



Town of Winchester  
BOARD OF APPEAL  
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Janine L. Viarella, Clerk

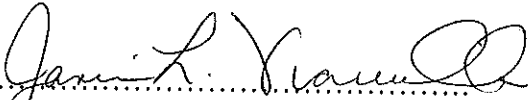
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March 28, 2017

RE: Petition No. 3798 – Winchester Boat Club, Inc.  
Rear 65 and 69 Cambridge Street

Pursuant to Chapter 40A, Section 15 of the Massachusetts General Laws, you are hereby notified that the Board of Appeal voted to uphold the Building Commissioner/Zoning Enforcement Officer's determination regarding the construction of a structure (a fence) and the December 6, 2016 determination of the Building Commissioner/Zoning Enforcement Officer regarding the installation of landscaping. The property is located in the RDB (Single Residence) zoning district and contains 68,000 square feet.

Appeals from this decision, if any, must be made pursuant to Chapter 40A, Section 17 of the Massachusetts General Laws and must be filed within twenty (20) days after the date of the filing of this decision in the Office of the Town Clerk.

  
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Janine L. Viarella  
Clerk, Board of Appeal

/jv

**TOWN OF WINCHESTER**  
**BOARD OF APPEAL**  
**Petition No. 3798**  
**65 and 69 Rear Cambridge Street**

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TOWN CLERK  
TOWN OF WINCHESTER

**Name of Petitioner:** Winchester Boat Club, Inc.

**Appeal:** The Petitioners are appealing, pursuant to Section 9.3.3(3) of the Winchester Zoning By-law in accordance with Chapter 40A, Section 8 and 15 of the Massachusetts General Laws a November 22, 2016 determination of the Building Commissioner/Zoning Enforcement Officer regarding the construction of a structure (a fence) and the December 6, 2016 determination regarding installation of landscaping. The property is located in the RDB (Single Residence) zoning district and contains approximately 68,000 square feet.

**Date of Hearing:** February 27, 2017

**Board of Appeal:** Joan E. Langsam, Richard Sampson and Jonathan Gyory

**Decision:** Upheld

**Vote of the Board:** Unanimous

**Facts:**

Petitioner, Winchester Boat Club, Inc. is appealing an enforcement order of the Building Commissioner/Zoning Enforcement Officer to remove and cease construction of a fence on its property located at 65 Rear and 69 Cambridge Street ("Property"). Such order was based on the Commissioner's interpretation of the conditions contained in Special Permit Decision No. 3021. The Building Commissioner also issued an opinion that the planting of additional landscaping would also violate the conditions of Special Permit #3021.

In 1997, the Board of Appeals issued Decision No. 3021, pursuant to a remand order of the Land Court, granting the Petitioner a Special Permit authorizing the predominately outdoor use of the property. Decision No. 3021 was issued after extensive public hearings, an initial decision in 1994, litigation, and then further public hearings in 1997. Pursuant to the remand order of the Land Court, a written stipulation was entered into by the parties which included the following language:

"Nothing in Decision No. 3021 may be construed as restricting the ability of the boat club in the future to apply for appropriate permits to make improvements on any of its land."

The Special Permit Decision No. 3021 imposed numerous conditions aimed at addressing the concerns of the neighborhood and relating to screening, ingress and egress from Everett Avenue, parking, lighting, the types and hours of activities, and structures (none allowed except bridge and gate).

The language in Decision No. 3021 relied upon by the Building Commissioner for his enforcement order is as follows:

**“The existing shed shown on the Keenan Plan shall be removed. No boat storage racks shall be installed on the land. There shall be a pedestrian bridge constructed over the brook on Lot A. No other structures (other than the gate) are proposed or approved as part of this Special Permit.”**

Abutters to the Property, Kathleen Ho and Timothy O’Donnell of 48 Everett Avenue filed memorandum in support of the Commissioner’s order. They contend, through their attorney, that the installation of the fence was “...built in direct contravention of the conditions and limitations imposed by Decision No. 3021.”

Decision No. 3021 refers to a “Landscape Plan” by Peter Wild, Certified Arborist defined as a “set of three plans showing the proposed and completed landscaping work” and a “memorandum from Mr. Wild describing landscaping work to be completed.” Such plan appears not to have been filed with Decision No. 3021 as it cannot be located in the Town’s files. However, the memorandum referenced was located in the files. The abutters contend that as a landscape plan was approved and incorporated into Decision No. 3021, any change to such plan, such as the installation of a fence or change in plantings would have to come before the Board of Appeals.

### **Discussion and Findings:**

Section 10 of the Winchester Zoning Bylaw defines a structure as “Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, billboards and poster panels.”

In the usual case of a landowner installing a fence, no building permit is required if it is 6 feet or less. However, where a landscape plan, has been approved and made a condition of a Special Permit, a modification to such plan, must be presented to and reviewed by the issuing authority, the Board of Appeals. The Board of Appeals must then make a determination as to whether such modification is minor or substantial in nature. If substantial, then a hearing with notice to abutter is required. Even though no landscape plan has been located in the Town files it appears that one was discussed and approved. However, as the Board does not have the actual plan to review it is not clear exactly what plantings were included but it is reasonable to assume a fence as proposed by Petitioner was not contemplated as no fence was installed. As such, the installation of a fence would be a modification to Special Permit No. 3021.

The Board discussed and found that the language in Decision No. 3021 and the Stipulation agreed to by parties in litigation does not prohibit the modification of that decision by the Board. Circumstances may change which would make such modifications appropriate. The Petitioner may seek modifications to Special Permit No. 3021 for the installation of fencing and/or additional landscaping.

**Decision:**

The Building Commissioner's enforcement order requiring the removal and cessation of construction of a fence on the Property is upheld. The Petitioners are allowed to file a request with the Board for a modification of Special Permit No. 3021.

**Board of Appeal**



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Richard Sampson

**Date of Decision: March 28, 2017**