



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

May 20, 2022

RE: Petition No. 3955 – 65 Cambridge Street, Winchester, MA
Petitioner: Winchester Boat Club

Pursuant to Chapter 40A, Section 15 of the Massachusetts General Laws, you are hereby notified that the Board of Appeals reversed the Building Commissioner/Zoning Enforcement Officer's order dated January 3, 2022 requiring the Petitioner to remove arborvitaes planted along Everett Avenue.

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.

Janine L. Viarella
Clerk, Board of Appeals

/jv

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

TOWN CLERK
TOWN OF WINCHESTER

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 arborvitae 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, 2022 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: The Board received the following documents regarding this appeal:

- Appeal Package (Contents)
- Form 1 (Zoning Application checklist)
- Form 2 (Application for Zoning Hearing)
- Form 2A (Appeal-Supporting Statement Requested Findings)
- Addendum to Form 2A (includes 5 Exhibits)
- Memo from Beth Rudolph, PE – Town Engineer and Bryan Manter, PE – Assistant Town Engineer dated March 31, 2022
- Email from Kevin Sarney dated March 17, 2022 with two attachments (Letter to ZBA Continuance – March 17, 2022 and WBC Landscape – Exhibits March 2022)
- Design Review Committee – Meeting minutes March 9, 2022

- Email from Margaret Pinkham dated March 24, 2022 with two attachments (O'Donnell-Sarney 3 24 22 ltr ZBA and 3 24 22 ZBA Exhibits)
- Conservation Comments dated 3/8/22
- Letter from Richard and Cheryl Norsworthy dated March 22, 2022
- Email from Kathleen Ho dated March 27, 2022 with two attachments (Ho O'Donnell letter to ZBA 3-27-2022 and O'Donnell Ho ltr Bld Comm 7 17 18)
- Email from Tod Gulick dated March 28, 2022 with attachment (ZBA letter March 2022)
- Email from Kathleen Ho dated March 31, 2022 with attachment (WBC -everett ave trees and gate)
- Email from Margaret Pinkham with attachment (Ltr to A. Wile Requesting Enforcement 3 31 22)
- Email from Jonathan Silverstein dated April 19, 2022 with four attachments (IMG_0890, IMG_0897, IMG_7728, IMG_5477)
- Email from Kevin Sarney dated April 21, 2022 with attachment (WBC Everett Ave Photos Through Time - April 21, 2022)
- Email from Elaine Vreeland dated April 27, 2022 with attachment (2022.04.12 Minutes DRAFT)

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 arborvitae 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 arborvitae 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 arborvitae. 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 arborvitae 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 arborvitae. He also asserted that there is still some view to the Upper Mystic Lake across Lot B, and offered to trim the arborvitae 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 arborvitae 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 arborvitae 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 arborvitae for the reasons described above.

BOARD OF APPEALS

BY:



David L. Feigenbaum

Dated: 5/20/2022