

Town of Winchester
BOARD OF APPEALS
Town Hall 71 Mt. Vernon Street, Winchester, MA 01890
Phone 781-721-7115 Fax 781-721-9935
Janine L. Viarella, Clerk

June 13, 2022

RE: Petition No. 3959 – 19 Agawam Road, Winchester, MA

Pursuant to Chapter 40A, Section 15 of the Massachusetts General Laws, you are hereby notified that the Board of Appeals has granted Kelly and Paul Murray 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.

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**

2022 JUN 13 AM 8:26

**Petition No. 3959
19 Agawam Road**

TOWN CLERK
TOWN OF WINCHESTER

PETITIONER: Kelly and Paul Murray

APPLICATION FOR: Special Permit under Section 4.4.2 of the Winchester Zoning Bylaw 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 of the property line than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 14,705 +/- square feet.

DATE OF HEARING: Heard on April 21, 2022. Continued to May 19, 2022. Decided on May 19, 2022.

BOARD OF APPEALS: Robert Tedesco (Vice Chair), William McGonigle (Regular Member), Dorothy Simboli (Alternate Member)

DECISION: Special Permit is granted.

VOTE: 3-0

MATERIALS CONSIDERED:

Submitted by Petitioner:

- Form 1
- Form 2
- Form 2H
- Site Plans, including pool plans, civil detail sheet, and site preparation plans
- September 8, 2021 Stormwater Mitigation Report by Quetti Design
- March 1, 2022 Email from Tim and Janiene Gresla
- March 1, 2022 Email from Kelly Unger
- March 8, 2022 Email from Marta Dragos
- April 12, 2022 Email from Kelly Murray
- Neighborhood map

Submitted by Town:

- April 4, 2022 Memo from the Winchester Historical Commission
- April 6, 2022 Memo from the Winchester Design Review Committee
- April 19, 2022 Memo from the Winchester Planning Board
- April 21, 2022 Memo from the Winchester Engineering Department
- May 19, 2022 Memo from the Winchester Engineering Department

THE LAW:

Section 4.4.2 of the Winchester Zoning Bylaws ("WZB") states:
"Swimming Pools. Swimming pools are allowed as set forth in the Table of Use Regulations, subject to the following:

1. Such pool is used only by the residents of the premises and their guests.
2. No portion of the water or pool equipment including but not limited to pumps, mechanical equipment, heaters and fuel tanks shall be within a required yard area.
3. If a lot cannot reasonably accommodate a pool without infringing the side or rear yard requirements, the Board of Appeals may, by Special Permit, allow location of a pool or pool equipment within the required side or rear yard up to half the distance required from the side or rear lot line. The Board may grant a Special Permit for this purpose where it finds that enforcement of the yard restrictions would involve practical difficulty or unnecessary hardship and the granting of relief would not result in a detriment to the public safety, health or welfare of the neighborhood, but without further reference to Section 9.4.
4. No portion of the water shall be within ten (10) feet of any building.
5. A covered or indoor pool must meet all requirements pertinent to any building or structure.
6. Uncovered, exterior swimming pools shall be considered open area for the purpose or computation under Section 4.1.1.
7. The pool shall not be filled with water or used by any person until a Certificate of Occupancy has been issued
8. A fence or protective barrier not less than five (5) feet in height having self-latching devices on all gates shall be installed and maintained so as to completely enclose all swimming pools. All latches shall be located not less than four (4) feet above ground.

Chapter 40A, Section 9 of the Massachusetts General Laws states, among other provisions, that: "Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use."

DISCUSSION:

The Petitioners seek to construct a pool in the backyard of their property. The WZB allows the construction of a pool by right if, among other things, it is at least 15' from the property lines. Here, because the proposed pool will only, at one point, be 8.3' from the rear property line, a Special Permit is required.

At the April 21, 2022 hearing, the Board asked why the submitted plans included areas labeled "Proposed Addition" and "Proposed Deck" which appeared to force the pool location back towards the rear property line and thus created the need for the Special Permit. Petitioners explained that this addition and deck were no longer "proposed" but were either constructed or under construction. The Board then asked why the pool was not considered when planning the addition and deck, and Petitioners explained that there was no explanation other than they did not consider building a pool until after work started on the addition and deck. At least one member of the Board demonstrated significant concern over this approach, pointing to the provision in WZB 4.4.2 that states a Special Permit for a pool is only justified "if a lot cannot reasonably accommodate a pool without infringing the side or rear yard requirements." According to that Board member, had the Petitioners included the pool in their plans for an addition and deck, the lot could have reasonably accommodated a pool, and there would be no need for a Special Permit. Ultimately, no vote was taken at the April 21, 2022 as the Board required a report from the Engineering Department concerning stormwater before a vote could be held. The hearing was therefore continued.

By the May 19, 2022 hearing, the necessary report was submitted by the Engineering Department. The Board member who had concern over the ability of the lot to reasonably accommodate the pool had the pool been considered in the plans for the addition and deck reiterated those concerns, stated that in the future it would be best for petitioners to employ greater foresight and planning to better respect the requirements of the WZB, and warned that the Board might not be as favorable towards similar situations in future petitions. These concerns having been stated, the Board voted 3-0 in favor of the Petitioners and to grant the requested Special Permit subject to the conditions set forth below.

Applying the requirements of WZB §4.4.2:

1. Such pool is used only by the residents of the premises and their guests.
 - Petitioners represented the pool was only to be used by them as residents of the premises and their guests.
2. No portion of the water or pool equipment including but not limited to pumps, mechanical equipment, heaters and fuel tanks shall be within a required yard area.
 - Petitioners represented that no portion of the water or pool equipment including but not limited to pumps, mechanical equipment, heaters and fuel tanks shall be within a required yard area.
3. If a lot cannot reasonably accommodate a pool without infringing the side or rear yard requirements, the Board of Appeals may, by Special Permit, allow location of a pool or pool equipment within

the required side or rear yard up to half the distance required from the side or rear lot line. The Board may grant a Special Permit for this purpose where it finds that enforcement of the yard restrictions would involve practical difficulty or unnecessary hardship and the granting of relief would not result in a detriment to the public safety, health or welfare of the neighborhood, but without further reference to Section 9.4.

- As discussed above, at least one Board member believed that the lot could have reasonably accommodated a pool had the pool been included in the plans for the recent addition and deck, and stated that the Board may not act favorably in certain circumstances in the future.
 - Acknowledging that concern, the Board recognized that enforcing the yard restrictions upon the property now that the addition and deck were built (or being built) would involve practical difficulty or unnecessary hardship and the granting of relief would not result in a detriment to the public safety, health, or welfare of the neighborhood.
 - Contributing to the Board's conclusion on this matter was the multiple emails of support from neighbors and the relationship between the Petitioners' lot and their neighbors on the other side of the rear property line. Specifically how, due to the elevation and covering foliage, the rear neighbor would suffer minimal impact from the proposed pool location.
4. No portion of the water shall be within ten (10) feet of any building.
 - Petitioners' plans demonstrated adherence to this requirement.
 5. A covered or indoor pool must meet all requirements pertinent to any building or structure.
 - Petitioners' plans demonstrated adherence to this requirement.
 6. Uncovered, exterior swimming pools shall be considered open area for the purpose or computation under Section 4.1.1.
 - Petitioners' plans demonstrated adherence to and consideration of this requirement.
 7. The pool shall not be filled with water or used by any person until a Certificate of Occupancy has been issued.
 - Petitioners represented that they would adhere to this requirement.
 8. A fence or protective barrier not less than five (5) feet in height having self-latching devices on all gates shall be installed and maintained so as to completely enclose all swimming pools. All latches shall be located not less than four (4) feet above ground.
 - Petitioners' plans demonstrated adherence to this requirement.

For these reasons, the Board approved the petitioner by a vote of 3-0, subject to the conditions below.

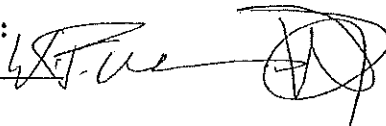
CONDITIONS: Petitioner shall adhere to all representations made to the Board (both written and oral) as well as the requirements and conditions set forth in both WZB §4.4.2 (as set forth above and incorporated here by reference), the April 6, 2022 Memo from the Winchester Design Review Committee, and the May 19, 2022 Memo from the Winchester Engineering Department, including:

- All site lighting shall be designed to avoid light trespass on abutting properties and in compliance with the dark sky ordinance.
- Petitioners will be required to obtain a street opening permit from Winchester DPW for any work in the Right-of-Way. This includes work associated with curb cuts.
- The Engineering Department shall be notified a minimum of 48-hours prior to installation of the sub-surface infiltration system.
- Petitioners shall provide an as-built plan and certification by the engineer of record confirming the system was installed per the approved plan prior to the issuance of a Certificate of Occupancy permit.
- As-built plans and O&M plans shall meet requirements as described in 5.8.d of the Sewer and Storm Drain Regulations
<https://www.winchester.us/DocumentCenter/View/136/Public-Sewer-and-Storm-Drain-Regulations-PDF?bidId=>
- Upon completion of work, the engineer of record for the project shall certify that:

“Based on site observations by myself or an employee under my direct supervision and/or based on information provided by a registered land surveyor, I hereby certify that all grading, stormwater management systems, water, sewer and other utilities have been constructed in substantial conformance with the approved plans, except as noted herein. I further certify that the drainage and stormwater management system, as constructed, will operate (1) as designed by the engineer of record and (2) as approved by the Town.”
- Petitioners shall record the As-Built Plans and O&M Plan at the Middlesex County Registry of Deeds within thirty (30) days of completion of the project.

BOARD OF APPEALS, BY:

William F. McGonigle
William F. McGonigle



DECISION DATED:

June 8, 2022