

January 26 2023 Winchester Zoning Board of Appeals Minutes

Present: David Felgenbaum, Chair
 Robert Tedesco, Vice Chair
 Gerard Marino
 William McGonigle
 Dorothy Simboll

Jay Talerman	Melissa and George Noble	Ben and Erin McCoy
Keith Hinzman	Caroline and Benjamin Sacks	Halsey Morris
Richard Leaf	Jacqui Lacey	Anne Spry
Donna Grant	Joel Saren	Chris Bernardi
Jeff Roeliff	David Miller	Rick Beliveau
Kathryn Zioto	Sheri Weber	Dan Beliveau
Lucie Weber	Ben Ashenburg	Tim Lee
Suzanne Roeder	Stephen Carey	Elisa Baris
?	Peter Daus Haberle	

19-35 River Street — is largely done. Mr. Engler will pay the town \$5000; he talked with the neighbors and will do the plantings and build a fence on their property. He is seeking a determination from the ZBA that the change is unsubstantial and is going to get a certificate of occupancy when it's done. The neighbors would be responsible for the care of the fence and the plantings, part of which is on town property. The town counsel represents Mr. Engler on another matter. Mr. Engler and the Board waived any conflict of interest. Mr. Tedesco made a motion to approve the waiver, seconded by Mr. McGonigle, which passed unanimously. Mr. Engler has to resolve with the town who would deal with maintenance; he needs to get a license from the town for installation. Mr. Felgenbaum propose that we consider approve the change to swap out the \$5000 payment in favor of the planting and the fence, as conditional to getting the certificate of occupancy. Mr. McGonigle made a motion to determine that the change is insubstantial, which was seconded by Mr. Tedesco, and passed unanimously. Mr. McGonigle made a motion to amend to include the conditlon that the town and neighbors approve the fence and the planting, which was seconded by Mr. Tedesco, and passed unanimously. Town Counsel Jay Talerman recommended reducing the decision to writing which affects the title. He will write a draft decision.

3980 — 8 Bridge Street: The applicant requested a withdrawal. Mr. McGonigle made a motion to accept the withdrawal of Petition 3980 without prejudice, which was seconded by Mr. Tedesco and passed unanimously.

3968 — 6 Wolcott Road: The applicant is retaining the approved garage plans; one of the driveways is being removed and will be replaced by lawn. There will be a walkway of stepping stones. Today, an email and letter arrived at 4:44 p.m. from the Engineering Department on the pervious pavers that says that excess water should not be dumped into the street. The new driveway will have pervious pavement. We need to vote on this tonight; Mr. Tedesco is stepping off the board. Mr. Felgenbaum read the letter. Pervious pavers would mitigate the situation. There is a back-up system. There are no curbs or sidewalks on the street. All water is to be captured on land.

Mr. Tedesco: The redesign is excellent. The engineering letter guidelines should be made a condition of the project. Mr. McGonigle made a motion to close the hearing, which was seconded by Mr. Tedesco and passed unanimously. Mr. Tedesco made a motion to approve Petition 3968, as updated by the January 13 2023 plan, with the approval of the Engineering Department and compliance with any and all conditions, seconded by Mr. McGonagle, and which passed unanimously. Mr. McGonigle will write the decision.

3978 –32 Everett Avenue: Atty. Vaughn: This is our third hearing about owner Will Evans' desire to site an in-ground pool and tennis court in his backyard. This project complies fully with all town requirements, other than the six-percent slope. The scenic view component should not prevent Mr. Evans from doing something in his rear yard. The town engineering department has some perfunctory requests, to which we will comply. There is no drainage impact according to Andover Consultants, no runoff to the abutters. A test pit would be invasive and costly; it could be made a condition of the approval. There is precedent, given the next-door neighbor, who did get approval, conditional on the test pit. We are before the Conservation Commission now. We have been responsive. The project meets the site plan criteria.

Mr. Feigenbaum: We have asked twice for a view from the abutters of the swimming pool without vegetation. What would that look like? Atty. Vaughn: It was not done; there is current vegetation on the property. We are proposing additional vegetation. The pine trees will remain, augmented by additional vegetation. Dense planting will screen the pool. Respectfully, it did not make sense to show a naked view. If someone was going to take down vegetation, they would have to go before the Conservation Commission, as it is in the buffer zone.

Mr. Feigenbaum: My concern is that plantings are ephemeral. They can die and be removed. Deciduous trees lose their leaves. I am thinking about the next owner. The neighbor now has an unobstructed view of the lake and will not, going forward, given the plan.

There was no effort to resolve this privately. Mr. Evans: There has been no conversation. I supported the Morris' project; I thought that they would support mine.

Mr. Feigenbaum: The issues are on the table and we have had a thorough discussion. The whole neighborhood is historic.

Elisa Baris of 34 Everett: I invited Will over and we talked. There are no issues with the pool, but with the height of the pedestals. Sorry to not see the view from the abutters of the swimming pool without vegetation. Feel free to come over and see the view from my perspective.

Mr. McGonigle made a motion to close the hearing, which was seconded by Mr. Tedesco and passed unanimously.

Mr. Tedesco: They have done an excellent job on the design. The patio is being replaced by a pool at same level. The tennis court wall is lower than the garage, although just having a singles court may not be really worth it.

Mr. McGonigle: We cannot break up the project: We take all of it or none of it. I have deep concerns: The site is going to require a large amount of excavation and replacement. The peninsula view, with its sensitive and prominent location, can be seen from all over, including from public spaces. And I agree

that vegetation is ephemeral. The overall massing of the wall has a significant effect on the historical view. A neighbor built a large wall before the zoning bylaws were written; it is a scar on the view and never should have been built in the first place. This plan would chip away at the shore, historical and scenic lake resource, as listed by MACRIS. There are legitimate concerns raised by the Oaks Engineers report about the storm water management and environmental impact, not all of which have been addressed. The pool is much larger than the patio. There is an adverse effect on historical character. There is the peer review from peer consultants.

Ms. Simboli: If you were to vote yes, making it conditional on vegetation and no additional structures built on the property, we really have no one in town that would enforce any conditions.

Mr. Feigenbaum: It's a substantial reconfiguration of the topography. The lake falls under the notion of places of public view; the proposed project does damage to the historic quality of the neighborhood, one of the most historic areas of the town. Rows of houses on both sides have been documented, surveyed and listed. There is not a problem with a pool but with the height the wall. We would see it clearly in the requested rendering. I am not enthusiastic about the tennis court. And people don't maintain impervious storm drainage systems.

Mr. Tedesco: Based on what you are hearing, would you consider withdrawing without prejudice and coming back with a scaled-down plan? Atty: Vaughn: We would prefer that the board move forward now.

Mr. McGonigle made a motion to grant site plan approval for petition 3978 — 32 Everett Avenue: Mr. Tedesco: Yes. Mr. McGonigle: No. Mr. Feigenbaum: No. Mr. McGonigle will write the decision.

3979 — 29 Calumet Road: Caroline and Ben Sacks want to remove a metal tin garage in the back corner and construct a new carriage-house-style garage. 22' x 26', sited on the side and attached to the house by a mudroom and a bath, calling it a modest addition. They fell in love with the Victorian home which needs some modernization and wish to honor the historical nature of the original home.

They hired historical architect Peter Daus-Haberle. Neighbors circulated and signed a petition. Mr. Daus-Haberle showed revised plans with the garage one foot lower and one foot farther from the property line, to meet their concerns. The existing garage is only four feet from the back property line, showing a rendering of the metal garage that is rusting away. The paving has been reduced. The door was lowered to 7 feet (which is sufficient for most cars, without bike racks on top). The pitch of the roof matches the pitch of the house. The garage is moved 15 feet from its current location to the front so that the Sacks can have a backyard.

Mr. Feigenbaum: Projects draw comments from neighbors. We make decisions based on bylaw criteria. Reaching out to neighbors is not a criteria. The majority of neighbors have detached garages in their backyards.

Mr. Daus-Haberle: Lots of lots are narrow and deep. They don't have the setbacks for an attached garage. The Sacks' lot is shallow and wide. If this were a smaller garage, it would be in accordance with the bylaws.

Mr. Feigenbaum: We are not here to consider an owners' personal need for more space, a second story on a garage as close to street as possible and a yard. The town has a legitimate view that a large garage

attached to a house closer to the road, in a historic location is out of scale and not in keeping with the character of the neighborhood.

Neighbors Joel Saren, Ricky Belliveau, Chris Bernardi, Kathryn Zioto, and Dan Belliveau: Their comments included: There are similar houses in scope and scale and an attached garage in Winchester. Moving the garage from the back to the front opens up the yard space. One neighbor has a detached garage with a top floor. Their orientation is unique; we are happy they have honored the character of the house design. People need to live a modern life. It's nice to see a garage that architecturally matches the house. Our garage is two stories. The Historical Commission approves the plan. The current garage is an eyesore and not compliant.

Atty Roeloff represents the Hinkleys, abutting neighbors, whose kitchen windows would look out on the proposed front-yard garage. They had sent a letter to the ZBA, conveying Mrs. Hinkley's distress. They are fine with having a garage, but the proposal is not in keeping with the character of the neighborhood. There are no attached, two-story garages in front of house. Garages are tucked into the back corner of lots, rather than blocking the neighbors' kitchen window light. If this is a new precedent, the historical character of the neighborhood would change.

Moving the two-story attached garage back corner would mediate the two conflicting views. An attached higher garage affects the sight lines. Buyers of historic homes are not going to have all the modern amenities. He read various submitted letters. The Hinkleys can write a letter to follow the process and create a record.

Mr. Tedesco made a motion to close the hearing, which was seconded by Mr. Marino, and unanimously passed.

Mr. Marino made a motion to approve the plan with the original height with the recess in the frontage pushed back one foot, which was seconded by Mr. Tedesco. Mr. Tedesco and Mr. Marino voted to approve the motion; Mr. Feigenbaum voted to withhold approval. The motion passes 3 to 2.

3986 — 407 Highland Avenue: Winchester Music School. Mr. Feigenbaum and Mr. Tedesco recused themselves. Mr. Marino made a motion to continue 3986 to February 17 2023, which was seconded by Mr. McGonigle and passed unanimously.

3985 — 7 Prince Avenue: Owners Ben and Erin McCoy wish to construct a third-story addition that will be located closer to the side property line than permitted as of right. Architect Kelth Hinzman did a thoughtful design that received approvals from all the boards.

Mr. Feigenbaum: This property is nonconforming as it is too close to one property line. Building a 3 1/2-story house on same the footprint is a new nonconformity. Do they need a variance? There are not 3 1/2-story buildings in this neighborhood; the proposed height would create a new nonconformity.

Atty. Talerman took the issue of the variance off the table; it's for the Town Meeting to decide: Bylaw vs Case law. There was discussion about a variance vs a special permit and the implications of creating a new nonconformity.

One of the McCoy's neighbors stood up to briefly speak in favor of the plan. There was an opposing letter citing lack of privacy and airflow.

Mr. Feigenbaum: I am troubled by this, the building of a 35-foot-tall building. And the house, surrounded by other bungalows, is now affordable, a big issue in this town. A 3 ½-story house will be unaffordable and will not fit on Prince Street.

There was discussion that there is precedence and the proposed plan, while not prevalent, is not out of character with the homes on Prince and Washington Street.

Mr. Tedesco made a motion to close the hearing, which was seconded by Mr. Marino, and passed unanimously.

Mr. McGonigle moved to approve Petition 3985 7 Prince Avenue, which was seconded by Mr. Tedesco, which with hesitancy from Mr. Feigenbaum, passed unanimously.

Mr. Feigenbaum will write the Calumet and Prince Avenue decisions, and will ask Ms. Viarella to inform the Music School that the next meeting is February 17 2023. [ed.: subsequently the next session was scheduled for 7:30 p.m., March 2, 2023, in the Select Board room of Town Hall.

Mr. McGonigle made a motion to adjourn the meeting, which was seconded by Mr. Tedesco, and passed unanimously. The meeting adjourned at 10:15pm. Board members expressed warm appreciation for his service to Mr. Tedesco, who is leaving the ZBA, after having moved to Charlestown.