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**TOWN OF WINCHESTER**  
**BOARD OF APPEALS**  
**Decision No. 3925**  
**7 Grassmere Avenue**

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TOWN CLERK  
TOWN OF WINCHESTER

**Name of Petitioner:** Samantha Allison and Mann A. Shoffner

**Application For:** 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 an addition that will be located closer to the side property lines than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 11,917 +/- square feet.

**Date of Hearing:** January 21, 2021

**Board of Appeal:** Dorothy Simboil, Mark Waterbury, and Mark Regan

**Decision:** **Granted**

**Vote of the Board:** Unanimous

**Conditions:** The following conditions apply to the grant of this Special Permit:

1. Construction of the proposed addition shall be in substantial conformity with the plans and information submitted with the petition, including the following:
  - a. Form 2 Application for Zoning Hearing, dated December 1, 2020
  - b. Form 2F Special Permit (Non-conforming, 1 and 2 family) Supporting Statement, Requested Findings, dated December 1, 2020
  - c. Town of Winchester Assessors Map, undated
  - d. Plot Plan, Keenan Survey 8 Winchester Place, Suite 208, Winchester MA 01890 (dated December 2, 2020)
  - e. Ten-page set of plans prepared by HM Architects 611 Main Street, Suite 300, Winchester MA 01890 (dated December 1, 2020) including the following:
    - i. DD.2 – Proposed First Floor Plan
    - ii. DD.3 – Proposed Second Floor Plan
    - iii. DD.4 – Front (East) Elevation
    - iv. DD.5 – Rear (West) Elevation

- v. DD.6 – Left (South) Elevation
  - vi. DD.7 – Right (North) Elevation
  - vii. DD.8 – Five Color Photos/ Renderings of Existing and Proposed Views
  - viii. C-0 – Drainage /Grading plan- Existing Site Plan
  - ix. C-1 – Drainage /Grading plan- Proposed Site Plan
  - x. L-3 – Proposed Planting Plan
- f. Materials Summary from Harrison Mulhern Architects, undated.
  - g. Letters from five neighbors supporting the proposed addition.
  - h. Driveway Pavement Design by Olmsted Design dated January 2021.
2. All representations made by the petitioners at the public hearing and not memorialized are hereby incorporated into the decision.
  3. Completion of the purchase of the 1,439 square feet plot of land, shown as Parcel 2 on a Plan of Land as specified in the Purchase and Sale, dated January 22, 2021, between the sellers (Drew J. Bottaro and Gail R. Sjo) and the buyers (Samantha Allison and Mann Shoffner)
  4. Obtain Standard Order of Conditions from the Winchester Conservation Commission as a condition of approval.
  5. Install the driveway pavement and walkway pavement in accordance with the Olmsted Design drawings.

**Facts:**

The petitioners own the property at 7 Grassmere Avenue. It is a 2 ½ story wood framed house with two small sheds. They propose the construction of a garage with a home office above, removal of a shed and landscaping. The garage is a tandem two car garage: one car wide, two cars deep.

The property is non-conforming at its front setback (17.4 feet, 25 feet required) and its left side setback (9.8 feet, 15 feet required). The house was built in 1928 and the non-conformities are original to the house.

The neighbor at 11 Grassmere is selling a parcel of land to the petitioners to construct the addition on the left side of their house.

The petition was reviewed by the Winchester Planning Board (January 18, 2021) and recommended favorable action, 4-0-1, noting one member objected to the 5-foot setback and another wanted the curb cut to be reduced.

The application was reviewed by the Winchester Conservation Commission on January 11, 2021. On the November 24, 2020 meeting, members were satisfied with the revised plan, and decided that a Standard Order of Conditions would be appropriate. In a follow-up memo to the ZBA dated November 25, 2020 the Winchester Conservation Commission stated that they have continued the public hearing

at the request of the applicants, stating "we have drafted our standard order of conditions for the project, and we have no residual concerns about wetland protection with the plans submitted. If nothing else changes (from the ZBA) we are ready to approve this project".

The petition was reviewed by the Winchester Design Review Committee (January 6, 2021) and they voted for favorable action by a vote of 6 to 0, noting that property is to be transferred from the neighboring parcel to allow construction of a two car, single width garage. The materials and detailing are to match the existing house. Favorable action is conditioned on the paving materials and colors reflecting the distinction between the driveway and the new walkway.

The Historical Commission reviewed the petition on January 11, 2021 and voted for favorable action 6-0 with no conditions, finding no adverse effects on a historic or cultural resource.

The petition was reviewed by the Engineering Department on January 12, 2021. They noted that they had previously reviewed the project through the Notice of Intent process with the Winchester Conservation Commission and included a memo, dated November 9, 2020, with five comments that needed to be addressed. Two issues remained as of the January 12, 2021 memo. The comments in the letter with respect to the compensatory storage requirements and erosion control measures on the neighboring property had not been addressed. Engineering requested responses to the two comments.

Engineering, on January 20, 2021, in a follow-up memo, stated that the applicant had resolved the compensatory storage requirements, but had not addressed the erosion control measures on the neighboring property.

In a letter dated January 19, 2021 the neighbor, at 11 Grassmere Avenue, granted a temporary construction easement for the proposed construction and erosion control measures stating "such measure may be taken as needed".

**Discussion:**

Pursuant to Section 3.5.5 of the re-codified Zoning By-Law, the Board of Appeal 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." The existing non-conformities for this petition are at front setback (17.4 feet, 25 feet required) and the left side setback (9.8 feet, 15 feet required). The relief requested is the left side setback (5 feet, 15 feet required).

The location and size of the proposed garage addition is a compromise driven by several factors unique to this property and neighborhood. The right side of the property affords sufficient space to build, by right, a large garage and connecting structure. The construction of such a structure, however, would be difficult to build due to the topography of the property and, as evidenced by Petitioners, ultimately result in an unattractive addition that would be substantially more detrimental to the neighborhood

than the proposed structure. The prior owner of the property proposed construction of a large addition on the right side of the property. Although they failed in court, the abutters and neighbors objected to the addition as detrimental to the quality of neighborhood. Further, the neighborhood's narrow, winding roads, limiting on-street parking; and the property's location within the 100-year floodplain and resultant infiltration of storm water and compensatory storage are of great concern and are critical design factors in this decision.

The fact that the current property owners could construct a garage, by right, on the right side of the property served as a significant consideration in the board's decision process. The Board acknowledges that such a development would present not only a financial hardship to the Petitioner, but the addition on the right side of the property would be detrimental to the character of the neighborhood and to the public views of the pond. In contrast, the left side of the property is level, but the existing structure is already within the required setback on that side.

Recognizing the preferred location for a garage addition was on the left side of the house, where the property is level, the Petitioners reached an agreement with the abutting neighbor to acquire a parcel of land that would allow an addition to be built, subject to the requested zoning relief for the side setback. The addition proposed is in conformity with the design and style of the existing structure, and unlike the by right development presents lessened neighborhood detractor or detriment. In order to minimize the land required and impact on the neighborhood views, the design incorporates a tandem two car garage, with a single car width.

Based on all the information presented at the hearing, including the submissions of the Petitioners, the Board finds that the proposal will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

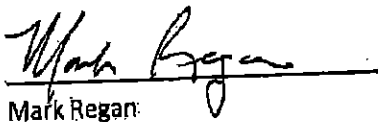
Under Section 9.4.2, the re-codified By-Law requires that this Board also consider and address how the following criteria have an effect on this petition:

1. Community needs which are served by the proposal.  
*The board finds that the placement of the tandem garage on the left side of the house and removal of a shed maintains and improves the public and neighborhood views of the pond. The board also notes that this proposal is significantly better than the "by-right" option that the petitioners have on the right side of the property.*
2. Traffic flow and safety, including parking and loading.  
*The tandem garage and driveway will provide sufficient parking that should reduce the use of street parking on the narrow road.*
3. Adequacy of Utilities and other public services.  
*Not material to this decision*
4. Impacts on Neighborhood character, including historic the extent to which:
  - a. Building forms and materials are compatible with the prevailing scale and character of buildings in the neighborhood.

- The addition is consistent with the style and materials of the current house. The 1 ½ story addition is lower than the main structure and setback 12 feet from the main house, minimizing its visual impact on the property.*
- b. Architectural features add visual character to the neighborhood; and  
*The use of a tandem two car garage, versus a two-car design, minimizes the width of the structure and improves and maintains views of the pond*
  - c. Patterns and proportions of windows are consistent.  
*The window patterns and proportions are similar to the existing structure.*
5. Adequacy of proposed screening and buffering.  
*The addition will be screened by ornamental trees and shrubs along the property line.*
  6. Impacts on the natural environment.  
*Grading, new retaining walls and new landscaping will improve the property. The work will open-up water views. The standard order of conditions will protect the pond and wetlands of the property.*
  7. Fiscal impacts, including impact on town services, tax base and employment; and  
*Not material to this decision*
  8. Impacts on Historic Resources, as defined in Section 10 of this Bylaw.  
*The house is in a neighborhood that is on the National Register of Historic Places. The Historic Commission finds no adverse effect on a historic or cultural resource. Construction of the "by-right" addition on the right side of the property would have been detrimental to the historic nature of the neighborhood.*

Thus, the Petitioners' request for a Special Permit to construct an addition to the existing nonconforming structure is granted, subject to the above-described conditions and limitations.

Board of Appeals

  
Mark Regan

Date of Decision: February 12, 2021