

**TOWN OF WINCHESTER****PUBLIC MEETING NOTICE and AGENDA** REVISED

Pursuant to MGL Ch. 30A, Sec. 18-25 All meeting notices and agendas must be filed and time stamped by the Town Clerk's Office and posted at least 48 hours prior to the meeting (**excluding Saturdays, Sundays and Holidays**) Town Clerk's staff requests submissions **72 hrs. prior** to the meetings to allow for processing time.

**Board/Committee Name:** Board of Appeals

Type Check one: In Person:  Remote:  Hybrid:

Link:

Date: March 16, 2023

Time: 7:00PM

Place: Select Board Meeting Room

Email: [jviarella@winchester.us](mailto:jviarella@winchester.us)

**Agenda:**

- Review November 17, 2022, December 8, 2022, December 15, 2022 and January 26, 2023 minutes
- Petition No. 3987 – 316 Highland Avenue (continued from February 16, 2023)
- Petition No. 3988 – 19 Hancock Street (continued from February 16, 2023)
- Petition No. 3989 – 19 Verplast Avenue (continued from February 16, 2023)
- Petition No. 3991 – 12 Manchester Road
- Petition No. 3992 – 181 Mystic Valley Parkway
- Checklist for reviews by the Conservation Commission
- Designation of associate member to act as a regular member until the current vacancy is filled by an appointment by the Select Board
- Review draft decision – Petition No. 3978 – 32 Everett Avenue

If you need an accommodation pursuant to the American Disabilities Act, please contact the Town's ADA Coordinator, Michael Towne, at [humanresources@winchester.us](mailto:humanresources@winchester.us) or (781) 721-7157.

Please submit posting: [townclerk@winchester.us](mailto:townclerk@winchester.us)



CONTINUED TO MARCH 16, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, FEBRUARY 16, 2023 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 3987 - That of DR. VIRGINIA HUNG, MD concerning the property at 316 HIGHLAND AVENUE, WINCHESTER, MA. The petitioner is seeking Site Plan Review under Section 9.5.1(7) of the Winchester Zoning By-Law so as to change the grade of more than 500 square feet by more than six (6) percent. The property is located in the RDB (Single Residence) zoning district and contains 39,810 +/- square feet.

WINCHESTER BOARD OF APPEALS

Petition may be viewed at the Building Department during regular office hours or on the Board of Appeals web page [www.winchester.us](http://www.winchester.us)



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MEETING ROOM

BOARD OF APPEALS

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PETITION NO. 3988 - That of 19 HANCOCK ST., LLC concerning the property at 19 HANCOCK STREET, WINCHESTER, MA. The petitioners are seeking a Special Permit under Section 4.5 and 9.4 of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws so as to be permitted to divide the existing property into two lots (Lots 15A and 15B) creating new non-conforming lots. Lot 15A will not meet the lot area, lot frontage and lot width requirements and the existing two-family dwelling will be located closer to the side property line than permitted as of right. Lot 15B will not meet the lot frontage and lot width requirements. The property is in the RG (General Residence) zoning district, Lot 15A contains 7,522 +/- square feet and Lot 15B contains 7,522 +/- square feet.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

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PETITION NO. 3989 - That of CATHERINE FROTTEN and SCOTT HATHAWAY concerning the property at 19 VERPLAST AVENUE, WINCHESTER, MA. The petitioners are seeking a Special Permit under Section 4.5 and 9.4 of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws to be permitted to divide the existing property into two lots (Lots 1 and 2) creating a new non-conforming lot (Lot 1) that will not meet the lot area, lot frontage and lot width requirements. The property is in the RG (General Residence) zoning district, Lot 1 contains 3,288 +/- square feet and Lot 2 contains 11,118 +/- square feet.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

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PETITION NO. 3991 - That of TOM and SUZANNE KAHL concerning the property at 12 MANCHESTER ROAD, WINCHESTER, MA. The petitioners are seeking 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 side property lines than permitted as of right and located closer to another building than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 12,834 +/- square feet.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

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PETITION NO. 3992 - That of CONOR and EMILY DALY concerning the property at 181 MYSTIC VALLEY PARKWAY, WINCHESTER, MA. The petitioners are seeking 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 side property line than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 5,420 +/- square feet.

WINCHESTER BOARD OF APPEALS

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**TOWN OF WINCHESTER**  
**BOARD OF APPEALS**

**Petition No. 3978**  
**32 Everett Avenue**

**PETITIONERS:** Will Evans

**APPLICATION FOR:** Site Plan Review under Section 9.5.1(7) of the Winchester Zoning By-Law so as to change the grade of more than 500 square feet by more than six (6) percent. The property is located in the RDB (Single Residence) zoning district and contains 33,429 +/- square feet.

More specifically: Petitioners seek to regrade the land behind their house to install and construct a tennis court and swimming pool. Among other features, the proposed construction will include a retaining wall that, at points, will be over 20 feet high.

**DATE OF HEARING:** Heard on October 20, 2022, December 8, 2022, and January 26, 2023.  
Decided on January 26, 2023.

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

**DECISION:** Site Plan Approval is denied.

**VOTE:** 2 in favor of denial, 1 in favor of approval.

**MATERIALS CONSIDERED:** *Submitted by Petitioner:*

- Form 2
- Form 2I
- Assessor's Parcel Map
- MACRIS Report for Inventory No. WNT.364
- June 28, 2022 Hydrology Report by Andover Consultants, Inc.
- Site Plans
- November 10, 2022 Revised Hydrology Report by Andover Consultants, Inc.
- November 10, 2022 Letter from Andover Consultants, Inc.
- Site Plans
- November 10, 2022 Operation & Maintenance/BMP Plan by Andover Consultants, Inc.
- Images & Renderings of the Current Property and Proposed Project (dated August 31, 2022)
- Photographs and Images Depicting the Existing Conditions of the Property and Nearby Properties (dated November 10, 2022)

- Additional Renderings (dated November 10, 2022)
- Additional Renderings (dated December 6, 2022)
- Images of the Current Property and Nearby Properties (dated December 7, 2022)
- Landscape Plans (dated August 31, 2022)
- October 20, 2022 Letter from Riemer Braunstein
- January 18, 2023 Letter from Andover Consultants, Inc.
- January 19, 2023 Letter from Riemer Braunstein
- Winchester ZBA Decision No. 3807

*Submitted by Town:*

- Minutes from the July 26, 2022, August 9, 2022, September 13, 2022, September 27, 2022 Conservation Commission Meetings
  - As discussed below, the Conservation Commission did not submit a formal, final recommendation on this Petition.
  
- October 5, 2022 Design Review Committee Minutes
  - Comments by the DRC included:
    - “This beautiful, natural landscape is all getting ripped apart.”
    - “Part of the character and value of the historic homes in this neighborhood is how they are sited in the landscape and the character of the landscape that surrounds them.”
    - “The tennis court requires so much regrading as to be untenable.”
    - “The tennis court is not viable for the reasons stated in Bylaw Section 9.5.7, subsections 1, 2, 3, 7, and 8.”
  - The DRC recommended unfavorable action and did so with a vote of 5-0.
  
- October 19, 2022 Letter from the Planning Board
  - Comments included:
    - “The height of the tennis court retaining wall facing the lake has a negative impact on views.”
    - “A tennis court is too massive and flat a feature for this location.”
    - “The 21-foot tennis court retaining wall is jarring, visually obtrusive, and impacts a scenic view.”
    - “A 20 foot plus, cream-colored retaining wall is an unfortunate addition to the site.”
    - “The walls are stark, substantial, rise dramatically, have a negative impact on a public view, and are not right for this site.”
    - There was “concern about the large number of trees being removed.”



- There were “concerns about the proposal requiring too much removal of soil, too much impervious surface, and too much tree removal.”
  - Endorsement was withheld by a vote of 4-0-1. (Mr. Spring abstained.)
- October 20, 2022 Engineering Department Memorandum
  - The Engineering Department raised a number of concerns over the project and instructed the Petitioner to conduct site soil investigations to inform infiltration design and to update the design/drawings and provide responses as noted in the Memorandum.
- December 8, 2022 Engineering Department Memorandum
  - The Engineering Department raised a number of concerns over the project and instructed the Petitioner to conduct site soil investigations to inform infiltration design and to update the design/drawings and provide responses as noted in the Memorandum.
- October 3, 2022 Historical Commission Findings
  - Comments included:
    - “Vice Chair Hickey felt that the issue is whether the existing foliage contributes to the historical value of the house, as it seems to be situated on the peninsula. However, because he personally had never been on the lake, he does not know how much it would be impacted.”
    - “A tennis court is a significant change to the landscape.”
    - There was “concern that depending on the maturity of the plants, the area would be barren in the first few years.”
  - The Commission found that there was no adverse impact on a historical or cultural resource by a vote of 5-1, with 1 absent.

*Submitted by Third Parties:*

- January 11, 2023 Email from Kevin Sarney
- October 17, 2022 Letter from Oak Consulting Group submitted on behalf of abutters at 30 Everett Avenue
- October 19, 2022 Letter from Luran and Halsey Morris (abutters at 30 Everett Avenue)

*The Board also conducted a site visit on November 5, 2022. During the site visit, the Board toured the backyard, where stakes had been driven demonstrating the area and height of the proposed project.*

**THE LAW:**

Site Plan Review is required when there is “Changing the grade of more than five hundred (500) square feet by more than six (6) percent.” Winchester Zoning Bylaw (“WZB”) §9.5.1(7).

WZB §9.5.7 sets the standard for Site Plan Review, stating: “Site Plan Approval shall be granted only upon determination by the Board that the plan meets the following standards. The Board may impose reasonable conditions at the expense of the applicant to implement these standards. New building construction and other site alterations shall be designed, after considering the qualities of the specific location, the proposed land use, the design of the buildings, grading, egress points, and other aspects of the development, so as to:

1. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity;
2. Minimize any adverse effect on any historic resource;
3. Minimize the volume of cut and fill, the number of removed trees six (6) inches in caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, soil erosion;
4. Provide adequate stormwater management and other utilities consistent with the functional requirements of the Planning Board Subdivision Rules and Regulations;
5. Maximize pedestrian and vehicular safety, both on the site and egressing from it;
6. Provide adequate access to each structure for fire and emergency service equipment;
7. Minimize obstruction of scenic views from publicly accessible locations;
8. Minimize visual intrusion by controlling the visibility of parking, storage, utilities such as HVAC systems and transformers, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
9. Minimize glare from headlights and lighting intrusion;
10. Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances; and
11. Ensure compliance with the provisions of this Zoning Bylaw, including parking, signs, landscaping, and environmental standards.

WZB §9.5.8 states that “In the event that the Board of Appeals approves a special permit under these provisions, any construction, reconstruction, substantial exterior alteration or addition shall be carried on only in conformity with any conditions, modifications and restrictions subject to

which the Board shall have made its findings and determination, and only in conformity with the application and site plan on the basis of which the finding and determination are made.”

**DISCUSSION:** The hearing on this Petition continued over three nights, during which the Board heard statements from the Petitioner, the Petitioner’s counsel, the Petitioner’s architect, the immediate abutters from 30 and 34 Everett Avenue, counsel for one of the abutters, and at least one other neighbor from Niles Lane. The discussion was thorough and covered the elements of Site Plan Review in depth. A site visit was also conducted by the Board to better understand the scale of the proposed project and the impact it would have upon the property, neighborhood, and larger local area. The Board gave significant and material consideration to all facts, arguments, opinions, and materials submitted and/or raised.

As with the Planning Board and Design Review Committee, the Board of Appeals had significant concern over the size and scope of the proposed project and the impact it would have upon the local environment, geography, and character of the neighborhood. Concern was also expressed over the potential precedent being set by approving the proposed project.

In no uncertain terms, the proposed project would constitute a significant impact in a way that implicated multiple requirements of Site Plan Review. The proposed tennis court would require a retaining wall that, at one point, would rise between 20 and 25 feet up, creating a large, bare wall. This wall alone, which would rise up from the north west corner of the tennis court and then run eastward, was considered to be significant massing and unlike anything else in the vicinity. And though the tennis court would sit within this wall, another wall would have to be constructed to raise the south eastern corner—this one approximately 5 feet high. Large retaining walls would also be constructed to house the pool. These walls would, at points, be greater than 12 feet in height and effectively place the pool on a pedestal.

The site for the proposed project would be Petitioner’s backyard, which is a peninsula that juts into the Upper Mystic Lake. Construction would require reshaping this peninsula with significant grading. It would undoubtedly impact the local environment and ecosystem, both through the re-grading, the large area of impervious surface, and the removal of existing trees and flora. As pointed out by one local resident, at least part of the project fell within the 25 foot buffer zone set for the Mystic Lake (into which the peninsula jutted), and the Conservation Commission had historically denied building permits for projects that did so. The Board requested the Conservation Commission provide a definitive opinion on the project, but the Commission refused to do so, in part stating that it could not render an opinion until a variety of studies were complete. The Commission’s minutes nonetheless indicated significant concern, including how allowing a

project of this scope, which encroached within the 25' buffer zone, greatly impacted wildlife habitat, and otherwise set a poor precedent.

Abutters submitted an engineering opinion that raised other concerns, some of which were not considered by the Town's Engineering Department. The Board requested the Engineering Department to review and comment upon the abutter's engineer's letter and invited the Petitioner to respond himself, but both declined. In doing so, the Engineering Department brought attention to the Board's ability to require a petitioner fund the costs of a peer review, set forth in M.G.L. ch. 53G.

Nonetheless, the Engineering Department did indicate a need to conduct soil investigations to inform the design of the project. This required test pitting, and the Board requested the Petitioner address the Engineering Department's request. Petitioner refused to conduct test pitting, arguing that it should be postponed until after approval was given. The Board recounted its experience that such requirements were traditionally addressed prior to any approval.

Much discussion was had over the impact the project would have upon scenic views and how it fit in with the character of the neighborhood. As to scenic views, the proposed project would be visible from numerous public spots, including but not limited to the Upper Mystic Lake, the Mystic Valley Parkway, and the Mystic River Path and surrounding park. Indeed, the peninsula upon which the project was sited was a focal point of the lakeshore and the project would undoubtedly impact that scenic view. Petitioner's architect explained that plantings would be made to screen the large walls (including the ~25 foot tennis court wall), but 1) the renderings suggested the wall would still be visible and 2) there was no accounting for the ephemeral nature of using trees for screening—trees that may lose their leaves in the colder months, suffer adverse conditions and die, or be removed by a subsequent owner; all to expose a permanent and large structure.

In considering the character of the buildings in the vicinity, there is simply no other property along the Upper Mystic Lake with a retaining wall as large as what was proposed here. Instead, the area was defined by backyards that rolled down to the lakeshore. Though there were a small number of properties with retaining walls visible from the public locations, the largest of these few was only seven feet tall—significantly less than the proposed ~25 foot wall. At least one Board member commented that this 7 foot wall was a poor example to support the immediate project, as the 7 foot wall was likely built prior to the current bylaws and would unlikely be approved if offered for Site Plan Review under the current bylaws.

Combining the two concerns above was the fear that the project would have an adverse impact upon the historic and natural resource that was the Upper Mystic Valley lakeshore. At least one Board member commented how this was not considered by the Historical Commission, which instead limited its review to the question of whether any historically significant buildings were being destroyed.

Finally, and though it does not immediately bear upon the elements for Site Plan Review, it should be noted that the abutters had significant objections to the proposed project. In particular were the abutters from 34 Everett, who explained how the large retaining walls would directly impact their views from their property.

With these issues in mind, the Board had significant concerns implicating the following elements of Site Plan Review as applied to the proposed project:

- Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity.

The Board found that the proposed project was an unreasonable departure from the character and scale of buildings in the vicinity. No other property included retaining walls as large as proposed by Petitioners, and certainly not where such walls could be seen from public areas. Petitioner argued that the 7 foot retaining wall existing on one property was sufficient to establish that the proposed project was not an unreasonable departure, but the Board instead found that 1) the proposed 20+ foot retaining was of an unreasonably larger scale than the referenced 7 foot wall and 2) the 7 foot wall was itself an unreasonable departure from the local character and scale. Indeed, similar concerns had been stated by other Town board and committees, including but not limited to the Design Review Committee (stating, e.g.: "Part of the character and value of the historic homes in this neighborhood is how they are sited in the landscape and the character of the landscape that surrounds them.") and the Planning Board (stating, e.g.: "A 20 foot plus, cream-colored retaining wall is an unfortunate addition to the site.") Petitioner was otherwise unable to present any persuasive evidence that the proposed project was anything but an unreasonable departure from the character, materials, and scale of buildings in the vicinity.

- Minimize any adverse effect on any historic resource.

The Board considered the Upper Mystic Valley Lake shore to be a historic resource, one identified as an attractive element to the Town by MACRIS, and which was well known and well regarded by the public. The Board had concern that allowing a project of the size proposed would have not simply an adverse effect on that historic resource (by manner of imposing a large

wall upon it and destroying the existing landscape) but would also set a precedent justifying further large-scale projects that would risk negatively transforming the lakeshore. Petitioner was otherwise unable to present any persuasive evidence that the proposed project sufficiently minimized its adverse effect on any historic resource.

- Provide adequate stormwater management and other utilities consistent with the functional requirements of the Planning Board Subdivision Rules and Regulations.

Abutters raised concern over stormwater management, some of which were addressed in their engineer's report. Though Petitioner's engineer argued that there were no such concerns, Petitioner chose not to provide a supplemental report addressing the specific issues raised by abutters' engineer. Because of this, questions remained as to whether adequate stormwater management plans had been provided, and at least one Board member had concern over approving a project of this size where there could be any question over whether it was properly engineered. Petitioner was therefore unable to present sufficient persuasive evidence that the proposed project provided adequate stormwater management.

- Minimize obstruction of scenic views from publicly accessible locations.

The Board found that the proposed project would obstruct scenic views from multiple publicly accessible locations, including the Upper Mystic Lake, the Mystic Valley Parkway, and the Mystic River Path and surrounding park. The Board found that the large walls required for the project would inarguably obstruct and impose upon those scenic views, especially considering the prominent placement of the peninsula upon which these walls would be built. Similar concerns had been raised by other Town boards and committees, including but not limited to the Planning Board (e.g.: "The walls are stark, substantial, rise dramatically, have a negative impact on a public view, and are not right for this site."). Petitioner was otherwise unable to present any persuasive evidence that the proposed project sufficiently minimized the obstruction of scenic views from publicly accessible locations.

- Ensure compliance with the provisions of this Zoning Bylaw, including parking, signs, landscaping, and environmental standards.

The Board was concerned that no opinion had been provided by the Conservation Commission on the proposed project. Given the large nature of the project, its imposition upon wetlands and being within the buffer zones for the Upper Mystic Lake, and the transformative nature it would have upon the local habitat, the risk that the proposed project did not

comply with environmental standards were considered by at least one Board member to be too great. Other Town boards and committees had expressed similar concerns, including the Design Review Committee (e.g.: “This beautiful, natural landscape is all getting ripped apart.”), the Planning Board (e.g.: “concerns about the proposal requiring too much removal of soil, too much impervious surface, and too much tree removal”), and the Historical Commission (e.g.: “concern that depending on the maturity of the plants, the area would be barren in the first few years”). Though the Conservation Committee did not provide a formal opinion, its minutes also demonstrate significant concerns over the environmental impact of the proposed project, including:

- “construction on this scale that removes so many mature trees and allows for construction which will encroach within 25’ to the lake sets a poor precedent;”
- “the work area is now beautifully landscaped, and will be replaced by an impervious surface;”
- “the proposed construction greatly impacts wildlife habitat, and that although it includes future landscaping, it is not real replication;” and,
- “the presumption that alterations within [the wetlands buffer zone] will have a negative impact on the interests protected by the state Wetlands Protection Act and the Winchester Wetlands Bylaw.”

The Conservation Commission Chairman also recited multiple aspects of the Winchester Wetlands Bylaw triggered by the proposed project. Consequently the Board was not convinced that Petitioner had complied with relevant environmental standards and Petitioner was unable to present sufficient persuasive evidence establishing that they had.

WZB §9.5.7 states that “Site Plan Approval shall be granted **only** upon determination by the Board that the plan **meets**” the applicable standards. (Emphasis added.) Here, the Petitioners failed to present sufficient persuasive evidence that their proposed plan met all of those standards. To the contrary, the Board had sufficient reason to believe that the proposed plan **failed** to meet multiple required standards.

Consequently, for all of the reasons summarized above, and those otherwise addressed at the multiple hearings held (before both the Board of Appeals and other Town Boards), the Board voted against approving the Petition.

**CONDITIONS:** Not applicable, as the Petition was denied.

**BOARD OF APPEALS, BY:**

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**William F. McGonigle**

**DECISION DATED:**

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