

**TOWN OF WINCHESTER
BOARD OF APPEALS**

Petition 3976
36 Salisbury Street

2022 OCT 11 AM 10:12

- PETITIONER:** Lori S. and Richard L. Evans
- APPLICATION FOR:** Special permit under section 3.5.5 of the Zoning Bylaw to construct an addition to a non-conforming single residential structure; the addition will be located closer to the side property line than permitted as of right.
- DATE OF HEARING:** Heard and decided on September 15, 2022.
- BOARD OF APPEALS:** David Feigenbaum, Gerard Marino, and Dorothy Simboli
- VOTE:** David Feigenbaum, Gerard Marino, and Dorothy Simboli in favor
- DECISION:** The special permit is approved effective as of the date of compliance with the following conditions.
- CONDITIONS:**
1. The completion of the work. All construction, reconstruction, exterior alteration, or addition shall conform to the application, site plan, and representations made by the applicant.
 2. Submission to the Building Commissioner/Zoning Enforcement Officer of a signed certificate of the applicant confirming the completion of work and compliance with condition 1.
- MATERIALS CONSIDERED:** The Board received the following documents:
1. Form 1 (Zoning Application checklist)
 2. Form 2 (Application for Zoning Hearing)
 3. Form 2F (Application for Special Permit pursuant to Section 3.5.5 of the Winchester Zoning By-Law)
 4. Existing front and rear façade with existing first floor plans
 5. Proposed right side elevation, rear elevation, left side elevation and proposed first floor plan
 6. Perspective drawings
 7. Assessor's Map
 8. Existing and Proposed Plot Plans prepared by James Keenan of Keenan Survey with existing and proposed Open Space, Greenspace and Hardscape
 9. September 15, 2022 Engineering Department memorandum
 10. August 29, 2022 Design Review Committee minutes
 11. September 15, 2022 Planning Board memorandum

12. September 12, 2022 Historical Commission memorandum
13. Petition – abutters (3 pages)

THE LAW:

A. Section 3.5.5 of the Zoning By-law empowers the Board of Appeals to grant a special permit for reconstruction, extension, alteration, or structural change to a nonconforming residential structure that will increase the nonconforming nature of the structure, if the Board determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

B. Section 3.5.1 of the Zoning By-law provides:

“Unless otherwise specified in Section 3.5 or elsewhere in this bylaw, a special permit may be granted by the Special Permit Granting Authority (SPGA) only if it finds that the beneficial impacts of the proposed use or structure will outweigh its adverse effects on 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 SPGA shall consider, and its written decision shall address, each of the following, as well as any recommendations by other Town agencies and officials:

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 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 (for example, dormers, lintels, bay windows, open porches, chimneys); and
 - c. Patterns and proportions of windows are consistent;
5. Adequacy of proposed screening and buffering;
6. Impacts on the natural environment, including, but not limited to, changes in topography, installation of retaining walls, or the removal of mature trees;
7. Fiscal impacts, including impact on Town services, tax base and employment; and
8. Impacts on historic resources, as defined in Section 10.

If the SPGA disagrees with the recommendations of any other Town agencies or officials, it shall explain its position in its written decision.”

**REPORTS
RECEIVED:**

Historical Commission. The Historical Commission found no adverse effect on a historical or cultural resource.

Engineering Department. The Engineering Department had no comment.

Design Review Committee. The Design Review Committee recommended favorable action.

Planning Board: The Planning Board approved of the request for a special permit.

DISCUSSION: Preexisting nonconformity

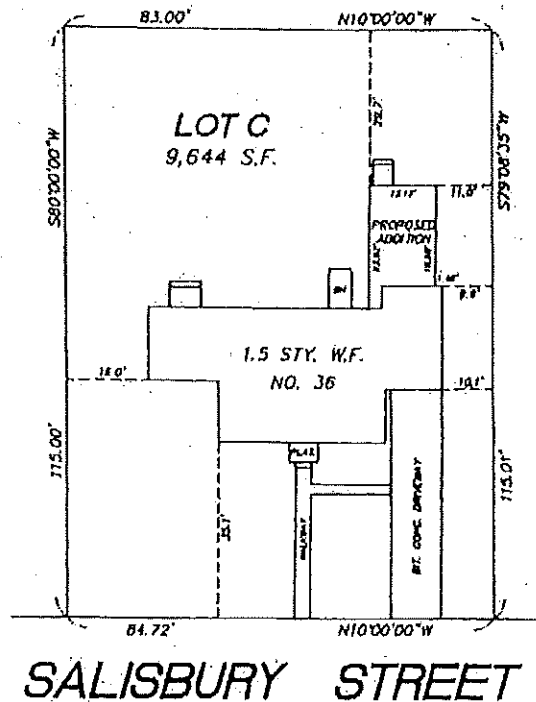
The applicant proposes to build a small single-story addition to the rear of the house at 36 Salisbury Street in the RDB zoning district where the minimum side yard is 15 feet and the minimum lot area is 10,000.



Because the lot at 36 Salisbury Street has 9644 square feet and the house encroaches on the side yard to the right of the house by 5.1 feet, the existing structure is nonconforming. Although the applicant did not establish that these nonconformities were pre-existing (that is, triggered by Zoning By-law language that was adopted after the house was constructed), we will rely on the implied representations of the application in that regard and assume the nonconformities were pre-existing.

Increase in nonconforming nature of the structure

The proposed addition will increase the nonconforming nature of the existing structure because the addition will encroach by between 4 feet and 3.55 feet into the required side yard of 15 feet.



In these circumstances, the Board may grant a special permit under section 3.5.5 if the Board determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood, and if the requirements of section 3.5.1 for a special permit are also met.

Not substantially more detrimental to the neighborhood than the existing structure

It could be argued that the addition is detrimental to the neighborhood because it will increase the proportion of the lot covered by structures and increase the amount of structure nearer to the neighbor's back yard than was intended to be allowed of right based on the current side yard requirement.

Nevertheless, the Board finds the degree of additional detriment to the neighborhood not to be substantial at least because the addition will, for the most part, not be visible from the sidewalk or street and the design of the addition is sympathetic to the design of the existing house.

The requirements of section 3.5.1

The beneficial impacts of the proposed use or structure will outweigh its adverse effects on the town or the neighborhood in view of the particular characteristics of the site and of the proposal in relation to that site.

The site is a level lot in a neighborhood of level lots. The proposed structure is an addition to the rear of the existing house that will be closer

to the neighbor's back yard than would be permitted currently. The proposal will have the beneficial impact of maintaining the house as an attractive dwelling of a consistent design sympathetic with the similarly-sized buildings in the neighborhood and that meets current living standards without adding unnecessary square footage or mass. The Board finds that the beneficial impacts outweigh the proposal's adverse effects.

1. Community needs which are served by the proposal;

The Board does not find any community needs served by the proposal.

2. Traffic flow and safety, including parking and loading;

The Board did not consider this factor to be affected by the proposal.

3. Adequacy of utilities and other public services;

The Board did not consider this factor to be affected by the proposal.

4. Impacts on 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;

The building forms and materials are compatible with the prevailing scale and character of other houses in the neighborhood.

b. Architectural features add visual character to the neighborhood (for example, dormers, lintels, bay windows, open porches, chimneys); and

There do not appear to be any architectural features that add visual character to the neighborhood.

c. Patterns and proportions of windows are consistent;

The patterns and proportions of windows appear to be consistent, although the absence of shutters on the addition is inconsistent with other parts of the house.

5. Adequacy of proposed screening and buffering;

Because no information appears to have been presented concerning screening and buffering with respect to the neighboring lot and house, the Board is not able to find that the screening and buffering is adequate.

6. Impacts on the natural environment, including, but not limited to, changes in topography, installation of retaining walls, or the removal of mature trees;

The Board did not consider this factor to be affected by the proposal.

7. Fiscal impacts, including impact on Town services, tax base and employment; and

The proposal does not appear to have any substantial impact on Town services, tax base, or employment.

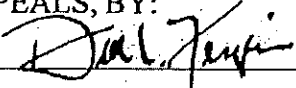
8. Impacts on historic resources, as defined in Section 10.

The Board finds that the existing house and other houses on the street constitute historic resources at least because they are listed as part of the Form A Inventory – Area, Massachusetts Historical Commission WNT.AQ, and apparently individually as WNT.1761.

The addition does have an impact on the historic resource as all additions attached to historic resources do. However, here the Board finds that the impact is not significant because the addition is relatively small, the design of the addition is sympathetic to the existing house, and the addition generally will not be seen from the street or sidewalk.

In view of the discussion above, the Board finds that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood and that the beneficial impacts of the proposed use or structure will outweigh its adverse effects on the town or the neighborhood in view of the particular characteristics of the site and of the proposal in relation to that site.

BOARD OF
APPEALS, BY:



David L. Feigenbaum

DECISION DATED:

10/7/2022
