



Town of Winchester  
BOARD OF APPEALS  
Town Hall 71 Mt. Vernon Street, Winchester, MA 01890  
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Janine L. Viarella, Clerk

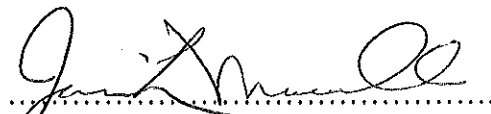
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June 17, 2022

RE: Petition No. 3958 – Lot 4 Abby 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 Joey Davis and Jessica Chang 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 Board of Appeals also granted Joey Davis and Jessica Chang 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.

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 Appeals

/jv

RECEIVED AND FILED

TOWN OF WINCHESTER  
BOARD OF APPEALS  
Decision No. 3958  
Lot 4 Abby Road

2022 JUN 17 AM 9:02

TOWN CLERK  
TOWN OF WINCHESTER

**Name of Petitioner:** Joey Davis and Jessica Chang

**Application For:** The Petitioners seek a Dimensional Variance from Section 4.0 of the Winchester Zoning Bylaw in accordance with Chapter 40A, Section 10 of the Massachusetts General Laws so as to be permitted to construct a new single family dwelling the will be located closer to the front property line than permitted as of right.

The Petitioners are also seeking Site Plan Review and Approval under Section 9.5.1(7) of the Winchester Zoning Bylaw 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-10 (Single Residence) zoning district and contains 15,998 +/- square feet. The proposed structure contains approximately 4188 square feet. In addition, the proposed structure includes a lower basement level consisting of a 937 square foot garage, an additional 790 square feet of living space and 652 square feet of storage.

**Date of Hearing:** April 21, 2022, May 19, 2022

**Board of Appeals:** Robert Tedesco, William McGonigle, Dorothy Simboli

**Decision:** Granted

**Vote of the Board:** Unanimous

**Conditions:** This grant of Variance and Site Plan Approval are conditioned on the following:

1. Construction of the proposed structure, landscaping, impervious services and amenities shall be in substantial compliance with the application, forms, documents, 3D renderings, representative images, stormwater report, calculations and plans submitted with the petition including but not limited to:
  - a. Plot Plan entitled "ABBY ROAD, LOT 4, WINCHESTER, MA" Scale 1"= 20', dated February 17, 2022, prepared by Brian S. Knowles, Professional Land Surveyor, Waterfield Design Group, 50 Cross Street, Winchester, MA 01890, consisting of 1 sheet, P-1.

- b. Set of Plans entitled "ABBY ROAD LOT 4, MAP 2, LOT 269 WINCHESTER, MASSACHUSETTS, dated February 17, 2022 and revised May 16, 2022, prepared for the Davis-Chang Family Trust, 139 Somerville Street, Unit 1, Somerville, MA 02143, consisting of 10 sheets ("Civil Plans") including:
- i) Plan entitled "EXISTING CONDITIONS ABBY ROAD LOT 4 WINCHESTER MASSACHUSETTS" Scale 1" = 10' dated February 17, 2022 and revised May 16, 2022, prepared by Brian R. Knowles, Professional Land Surveyor, Waterfield Design Group, 50 Cross Street, Winchester, Massachusetts 01890, Drawing Number EC-1, Sheet 2 of 10;
  - ii) Plan entitled "SEDIMENT AND EROSION CONTROL & SITE PREPARATION AND DEMOLITION" Scale 1" = 10' dated February 17, 2022 and revised May 16, 2022, prepared by Craig R. Miller, Registered Professional Civil Engineer, Waterfield Design Group, 50 Cross Street, Winchester, Massachusetts 01890, Drawing Number C-1, Sheet 3 of 10;
  - iii) Plan entitled "LAYOUT & MATERIALS" Scale 1" = 10' dated February 17, 2022 and revised May 16, 2022, prepared by Craig R. Miller, Registered Professional Civil Engineer, Waterfield Design Group, 50 Cross Street, Winchester, Massachusetts 01890, Drawing Number C-2, Sheet 4 of 10;
  - iv) Plan entitled "DRAINAGE & UTILITIES" Scale 1" = 10' dated February 17, 2022 and revised May 16, 2022, prepared by Craig R. Miller, Registered Professional Civil Engineer, Waterfield Design Group, 50 Cross Street, Winchester, Massachusetts 01890, Drawing Number C-3, Sheet 5 of 10;
  - v) Plan entitled "GRADING" Scale 1" = 10' dated February 17, 2022 and revised May 16, 2022, prepared by Craig R. Miller, Registered Professional Civil Engineer, Waterfield Design Group, 50 Cross Street, Winchester, Massachusetts 01890, Drawing Number C-4, Sheet 6 of 10;
  - vi) Plan entitled "LANDSCAPING" Scale 1" = 10' dated February 17, 2022 and revised May 16, 2022, prepared by Craig R. Miller, Registered Professional Civil Engineer, Waterfield Design Group, 50 Cross Street, Winchester, Massachusetts 01890, Drawing Number C-5, Sheet 7 of 10; and

- vii) Plan entitled "DETAILS" Scale 1" = 10' dated February 17, 2022 and revised May 16, 2022, prepared by Craig R. Miller, Registered Professional Civil Engineer, Waterfield Design Group, 50 Cross Street, Winchester, Massachusetts 01890, Drawing Number D-1, D-2, D-3, Sheets 8, 9 and 10 of 10;
  - c. Proposed Plans entitled "LOT 4 ABBY ROAD WINCHESTER, MA, 01890" Scale ¼" = 1'-0", prepared by I-KANDA ARCHITECTS, LLC, Isamu Kanda, Principal, 50 Terminal St Bldg 2, Unit#429, Charlestown, MA 02129, email: [info@i-kanda.com](mailto:info@i-kanda.com), cell: 646-228-1040, and TRIPI ENGINEERING SERVICES, LLC, Joaquin A. Denoya, P.E. Senior Structural Engineer, 433 Main St, Suite 4, Hudson, MA 01749, email: [jad@tripiengineering.com](mailto:jad@tripiengineering.com), cell: 603-213-2690, consisting of 8 sheets, A4.01, A4.02, A4.03, A4.04 and A2.00, A2.01, A2.02, A3.02, dated January 25, 2022.
2. Compliance with all recommendations and requirements by the Town Engineer and Assistant Town Engineer and documents and plans submitted including but not limited to:
- a. Memorandum from Town Engineer and Assistant Town Engineer to the Zoning Board of Appeals RE: Petition 3958 Lot 4 Abby Road Rev#1 dated May 19, 2022 including but not limited to Items 9, 14, 15, 16 and 17 referenced therein and incorporated herein by reference;
  - b. Stormwater Report prepared by Waterfield Design Group dated and stamped February 2022 and revised May 2022 and O&M Plans;
  - c. Civil Plans;
  - d. Letter to Town of Winchester Planning Board entitled "Subject Petition 3958 – Lot 4 Abby Road Response to Engineering Department Review Comments" and dated May 17, 2022; and
  - e. Installation of the Abby Road Subdivision Stormwater Drainage System meeting or exceeding the requirements of the Subdivision approval and as depicted on As-Built Drawings and as may be further modified and/or required by the Town Engineer and Assistant Town Engineer.

3. Applicable and relevant provisions of that certain Development Agreement by and between the Town of Winchester, Massachusetts, acting by and through its Select Board and the subdivision developer, Five Points Development, LLC and its assignees (“Developer”) dated November 7, 2018 (“Development Agreement”).
4. Strict adherence to the Building Code.
5. All representations made by the Petitioner at the public hearings, not otherwise memorialized in writing or in the submittals, are hereby incorporated into this Decision.

## **Facts**

### Variance

The Petitioners seek a variance for front yard setback so as to construct a single-family house in the Abby Road Subdivision. In the RDB-10 District, the Zoning Bylaw requires a twenty-five (25)-foot front setback. The Petitioner seeks to reduce that front setback to seventeen (17) feet.

The Abby Road Subdivision (“Subdivision”) was approved by the Planning Board in February 2019 following the transfer of land pursuant to the Development Agreement. Section I.E of the Development Agreement requires the Developer to “apply to the Zoning Board for a front setback variance in order to construct the houses...at least 5 feet closer to the Road...than is allowed under the Zoning By-Law.” Presumably, this provision was intended to allow for and maintain a meaningful distance, well in excess of minimum rear yard lot setbacks which, absent the Development Agreement, would have been permitted as of right, between the new residences of the Subdivision, together with their respective extensions, yard and amenities, and the respective abutting properties and existing homes on Dana and Highland Avenues and North Border Road. The original design of the Subdivision included drainage provisions for rooftop runoff from the respective houses on each lot with building footprints up to 1,600 square feet. Petitioner proposes a building footprint of 2,392 square feet with additional impervious surface.

In laying out the Subdivision, Abby Road was designed as a dead-end/cul-de-sac without a second outlet. As a result, the Subdivision, as designed and approved, contains a hammerhead in front of Lot 4 to enable fire and emergency vehicles to turn around at the top of Abby Road. This hammerhead, exclusive to Lot 4, also provides the only access to Lot 4. Because of the configuration and location of the hammerhead, Lot 4 has less usable frontage in which to locate a driveway and front yard. The existence of the hammerhead also results in a necessitated additional front yard setback from the main portion of Abby Road. We note that

front yard setback in RDB-10 is 25 feet. If strict enforcement of the front yard setback of 25 feet were required, the resulting structure would be located approximately 50 feet from the main portion of Abby Road, pushing the home even further into the corner and closer to the existing residences on Dana Avenue and North Border Road, contrary to the intent of the Development Agreement to maintain a rear yard buffer in excess of what the Zoning Bylaw allows. In addition, Lot 4 has a limited lot width of 78 feet where 80 feet would be required. Lastly, Lot 4 has a restricted building envelope due to the location of the stormwater management tank which tank benefits the entire Subdivision and other properties lying south of the Subdivision by handling stormwater runoff from the Fells and North Border Road. This tank is located along the east side of Lot 4 and requires a 10 foot setback therefrom. The location of this tank effectively resulted in a 40 foot minimum rear yard setback, further constraining the potential building envelope despite Lot 4 being relatively larger than the other lots in the Subdivision.

#### Site Plan Review

Petitioners also seek Site Plan Approval due to a change the grade of more than 500 square feet by more than six (6%) percent. In connection therewith, the Petitioner also proposes a building footprint of 2,392 square feet with additional impervious surface compared with the original design of the approved Subdivision which included drainage provisions for rooftop runoff from the respective houses on each lot with building footprints up to 1,600 square feet and no additional impervious surface other than presumably a driveway.

#### **Department, Board and Committee Review and Recommendations**

In its Memorandum, the Engineering Department stated that while it had no comment on the Variance request, it did note that it was the intent of the Select Board in the Development Agreement to require variance requests in order to provide additional buffer between the Subdivision and the existing abutting properties on Dana Avenue and Highland Avenue.

Regarding Site Plan Review and Approval, the Engineering Department noted that the Subdivision design included drainage provisions for the rooftop runoff from the respective houses on each lot with building footprints of up to 1,600 square feet. The Engineering Department noted that the proposed house for this Petition had a footprint of 2,392 square feet along with additional impervious surface. In its Memorandum, the Town Engineer and Assistant Town Engineer reviewed the Civil Plans, Storm Water report and O&M Plans and requested several revisions to each including but not limited to additional drainage and utilities, underground storage systems, new area drain lines, a comparison of impervious area proposed compared with that contemplated as part of the Subdivision, details of proposed water service

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connections, updates to HydroCAD model and calculations, and details for long-term maintenance and responsibilities for systems depicted on the O&M plans.

Engineering also noted that the Petitioner will be required to obtain a street opening permit from the Winchester DPW for any work in the Right-of-Way, including work associated with curb cuts, 48 hour advance notice prior to installation of the sub-surface infiltration system, as-built and certified plans confirming that the system was installed as per the approved plans, as-built plans and O&M Plans to meet requirements of 5.8.d of the Winchester Sewer and Storm Drain Regulations, certification from the engineer of record (see language of Memorandum) and the recording of As-Built Plans and O&M Plans at the Middlesex County Registry of Deeds within 30 days of completion of the project.

The Planning Board in minutes dated April 19, 2022 voted favorable action 4-0-1 on Site Plan Review pending a determination that the Stormwater Drainage System for the entire Abby Road Subdivision has been installed correctly which was under review by the Engineering Department. The Planning Board also voted favorable action 4-0-1 on the Front Yard Setback Variance to permit the dwelling to be located closer to the front property line than permitted as of right, based on the shape and topography of the lot and the orientation of the structure to improve sight lines and buffering for the abutting properties.

The Design Review Committee in minutes from April 6, 2022 concluded that Lot 4 is a "difficult site" with strong grading variations, that grading and zoning triggered Site Plan Review, that the Petitioner's contractor and engineer would be addressing the grading and that Petitioner's Site Plan for Lot 4 met all the design criteria of Section 9.5.7. The Design Review Committee found that the rotated home orientation and reduced front setback would contribute to the "public good" by "decreasing the visual impact of the structure's mass." Furthermore, the orientation further contributed to the public good by "optimizing solar energy collection and long-term sustainability." Lastly, the Design Review Committee noted Petitioner's expectation that the home would "achieve or exceed NetZero energy usage." The Design Review Committee voted favorable action, 7-0 for both the Front Yard Setback Variance and Site Plan Approval.

The Historical Commission in minutes of April 4, 2022 voted favorable action 6-0, finding the Petition had no adverse effect on a historical or cultural resource.

The Conservation Commission determined it did not have jurisdiction of this Petition.

Several neighbors, some of which were Dana Road and North Border residents, submitted letters in support of the project, and Ann Sera, as a representative of other local residents, spoke in favor of the project, while expressing concern and reservations regarding

the adequacy of stormwater management and run-off mitigation measures, all as required by the Engineering Department and the Planning Board for both Lot 4 and the Subdivision.

## Discussion

### Variance

Pursuant to Massachusetts General Laws, Chapter 40A, Section 10, this Board may grant a variance only where it "specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially effecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law."

The Board finds several special circumstances unique to Lot 4. First, Lot 4 has a unique corner condition due to its location in the Subdivision, whereby it abuts existing residences on both Dana Avenue and North Border Road. Second, the unusual hammerhead located in the road frontage of Lot 4 resulted in an atypical lot shape, limiting and resulting in non-conforming frontage of 56 feet where 80 feet would be required and lot width of 78 feet, where 80 feet would be required. Third, the building envelope is highly restrictive due to the corner condition, the hammerhead and the location of the on-site stormwater tank approved as part of the Subdivision. As a result of the foregoing unique and unusual circumstances, a substantial hardship exists whereby it would be impractical to build a house on Lot 4 without situating the house closer to Abby Road than permitted as of right and the granting of the requested variance to reduce the front yard setback to 17 feet.

The Board also finds that the granting of this variance does not result in substantial detriment to the public good and without nullifying or substantially from the intent or purpose of the Zoning Bylaw, in accordance with Section 10. The granting of this variance not only does not result in substantial detriment to the public good, but actually promotes the public good by enabling an increase in the buffer between the dwelling, together with its respective extensions, yard and amenities, and the existing abutting properties on Dana Avenue and North Border Road, consistent with the intent of the Development Agreement. The Petitioner's thoughtful and creative site design, sinking the structure into the hillside, creating viewing alleys on each side of the house, its orientation, layout and extensive landscaping furthermore reduces the visual massing from both Abby Road and the existing abutting properties on Dana Avenue and North Border Road. The Board also recognizes that the Petitioner has complied with the requirement of the Development Agreement to retain the existing forestry and



vegetation bordering the abutting properties on Dana Avenue and North Board Road also promoting public good. Additionally, the Board notes that the Petitioner's preferred house orientation on Lot 4 was also chosen to optimize solar energy collection consistent with Petitioner's design of a 100% electric house, which also includes photovoltaic panels and a geothermal heat pump for heating and cooling intended to result in increased sustainability and reducing reliance on fossil fuels, and with the expectation that the home will achieve or exceed NetZero energy usage, which further promotes public good. Lastly, the Petitioner has submitted engineering and stormwater analysis to the Engineering Department to ensure that the run-off from additional impervious surface in excess of a 1,600 square foot footprint satisfies the requirements of the Engineering Department. Because the Abby Road Subdivision is situated in Winchester Highlands, just below the Middlesex Fells, reservoir and watershed areas, stormwater management measures are critical to protect all areas situated downhill therefrom. The Board recognizes Petitioner's efforts in working with the Engineering Department and Planning Board, while also noting that the removal of forested areas together with increased impervious surfaces could result in soil erosion and unintended stormwater run-off which would, absent adequate mitigation, be a substantial detriment to the public good.

Lastly, the granting of this variance does not derogate from the intent of the Bylaw, particularly where most of the land on the opposite side of Abby Road is undeveloped land owned by the Town of Winchester. This land is zoned as a Conservancy-Institutional District and includes Bordering Vegetated Wetland, a Wetlands Buffer Zone and Riverfront Area associated with a spillway coming from a reservoir in the Middlesex Fells, and as a result, this land is unlikely to ever be developed, and thereby having no adverse effect.

#### Site Plan Review and Approval

Winchester Zoning Bylaw Section 9.5.1(7) requires Site Plan Review for a grade change of more than six (6%) percent over an area of more than 500 square feet.

Winchester Zoning By-law Section 9.5.7 provides as follows:

New building construction and other site alterations shall be designed, after considering the qualities of the specific location, the proposed land use, the design of the buildings, grading, egress points, and other aspects of the development, so as to:

1. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity;
2. Minimize any adverse effect on any historic resource;

3. Minimize the volume of cut and fill, the number of removed trees six (6) inches in caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, soil erosion;
4. Provide adequate stormwater management and other utilities consistent with the functional requirements of the Planning Board Subdivision Rules and Regulations;
5. Maximize pedestrian and vehicular safety, both on the site and emergency service equipment;
6. Provide adequate access to each structure for fire and emergency service equipment;
7. Minimize obstruction of scenic views from publicly accessible locations;
8. Minimize visual intrusion by controlling the visibility of parking, storage, utilities such as HVAC systems and transformers, or other outdoor service areas viewed from public ways or premises residentially used or zoned;
9. Minimize glare from headlights and lighting intrusion;
10. Minimize contamination of groundwater from on-site wastewater disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances; and
11. Ensure compliance with the provisions of this Zoning Bylaw.

This Board finds as follows:

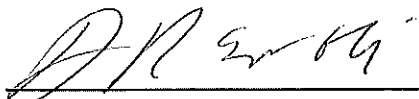
1. Petitioner's proposed plans minimize an unreasonable departure from the character, materials and sale of buildings in the vicinity. While Petitioner's proposed structure is considerably larger in square footage than properties on the adjacent Dana Avenue and North Border Road, and is also larger in footprint than that contemplated as part of the original Subdivision which depicted 1,600 square foot footprints which logically would result in 3,200 square foot homes, Petitioner sited the structure sideways and into the slope so as to minimize the visual massing from the street. The Petitioner represented that the increased footprint was necessary to configure the rooms of the house in part because of the atypical house orientation on the lot. The Board also notes that the square footage of Lot 4 is 60% larger than each of the other lots in the Abby Road Subdivision, allowing a larger footprint proportionally in this singular instance. Additionally, the Petitioner left in place the natural forested buffer situated at the rear of Lot 4 in order to protect the privacy of the abutting properties on Dana Avenue and North Border Road, all as contemplated by the Development Agreement. Lastly, in seeking a departure from the 1,600 square foot footprints, resulting in more impervious surface than that contemplated in the Development Agreement, the Petitioner sought an increase in stormwater management and infiltration compliance, all in collaboration with and as required by the Winchester Engineering Department.

2. Historical Commission determined that the Petition does not impact historical resources.
3. Petitioner's Landscape Plan and related submittals are consistent with the intent of the Development Agreement and original Subdivision to preserve trees in the rear of Lot 4, and also to install extensive new plantings, all of which should minimize soil erosion.
4. As stated in 1) above, Petitioner has sought the approval of the Planning Board and Engineering Department to provide adequate stormwater management and other utilities, and that the granting of this Site Plan approval is conditioned on compliance with the Engineering Department's detailed requirements as set forth and/or referenced herein, and any other requirements relating to stormwater management for the Subdivision.
5. Pedestrian and vehicular safety, both on the site and egressing from it were sufficiently depicted on the Civil Plans.
6. Fire and emergency service access would have been factored into the approval of the original Subdivision and the Winchester Fire Department had no comment on this Petition.
7. Obstruction of scenic views is not a factor in this Petition.
8. Minimizing visual intrusion as viewed from public ways and other residences was addressed in the siting and buffering of the structure and its amenities, all as detailed in the Civil Plans, including the Landscaping Plan.
9. Minimizing glare from headlights and lighting intrusion is not a factor of this Petition.
10. Minimizing contamination of groundwater from on-site wastewater disposal and handling and disposal of hazardous substances is not a factor in this Petition.
11. Petitioner is required to comply with all aspects of the Zoning Bylaw, except only as specifically permitted by this Decision and subject to the conditions imposed herein. Furthermore, given the exceptional and atypical nature of this Petition and Approval, together with the unique configuration of Lot 4 in the original Subdivision, it is not the intent of this Board that this property be eligible for a Special Permit at a future date due to the non-conforming nature of the property, including the reduced setback and decreased width dimension.

The Board notes that this decision is limited and solely related to the specific relief requested and makes no determination regarding the sufficiency or appropriateness of any of the plans, specifications and additional depictions submitted.

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**Board of Appeals**



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Dorothy Simboli