



Town of Winchester  
BOARD OF APPEALS  
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Janine L. Viarella, Clerk

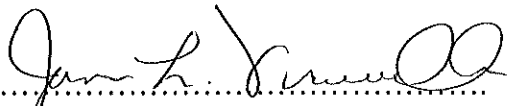
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July 26, 2022

RE: Petition No. 3962 – 11 Watson Place, Winchester, MA

Pursuant to Chapter 40A, Section 15 of the Massachusetts General Laws, you are hereby notified that the Board of Appeals has granted Zhongjing Duan and Wei Jiang 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 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 4,932 +/- 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 the filing of this decision in the Office of the Town Clerk.

  
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Janine L. Viarella  
Clerk, Board of Appeals

/jv

**TOWN OF WINCHESTER  
BOARD OF APPEALS**

**Petition No. 3962  
11 Watson Place**

RECEIVED AND FILED

2022 JUL 26 PM 3:42

TOWN CLERK  
TOWN OF WINCHESTER

**PETITIONER:** ZhongJing Duan and Wei Jiang

**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 4,932 +/- square feet.

More specifically: the Petitioners seek to construct an additional story, consisting of 520 square feet, to an existing portion of their house. Because the existing single story portion is non-conforming as to the distance to the front property line, this review was necessary.

**DATE OF HEARING:** Heard on May 19, 2022 and continued to June 16, 2022. Decided on June 16, 2022.

**BOARD OF APPEALS:** Robert Tedesco (Vice Chair), William McGonigle (Regular Member), Dorothy Simboli (Alternate Member)

**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 April 8, 2022)
- Form 2F
- Assessor Maps
- Plot Plan
- Multiple Architectural Drawings – Including Original and Revised Plans
- Historic Building Details
- Photographs of Property and Surrounding Neighborhood
- March 21, 2022 Letter from Kai Yin Yip (Professional Engineer)
- Signatures of Neighbors Supporting Petition

*Submitted by Town:*

- May 4, 2022 Design Review Committee Minutes
- June 8, 2022 Design Review Committee Minutes

- May 16, 2022 Planning Board Memorandum
- May 19, 2022 Engineering Department Memorandum
- May 11, 2022 Historical Commission Memorandum

**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 Petitioners wish to construct an addition atop the single-story section of their house, adding approximately 520 square feet to better accommodate their growing family. The existing structure does not conform with the necessary set-back from the front property line as required by the bylaws, and so because of that, constructing any addition above that portion of the house triggers the need for a Special Permit.

Petitioners were represented by counsel at the May 19, 2022 hearing. During that hearing, the Board was in agreement that the proposed structure was not substantially more detrimental than the existing nonconforming structure to the neighborhood. This was because the proposed structure did not encroach any further on the setback requirement than the existing structure. However, the Board did find concern with the proposed plans, including with the positioning of the windows, and noted how the Historical Commission raised the same concerns, how the Planning Board only recommended favorable action with certain revisions being incorporated into the proposed design, and the Design Review Committee recommending unfavorable action and listing numerous recommendations. Further, prior to the Board hearing, Petitioners submitted a proposed revised design that addressed many of the concerns being raised by the various committees and boards, and which the Zoning Board considered to be more congruent with the neighborhood character. Petitioners agreed to revise their plans and the hearing was held open and continued to allow them to do so. Between the

May 19, 2022 and June 16, 2022 Board hearing, counsel for the Petitioners withdrew his representation.

In the interim, Petitioners revised their proposed plans. The Design Review Committee voted for favorable action on the revised plans on June 8, 2022, with four recommendations. On June 10, 2022, Petitioners submitted further revised plans to the Design Review Committee. According to a June 13, 2022 email from Juli Mullan of the Design Review Committee, these revised plans met the conditions voted on by the Design Review Committee at their recent meeting.

The Board then continued the hearing on June 16, 2022. Upon reviewing the most recently revised plans (provided in a PDF titled "20220609 – 11 Watson Pl. Winchester.pdf"), the Board found all concerns addressed and voted in favor of 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 was not substantially more detrimental as it did not increase the nonconformity and the revised plans adequately respected the character of the neighborhood.

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 found that any adverse effects of the proposed use did not outweigh its beneficial impacts to the town or neighborhood. The proposed addition does not increase non-compliance of the already existing structure. In addition, the proposed addition respects and adds to the character of the neighborhood.
- 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.

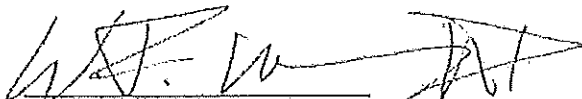
- Neighborhood character, including historic resources and social structures.
  - The Board considered the architectural drawings presented by the Petitioners, photographs of other houses in the vicinity, and their personal experiences observing the neighborhood.
  - The Board found that the revised plans, submitted to the Design Review Committee on June 10, 2022, addressed all concerns raised by the various committees and boards. Based upon the representation that these were the plans to be used when constructing the addition, the Board found them sufficiently compliant with the neighborhood character.
  
- Adequacy of proposed screening and buffering; Impacts on the natural environment; and Potential fiscal impact, including impact on town services, tax base, and employment
  - 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.

For these reasons, the Board approved the Petition by a vote of 3-0, subject to the conditions below.

**CONDITIONS:** As a condition for granting this Special Permit, the Board requires that the Petitioner adhere to the plans submitted to the Design Review Committee on June 10, 2022 and otherwise adhere to all representations made to the Board (both written and oral).

BOARD OF APPEALS, BY:

  
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William F. McGonigle

DECISION DATED:

7/26/2022