

**TOWN OF WINCHESTER
BOARD OF APPEALS**

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**Petition No. 3972
11 Mystic Avenue**

TOWN CLERK
TOWN OF WINCHESTER

PETITIONER: Diego Bellalta and Allison Kangas de Bellalta

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 another building than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 18,684 +/- square feet.

More specifically: the Petitioners seek to construct an addition onto the rear portion of their home. The addition will replace a currently existing elevated porch.

DATE OF HEARING: Heard and continued on August 18, 2022. Continued with no hearing on September 15, 2022. Heard and Decided on October 20, 2022.

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

DECISION: Special Permit granted subject to the conditions below.

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

MATERIALS CONSIDERED: *Submitted by Petitioner:*

- Form 2
- Form 2F
- Assessor Maps
- Existing Conditions and Addition Plans (Dated Sept. 3, 2021)
- Site Photos of 11 Mystic from various angles
- Photos of other homes on Mystic Avenue
- Photos of allegedly similar additions on Mystic Ave., Lloyd St., Chardon St., Washington St., and others
- June 3, 2022 Stormwater Management Plan by Vineyard Engineering and Environmental Services, Inc.
- Engineering Plans (Dated November 16, 2021)
- Landscaping Plans (Revised July 15, 2022)
- Plot Plan (Dated May 21, 2021)
- Revised Plans / "Proposed Basement Plan" (Dated September 7, 2021 -- NOTE: This document has a "Last Worked On" date of

September 7, 2021. Despite what the date suggests, these represent the revised plans submitted to the Design Review Committee after its August 2, 2022 meeting and which were then approved by the Design Review Committee with no conditions on August 29 and relied upon by the Board of Appeals when approving the petition on October 20, 2022.)

- Revised Window Schedule / “Proposed Basement Plans” (Dated September 7, 2021 – NOTE: See note above.)

Submitted by Town:

- Design Review Committee August 3, 2022 Meeting Minutes (Voting 5-0 in favor with five conditions)
- Design Review Committee August 29, 2022 Meeting Minutes (Voting 5-0 with no conditions after review of revised plans)
- August 16, 2022 Planning Board Memorandum (Voting 4-0-1 in favor)
- August 18, 2022 Engineering Department Memorandum (Finding the addition did not increase impervious surface by more than 500 sq. ft. and providing no further comment)
- August 15, 2022 Historical Commission Memorandum (Voting 6-0 in favor)

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 existing rear deck is closer than 15 feet to the existing garage, creating the non-conformity. The proposed addition will take the place of the existing deck, expanding the interior space on multiple levels of the residence but not increasing the exterior footprint of the structure.

When the immediate petition was first heard before the Board, the Design Review Committee (“DRC”) had voted 5-0 in favor but imposed five conditions. The Petitioners represented to the Planning Board that they were revising their plans to address the DRC’s concerns. The Board then instructed Petitioners to address and incorporate those conditions and submit revised plans to the DRC. The Board continued the hearing until Petitioners were able to complete that process.

Petitioners then revised their plans, addressing the DRC’s conditions, and resubmitted the plans for DRC review. The DRC were pleased with the revised plans and found that they met all of the identified conditions.

On October 20, 2022, the Petitioners appeared once again before the Board and presented their revised plans. The Board commended the collaboration between the Petitioners and the DRC, especially in how the DRC provided unambiguous and actionable conditions which Petitioners willingly addressed.

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 and therefore granted the petition.

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 finds that any adverse effects of the proposed use will not outweigh its beneficial impacts to the town or neighborhood, in view of the particular characteristics of the site and of the proposal in relation to that site. Because the proposed addition occupies the same footprint of the existing non-conformity and is for the use of providing additional interior residential space to Petitioners’ family, the Board found little to no adverse effects of the proposed use.
- Community needs which are served by the proposal; Traffic flow and safety, including parking and loading; and Adequacy of utilities and other public services.

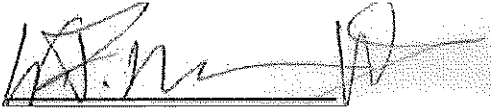
- No evidence was presented on any of these criteria.
 - However, given the nature of the proposed modification, there do not appear to be any impacts of the proposal relevant to these criteria. Consequently, the absence of evidence related to these criteria was not determinative of the Board's ultimate 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.
 - Relying upon the revised plans approved without conditions by the DRC, the Board found that the proposed addition to be consistent 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.

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 Petitioners adhere to the plans submitted and all representations made to the Board and other Town committees (both written and oral). Specifically, the Board requires Petitioners adhered to the revised plans approved without condition by the DRC on August 29, 2022 and relied upon by the Board on October 20, 2022.

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, looped initial 'W'.

William F. McGonigle

DECISION DATED:

November 5, 2022