

TOWN OF WINCHESTER  
BOARD OF APPEALS  
Decision No. 3961  
142 Sylvester Avenue

RECEIVED AND FILED

2022 AUG 18 PM 2: 28

TOWN CLERK  
TOWN OF WINCHESTER

**Name of Petitioners:** William Rutnam  
Maria Rutnam

**Application For:** Special Permit from Section 3.5.5 of the re-codified 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 to a non-conforming single-family dwelling that will be located closer to the side property line than permitted as of right. The property is located in the RG (General Residence) zoning district and contains 7,528 +/- square feet.

**Date of Hearing:** May 19, 2022.

**Board of Appeals:** William McGonigle, Robert Tedesco and Dorothy Simboli.

**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 compliance with the plans, photos, letters and documents submitted with the petition including but not limited:
  - a. Plot Plan entitled "Plot Plan 142 Sylvester Avenue, Winchester, MA" Scale 1" = 20' dated December 14, 2021, prepared by Edward J. Farrell, Professional Land Surveyor, 110 Winn Street, Suite 203, Woburn, MA.
  - b. Site Plan entitled "Notice of Intent Plan 142 Sylvester Avenue, Winchester, MA 01890" Scale 1" = 20' dated February 7, 2022, prepared by Alan Engineering, L.L.C. 110 Winn Street, Suite 209, Woburn, MA 01801.
  - c. Proposed Plans entitled "Rutnam Residence 142 Sylvester Avenue, Winchester, MA" Plan Scale 1/4" =

- 1.0", prepared by Paul Zbruz Design, 21 Nichols Street, Lowell, MA 01851, consisting of 6 sheets, A1-A6, dated January 5, 2022.
- d. Stormwater Report: Prepared by Alan Engineering: dated January 24, 2022.
  - e. Plan entitled "Proposed Roof Capture Plan 142 Sylvester Avenue Winchester MA 01890" dated February 7, 2022, prepared by Alan Engineering, L.L.C. 110 Winn Street, Suite 209, Woburn, MA 01801.
  - f. Response Letter dated February 7, 2022 of Mark A. Sleger, P.E., of Alan Engineering, L.L.C. 110 Winn Street, Suite 209, Woburn, MA 01801.
  - g. Email from William Rutnam to Janine Viarella dated May 10, 2022.
  - h. MA DEP Order of Conditions 346-552 dated March 8, 2022.
2. All conditions of the Town of Winchester Engineer referenced and incorporated into this Decision, including Memoranda dated February 9, 2022 and May 19, 2022.
  3. Strict adherence to the Building Code.
  4. All representations made by the Petitioner and its representatives at the public hearing and not memorialized in writing are hereby incorporated into this Decision.

**Facts:**

Petitioner owns the locus at 142 Sylvester Road, a single-family dwelling which predates the Zoning By-Law. The existing dwelling was built in 1952 with the porch addition built in 1966 and is pre-existing, non-conforming as to the following:

Minimum Side Yard set-back which is 9 feet where 10 feet is required.

The proposed addition will demolish an existing sunporch, deck and patio area and replace with vestibule and garage addition including a second-floor master suite, including bedroom, full bath, office and new deck. This addition will extend the existing side-yard non-conformity from 9 feet to 2.1 feet and will add a story to the home.

The locus abuts conservation land and is located at the end of Sylvester Avenue, a dead-end street. The end of the street continues into the Horn Pond Tri-Community Bikeway. As a result of the foregoing conditions, no neighbors would be impacted by

the addition other than the Town-owned conservation land, which land because of its location next to the Horn Pond Tr-Community Bikeway is unlikely to be developed as noted by the Winchester Planning Board. The existing house is a Cape style with no garage. The shape of the lot, location of the house on the lot, and the location of nearby wetlands limit the options for the placement of the addition.

The Engineering Department implemented and detailed in its Memorandum dated May 19, 2022 the following requirements:

- 1) Applicant will be required to obtain a Fill Permit from the Winchester Board of Health. Fill brought to site will have a hydraulic conductivity no more restrictive than infiltrating layer.
- 2) Applicant to conduct test pit during permitting phase. Test pit shall be conducted per the following:
  - a. At a minimum, a test pit shall be performed to document the soil conditions and seasonal high groundwater conditions at the proposed site of recharge.
  - b. Seasonal high groundwater shall be estimated based on redoximorphic features in the soil. Depth to bedrock or other restrictive layers shall also be identified.
  - c. The soil conditions shall be documented by a Certified Soil Evaluator.
  - d. Dig Safe shall provide mark outs at proposed test pit.
  - e. Winchester DPW to issue a trench permit prior to excavation of test pit.
- 3) The Engineering Department shall be notified a minimum of 48-hours prior to: performance of the sub-soil investigations and installation of the sub-surface infiltration system.
- 4) 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.
- 5) 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 as designed and approved by the Town."

- 6) 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.

The Design Review Committee minutes from May 4, 2022 voted favorable action for the Special Permit, 4-0, conditioned on Petitioner investigating alternative designs that better integrate the form of the addition with the existing house.

The Historical Commission in minutes of May 11, 2022 voted favorable action 6-0, finding no adverse effect on a historical or cultural resource.

The Planning Board in minutes dated May 16, 2022 voted favorable action 3-1-1, with no conditions.

Conservation Commission issued permit on May 11, 2022 subject to MA - DEP Order of Conditions #346-522.

#### Discussion:

Pursuant to Section 3.5.5 of the re-codified Zoning By-Law, this Board 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." Petitioners seek to modify the existing non-conforming structure by constructing an addition that will be closer to the side yard property line than permitted as of right. The project provides for a two-story addition of approximately 1,162 square feet, encroaching into the existing side-yard depth enlarging and extending the pre-existing non-conforming set-back to 2 feet, 1 inch. This proposed addition has no issues other than enlarging and extending the existing non-conformity as to the side yard set-back, and those requirements detailed herein including those of the Town of Winchester Engineering Department and the MA-DEP Order of Conditions.

Based on all of the information presented at the hearing, including the submissions of the Petitioners, the Board finds that the location of the existing structure on this property constitutes a condition pre-existing to the applicable requirements of the Zoning By-Law and that the proposed additions and modifications to the property will not be substantially more detrimental to the neighborhood than the existing non-conforming 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;
2. Traffic flow and safety, including parking and loading;

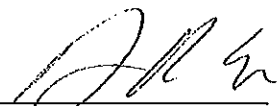
3. Adequacy of utilities and other public services;
4. Neighborhood character, including historic resources and social structures;
5. Adequacy of proposed screening and buffering;
6. Impacts on the natural environment; and
7. Potential fiscal impact, including impact on town services, tax base and employment.
8. Impacts on Historic Resources, as defined in Section 10 of the Bylaw.

This Board finds that criteria numbers 1, 2, and 4 will be met as the proposed addition will significantly improve the existing structure and provide an updated and attractive residence which will enhance the surrounding neighborhood and the Town of Winchester, in general. The highly unusual and unique location of the locus at the end of a dead-end street, abutting Conservation Land, Town Land, and the Horn Pond Tri-Community Bikeway mitigates criteria 5, especially given the increase in the non-conforming set-back. Criteria 6 is addressed by the Town Engineer's and MA-DEP and Conservation Commission's requirements. The remaining criteria listed above are either not relevant to, or are not adversely affected by the proposed addition, the subject of this petition.

The Board notes that this decision to grant the enlargement and extension of this existing non-conformity is based on the particularly unusual circumstances of this particular Petition and the locus described herein.

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

Board of Appeals

  
\_\_\_\_\_  
Dorothy R. Simboli

August 18, 2022  
\_\_\_\_\_  
Date of Decision