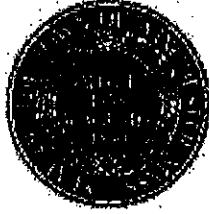


**TOWN OF WINCHESTER**



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TOWN CLERK  
TOWN OF WINCHESTER

**PUBLIC MEETING NOTICE and AGENDA** *Revised*

**REMOTE PARTICIPATION**  
(Due to State of Emergency COVID-19)

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) on [www.winchester.us](http://www.winchester.us)

Board/Committee Name: Board of Appeals  
Date: May 19, 2022  
Time: 7:00PM  
Place: REMOTE PARTICIPATION - Zoom

Register in advance for this meeting:  
<https://us02web.zoom.us/meeting/register/tZwkdOCsqT8qHtUDya3JpuSZgxqzO8HnyQc9>

After registering, you will receive a confirmation email containing information about joining the meeting.

**Agenda:**

- Review draft decision – Petition No. 3955 – 65 Cambridge Street
- Petition No. 3958 – Lot 4 Abby Road (Continued from April 21, 2022)
- Petition No. 3959 – 19 Agawam Road (Continued from April 21, 2022)
- Petition No. 3960 – 25 Yale Street
- Petition No. 3961 - 142 Sylvester Ave
- Petition No. 3962 – 11 Watson Place
- Petition No. 3963 – 121 Church Street

**TOWN OF WINCHESTER  
BOARD OF APPEALS**  
Matter No. 3955  
65 Cambridge Street

**DRAFT**

**PETITIONER:** Winchester Boat Club

**APPLICATION FOR:** An appeal under General Laws Chapter 40A, Section 15, from the Building Commissioner/Zoning Enforcement Officer's order dated January 3, 2022, that a row of arborvitaes on the Winchester Boat Club's "Open Space Parcel" obstructing the view from Everett Avenue to the Upper Mystic Lake should be removed as a violation of the planting schedule of Board of Appeals decision #3021.

**DATE(S) OF HEARING:** March 31 and April 27, 2022.

**BOARD OF APPEALS:** David Feigenbaum, Robert Tedesco, and William McGonigle

**DECISION:** The enforcement order is reversed.

**VOTE:** 3-0.

**MATERIALS CONSIDERED:** *[List to be provided by the Clerk]*

**FACTS** In April 1997, the Board issued an amended special permit (the "3021 Decision") authorizing the Boat Club to use "Lot B" of the Club's "Open Space Parcel," adjacent to its clubhouse parcel at 65 Cambridge Street, for outdoor recreation. In 2018, abutters at 48 Everett Avenue requested enforcement against the Boat Club, including the arborvitaes on the Open Space Parcel Lot B along Everett Avenue. They agreed to suspend that request until the conclusion of then-pending litigation regarding that parcel. The arborvitaes were planted in approximately 2007. They have grown substantially and now obstruct the views across the property to the Upper Mystic Lake along much of the Open Space Parcel's Everett Avenue frontage.

On January 3, 2022, the Building Commissioner/Zoning Enforcement Officer ordered the Boat Club to remove the arborvitaes. The Boat Club appealed that order.

**DISCUSSION:** The "Limitations and Conditions" section of the 3021 Decision includes the following requirement:

(1) Plantings and Fencing. The Petitioner shall install and maintain plantings in accordance with the Landscape Plan (hereinafter defined) along the properties owned (now or formerly, "n/f") by the Gutheries, McIntyres, Carrolls....

3021 Decision p. 1 (the "Planting Condition"). The "Landscape Plan" consists of a memorandum and three plans. The memorandum was before the Board. The three plans have not been reliably identified, although counsel for a group of abutters submitted a set of three plans that she contended were part of the Landscape Plan.

In the "Discussion" section, the 3021 Decision states:

satisfactory provision and arrangements have been made, with the Conditions and Limitations set forth herein, covering the issues described in Section 8.52 [the special permit criteria then in effect], which are described in detail, as appropriate, below.

Among the subsequent findings was the following:

(f) Yards and Other Open Space. Because the application is to permit outdoor recreational use, there is abundant yard and open space. *There is a public benefit in maintaining the view from Everett Avenue directly to the Mystic Lakes by use of the land for outdoor recreational use rather than for housing.*

*Id.*, p. 7 (the "Open Space Finding") (italics added).

At the public hearing, the Boat Club's counsel primarily argued that the arborvitaes are permitted by the Planting Condition because plans and other evidence show bushes along Everett Avenue that could have grown up to the height of the arborvitaes. He also asserted that there is still some view to the Upper Mystic Lake across Lot B, and offered to trim the arborvitaes to restore more of that view.

The abutters' counsel argued that the Boat Club's special permit and amended special permit to use the Open Space Parcel for outdoor recreation were premised on the preservation of the view from Everett Avenue to the Lake. She also argued that photos taken since 1997 showed that the arborvitaes were not consistent with the historic landscaping of Lot B. All three Board members agreed that, because the Planting Condition refers only to plantings "along the properties owned ... by" three particular

abutters, the 3021 Decision does not expressly require adherence to the Landscape Plan along Lot B's Everett Avenue frontage.

Two of the Board members concluded that, because the Open Space Finding was not included or incorporated in the "Limitations and Conditions" section of the 3021 Decision, it did not require the Boat Club to preserve the view along Everett Avenue. That conclusion was supported by the fact that the 3021 Decision recited a history of extensive negotiations between the Boat Club and abutters over the views *from the abutters' properties* and addressed those issues explicitly in the Planting Condition. There was no similar negotiation or discussion of the view from Everett Avenue.

The third Board member read the Open Space Finding as an implicit condition, reflecting a commitment by the Boat Club, to maintain the views to the Lake along Everett Avenue. However, he concluded that the enforcement order was improper because removal of the arborvitaes may not be the only way to restore those views to compliance with Decision 3021, and it is up to the Club to determine how to comply.

On these two grounds, all three members of the Board agreed to reverse the enforcement order.

**Decision**

The Board reversed the Zoning Enforcement Officer's order to remove the arborvitaes for the reasons described above.

**BOARD OF APPEALS**

**BY:**

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By: David L. Feigenbaum

Dated:



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**REMOTE PARTICIPATION PUBLIC HEARING CONTINUED TO MAY 19, 2022 AT 7:00PM**

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a REMOTE PARTICIPATION PUBLIC HEARING on THURSDAY, APRIL 21, 2022 at 7:00 P.M. on the following matter:

PETITION NO. 3958 - That of JOEY DAVIS and JESSICA CHANG concerning the property at LOT 4 ABBY ROAD, WINCHESTER, MA. The petitioners are seeking a Dimensional Variance from Section 4.0 of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 10 of the Massachusetts General Laws so as to be permitted to construct a new single family dwelling that will be located closer to the front property line than permitted as of right. The petitioners are also 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 15,998 +/- 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)

Link to the meeting can be found on the Government Calendar and the Board of Appeals web page [www.winchester.us](http://www.winchester.us)



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**REMOTE PARTICIPATION PUBLIC HEARING CONTINUED TO MAY 19, 2022 AT 7:00PM**

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a REMOTE PARTICIPATION PUBLIC HEARING on THURSDAY, APRIL 21, 2022 at 7:00 P.M. on the following matter:

PETITION NO. 3959 - That of KELLY and PAUL MURRAY concerning the property at 19 AGAWAM ROAD, WINCHESTER, MA. The petitioners are seeking a Special Permit under Section 4.4.2 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 in-ground swimming pool that will be located closer to the rear property line than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 14,705 +/- square feet.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

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PETITION NO. 3960 - That of WALID SUKARIEH concerning the property at 25 YALE STREET, WINCHESTER, MA. The petitioner is 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 the rear property line than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 12,433 +/- square feet.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a REMOTE PARTICIPATION PUBLIC HEARING on THURSDAY, MAY 19, 2022 at 7:00 P.M. on the following matter:

PETITION NO. 3961 - That of WILLIAM and MARIA RUTNAM concerning the property at 142 SYLVESTER AVENUE, 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 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.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a REMOTE PARTICIPATION PUBLIC HEARING on THURSDAY, MAY 19, 2022 at 7:00 P.M. on the following matter:

PETITION NO. 3962 - That of ZHONGJING DUAN and WEI JIANG concerning the property at 11 WATSON PLACE, 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 the front property line than permitted as of right. The property is located in the RG (General Residence) zoning district and contains 4,932 +/- square feet.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a REMOTE PARTICIPATION PUBLIC HEARING on THURSDAY, MAY 19, 2022 at 7:00 P.M. on the following matter:

PETITION NO. 3963 - That of BRANDON and LAUREN BETTENCOURT concerning the property at 121 CHURCH STREET, WINCHESTER, MA. The petitioners seek a Special Permit from Section 5.1.10(1) of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws so as to be permitted to have the width of the driveway entrances greater than 10 feet. The property is located in the RDB (Single Residence) zoning district and contains 15,997 +/- square feet.

WINCHESTER BOARD OF APPEALS

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