the existing non-conforming use and non-conforming structures to the neighborhood. The two existing structures, which are in disrepair, will be replaced by a single building with farmers' porches along the front façade. Attractive landscaping will further enhance the Property.

This Board has received and reviewed recommendations from the Historical Commission, the Planning Board, and the Design Review Board. The Historical Commission voted that the property does not have an adverse impact on a Town Historical Resource. The Planning Board unanimously voted for favorable action on three of the four special permit requests, as well as Site Plan approval, excepting only the request under Section 4.2.5 (dormers). The Petitioner removed the center dormer and replaced the two remaining dormers with gables as requested by the Design Review Committee. The Petitioner received initial comments from the Design Review Committee and made significant changes in the proposed design. As a result, the Design Review Committee, at their meeting on August 2nd, voted favorable action based on the amended drawings.

One abutter and two other individuals spoke in opposition to the Petition, advocating for a two-unit structure rather than a three-unit structure. Preferences notwithstanding, the number of units would have no impact on the shape or the size of the proposed structure, which complies with all front yard, side yard, and rear yard dimensional requirements.

¹ The Winchester By-Law defines dormers as a projecting structure on a pitched roof with a window or windows set vertically. The By-Law does not provide a definition for Gables.

Based on all the information presented at the hearings, this Board finds that the existence of two separate residential structures on a single lot constitutes a pre-existing non-conforming use of the Property. The Board also finds that the location of these residential structures on the Property creates pre-existing non-conforming structures with respect to front yard, side yard, and rear yard requirements.

Under Section 9.4.2 of the By-Law, this Board is required to consider and address how the following criteria have an effect on the 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. Impacts on the 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;
 - b. Architectural features add visual character to the neighborhood; and
 - c. Patterns and proportions of windows are consistent;
5. Adequacy of proposed screening and buffering;
6. Impacts on the natural environment;
7. Fiscal impacts, including impact on town services, tax base and employment; and
8. Impacts on Historical Resources, as defined in Section 10 of the By-Law.

This Board finds that the proposed structure and use will not be substantially more detrimental to the neighborhood than the existing non-conforming structures and use on the Property. The Petitioner's proposal will serve community needs by creating three additional housing units, which are much needed and in great demand. The plan calls for parking for six automobiles behind the structure, thereby providing off-street parking. Traffic flow and safety will thus be improved. The proposal will eliminate two dilapidated structures with a single building, constructed in accordance with the current Massachusetts Building Code, as well as the Local and State Fire Codes.

The proposal incorporates architectural features that add visible character to the neighborhood, including the use of gables, farmers' porches, and an eyebrow window. All patterns and proportions of windows for the proposed structure are consistent. Thus, the Board finds that neighborhood character is improved by this proposal. Landscaping proposed for the front yard will provide street trees, plantings, and other landscaping features that will greatly improve the existing site. The building will have a positive fiscal impact on the tax base and no impact on historic resources.

Therefore, the Petitioner's request for Special Permits under Sections 3.5.2, 3.5.3, 3.5.7, and 4.2.5 of the By-Law, to change the existing non-conforming use to a new non-conforming use, and to demolish the existing non-conforming structures and replace same with a single structure that will meet the front yard, side yard, rear yard, open area, green space, hardscape and building height in the RG-Zone is granted, subject to the above-described conditions and limitations.

Pursuant to Section 9.5.7 of the By-Law, Site Plan Approval shall be granted only upon determination by this Board that the site plan meets the eleven (11) Site Plan Approval standards. This Board finds that these standards have been satisfied by the plans and documents submitted by the Petitioner.

The Petitioner's request for Site Plan Review under Section 9.5.1(6) of the By-Law so as to construct a three-family dwelling with the total floor area of the building being greater than 3,600 square feet is granted.

In summary, the Petitioner's request for Special Permits and Site Plan Review are hereby granted, subject to the above-described conditions and limitations.

Board of Appeal

Dorothy Simboli

Gerard Marino

Mark Anderson

Date of Decision: _____