

**TOWN OF WINCHESTER
BOARD OF APPEALS**

2022 SEP 26 PM 12:41

**Petition No. 3975
34 Oneida Road**

TOWN CLERK
TOWN OF WINCHESTER

PETITIONER: ALEXANDRA and DOUG MURPHY

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 side property line than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 8,302 +/- square feet.

DATE OF HEARING: Heard and decided on August 18, 2022.

BOARD OF APPEALS: David Feigenbaum (Chair), Robert Tedesco (Vice Chair), William McGonigle (Regular Member)

DECISION: Special Permit granted.

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

MATERIALS CONSIDERED:

Submitted by Petitioner:

- Form 2
- Form 2F
- Location Map
- Neighborhood Map
- Property Photos
- Assessor's Maps
- Plot Plans (Incl. Plans from Both 2000 and 2022)
- Multiple Architectural Drawings Showing Current and Proposed Layouts
- August 15, 2022 Email from R. Leaf (Petitioners' Architect)

Submitted by Town:

- August 3, 2022 Design Review Committee Minutes
 - Favorable Action: 6 in favor, 0 opposed
- August 16, 2022 Planning Board Memorandum
 - Approved: 5 in favor, 0 opposed
- August 18, 2022 Engineering Department Memorandum
 - No site or civil work is proposed
- August 15, 2022 Historical Commission Memorandum
 - No Adverse Impact: 6 in favor, 0 opposed, 1 absent

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 on the rear of their house, replacing a deck. The proposed addition will extend approximately as far from the rear of the house as the existing porch and will allow the Petitioners to enlarge their kitchen and provide more storage space in the basement. The proposed addition will not extend to the second floor. The existing deck presents the existing non-conformity, being only approximately 9 ft. from the property line. The proposed addition will be 6 in. further from the property line.

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, it was argued that the proposed modification decreased the non-conformity.

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. Instead, it was

argued the proposed modification decreased the non-conformity. In addition, the proposed addition respects and adds to the character of the neighborhood.

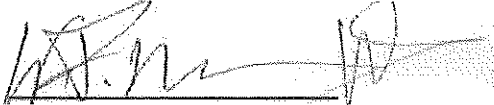
- Community needs which are served by the proposal; Traffic flow and safety, including parking and loading; and Adequacy of utilities and other public services.
 - No evidence was presented on any of these criteria.
 - However, given the nature of the proposed modification, there do not appear to be 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 and photographs presented by the Petitioners and their personal experiences observing the neighborhood.
 - The Board found that the proposed modification respected 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 and all representations made to the Board and other Town committees (both written and oral).

BOARD OF APPEALS, BY:

A handwritten signature in black ink, appearing to read 'W.F. McGonigle', is written over a horizontal line. The signature is somewhat stylized and includes a large flourish at the end.

William F. McGonigle

DECISION DATED:

9/19/2022