

TOWN OF WINCHESTER

REVISED

12:04 pm, Jan 18, 2023



RECEIVED

By Winchester Town Clerk at 12:04 pm, Jan 18, 2023

PUBLIC MEETING NOTICE and AGENDA REVISED

Pursuant to MGL Ch. 30A, Sec. 18-25 All meeting notices and agendas must be filed and time stamped by the Town Clerk's Office and posted at least 48 hours prior to the meeting (excluding Saturdays, Sundays and Holidays) on www.winchester.us

Board/Committee Name: Board of Appeals
Date: January 26, 2023
Time: 7:00PM
Place: Select Board Meeting Room

Agenda:

- Petition No. 3968 – 6 Wolcott Road (continued from 12/15/22)
- Petition No. 3978 – 32 Everett Avenue (continued from 12/15/22)
- Petition No. 3979 - 29 Calumet Road (continued from 12/15/22)
- Petition No. 3980 – 8 Bridge Street (continued from 12/15/22)
- Petition No. 3985 – 7 Prince Avenue
- Petition No. 3986 – 407 Highland Avenue
- Review November 17, 2022, December 8, 2022, and December 15, 2022 minutes
- Review and vote on draft revised forms.
- Review draft decision – Petition No. 3977 – 326 Highland Avenue
- 25 River Street (19-35 River Street)-modification of comprehensive permit-request for determination of insubstantial changes



CONTINUED TO JANUARY 26, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, JULY 28, 2022 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 3968 - That of GEORGE and MELISSA NOBLE concerning the property at 6 WOLCOTT ROAD, WINCHESTER, MA. The petitioners are seeking a Special Permit from Section 3.5.5 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 addition that will be located closer to the side property line than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 12,206 +/- square feet.

WINCHESTER BOARD OF APPEALS

Petition may be viewed at the Building Department during regular office hours or on the Board of Appeals web page www.winchester.us



CONTINUED TO JANUARY 26, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, OCTOBER 20, 2022 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 3978 - That of WILL EVANS by PETER WHITE, ZEN ASSOCIATES, INC. concerning the property at 32 EVERETT AVENUE, WINCHESTER, MA. The petitioners are seeking 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 33,429 +/- square feet.

WINCHESTER BOARD OF APPEALS

Petition may be viewed at the Building Department during regular office hours or on the Board of Appeals web page www.winchester.us



CONTINUED TO JANUARY 26, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, NOVEMBER 17, 2022 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 3979 - That of BEN and CAROLINE SACKS concerning the property at 29 CALUMET ROAD, WINCHESTER, MA. The petitioners seek Site Plan Review under Section 9.5.1(5) of the Winchester Zoning By-Law so as to be permitted to construct an addition where the total floor area of the single family dwelling will be greater than 5,000 square feet. The property is located in the RDB (Single Residence) zoning district and contains 18,000 +/- square feet.

WINCHESTER BOARD OF APPEALS

Petition may be viewed at the Building Department during regular office hours or on the Board of Appeals web page www.winchester.us



CONTINUED TO JANUARY 26, 2023 AT 7:00PM IN THE SELECT BOARD MEETING ROOM

BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

The WINCHESTER BOARD OF APPEALS will hold a PUBLIC HEARING on THURSDAY, NOVEMBER 17, 2022 at 7:00 P.M. in the SELECT BOARD MEETING ROOM, TOWN HALL, 71 MOUNT VERNON STREET, WINCHESTER, MA on the following matter:

PETITION NO. 3980 - That of EMERALD HYPNOSIS LLC/EMER T. MORRIS concerning the property at 8 BRIDGE STREET, WINCHESTER, MA. The petitioner is seeking a Special Permit from Section 3.1.2, Group VI (2) and 9.4 of the Winchester Zoning By-Law in accordance with Chapter 40A, Section 9 of the Massachusetts General Laws so as to be permitted to establish a home occupation where clients come to the house for consultation. The property is located in the RG (General Residence) zoning district and contains 11,778 +/- square feet.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

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PETITION NO. 3985 - That of BEN and ERIN MCCOY concerning the property at 7 PRINCE AVENUE, WINCHESTER, MA. The petitioners are seeking a Special Permit under Section 3.5.5 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 a third story addition that will be located closer to the side property line than permitted as of right. The property is located in the RDB (Single Residence) zoning district and contains 5,000 +/- square feet.

WINCHESTER BOARD OF APPEALS

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BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

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PETITION NO. 3986 - That of THE WINCHESTER COMMUNITY MUSIC TRUST (aka THE WINCHESTER COMMUNITY MUSIC SCHOOL AND WCMS) concerning the property at 407 HIGHLAND AVENUE, WINCHESTER, MA. The petitioners seek Site Plan Review under Section 9.5.1(3) of the Winchester Zoning By-Law so as to be permitted to construct an addition that will exceed 25% of the existing building floor area and will have greater than 20 parking spaces. The petitioners also seek Site Plan Review under Section 9.5.1(5) of the Winchester Zoning By-Law so as to be permitted to construct an addition where the total floor area of the building will be greater than 5,000 square feet. The property is located in the RDB (Single Residence) zoning district and contains 2.72 +/- acres.

WINCHESTER BOARD OF APPEALS

Petition may be viewed at the Building Department during regular office hours or on the Board of Appeals web page www.winchester.us

DRAFT DECISION

**TOWN OF WINCHESTER
BOARD OF APPEALS**

No. 3977
326 Highland Avenue

- PETITIONER:** Mark Andersen
- APPLICATION FOR:** Site plan approval under Section 9.5.1(7) of the Winchester Zoning By-Law to change the grade of more than 500 square feet by more than 6 percent. The property is in the RDB district.
- DATE OF HEARING:** Heard and decided on December 15, 2022.
- BOARD OF APPEALS:** David Feigenbaum, Robert Tedesco, and Dorothy Simboli
- VOTE:** David Feigenbaum, Robert Tedesco in favor of withholding site plan approval, and Dorothy Simboli against withholding site plan approval.
- DECISION:** Approval of the site plan is withheld.
- MATERIALS CONSIDERED:** The Board received the following documents:
1. Form 1 (Zoning Application checklist)
 2. Form 2 (Application for Zoning Hearing)
 3. Form 2I (Application for Site Plan Approval)
 4. Massachusetts Cultural Resource Information System – Form B
 5. Assessor's Maps
 6. Schematic Pool Plan (L1) dated 8/31/22
 7. Schematic Elevation and Section (L2) dated 8/31/22
 8. Existing and Proposed Views (L3-L9) dated 8/31/22
 9. Schematic Pool Plan (L1) revised 9/9/22
 10. Schematic Pool Plan (L1) revised 9/12/22
 11. October 3, 2022 Historical Commission memorandum
 12. October 5, 2022 Design Review Committee minutes
 13. October 18, 2022 Planning Board memorandum
 14. October 20, 2022 Engineering Department memorandum
 15. Memo to DRC from Peter White and Christopher Patzke, ZEN Associates dated 10/31/22
 16. Updated Drawings dated 10/31/22
 17. November 1, 2022 Design Review Committee minutes
 18. Drainage Plan, Sullivan Engineering Group LLC dated 11/13/22
 19. Drainage Report, Sullivan Engineering Group LLC dated 11/15/22
 20. November 17, 2022 Engineering Department memorandum
 21. Drainage Plan, Sullivan Engineering Group LLC revised 12/6/22

- 22. Drainage Report, Sullivan Engineering Group LLC dated 12/6/22
- 23. December 15, 2022 Engineering Department memorandum

THE LAW:

A. Purpose of the Zoning Bylaw.

B. Swimming pool as a permitted use.

In Section 3.1, the Table of Use Regulations, Group VI, Item 6, permits “An uncovered swimming pool, subject to the provisions of Section 4.4.2.”

C. Regulation of swimming pools.

Section 4.4.2 provides:

“... ”

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.

...”

D. Site plan approval.

Section 9.5.1(7) of the Zoning By-law requires site plan approval by the Board of Appeals before changing the grade of more than 500 square feet by more than six (6) percent.

E. Criteria for site plan review.

Section 9.5.7 provides with respect to the site plan review decision that “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 egressing from it;
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, including parking, signs, landscaping, and environmental standards.”

**REPORTS
RECEIVED:**

The Board received recommendations from the following bodies:

A. Historical Commission

The Commission, by a vote of 4 to 2, found the proposal would have no adverse effect on a historical or cultural resource on the condition that adequate and compatible vegetation be installed as screening around the pool, deck, and fencing.

Prior to the vote, one commissioner questioned the appropriateness of putting the swimming pool in the front yard. The applicant’s representative responded that since the house is set back on the lot, the only place a pool could go would be in front.

A second commissioner expressed concern that the pool would be a distraction from the street and would detract from the historical value of the house and the historical landscape of the neighborhood.

A third commissioner noted that one of the most dramatic features of the house is the round curvature on the house’s front and the pool would be in that same view scape.

The applicant’s representative called attention to the requirement to position pools at least 10 feet away from a building. He explained that there is not enough room in the backyard for the pool and expressed concern about ledge and blasting that could have an effect on the historic resource.

A fourth commissioner argued that the historic resource is the whole streetscape and not just the house, and a fifth commissioner concurred,

adding that the historic resource as defined in the bylaws is not just the property under question but also the immediate area.

The applicant's representative proposed planting in the foreground near the street to address concerns about the view toward the house.

B. Design Review Committee, first review

During a first review of the application, one member characterized the front yard as an odd place to put a swimming pool.

A second member, an architect who had worked on the house, noted that the big, beautiful stone foundation and [existing] wall make it "not a timid house" and that looking up from Highland Avenue, these stones and the big beautiful porch can be seen. She suggested that using large stones to match the house foundation and introducing a gentle curve to the proposed straight and long retaining walls might help integrate the site work with the original house and its wooded, hillside rocky landscape.

A third member, a landscape architect, suggested evergreens or other dense plantings at the ends of the retaining walls to soften the strong horizontals and expressed concern about such major changes to the property.

A fourth member suggested shrinking "the whole thing" to make the retaining walls, pool terrace, and spa less imposing. She noted that the proposed project is big, straight, and intrusive on the stone and shingle house.

The Committee members asked the applicant's representative to return to the Committee with proposals for changes.

C. Design Review Committee, second review

The applicant's representatives presented changes related to proposed plantings, stonework, and fencing.

Neighbors across the street noted that siting a pool in a front yard is unusual, pools have a lot of activity around them, and tables, chairs, towels, floating devices, a gas grill, and other things tend to accumulate around a pool. The neighbors asked for more screening at the pool terrace.

In response to the neighbor's comment that placing the pool in the back would require fewer 'heroics' than would be required to put the pool in the front yard, the applicant's representative replied that the back yard has ledge and would require blasting that may damage the house.

The neighbor noted that there are children in the [applicant's] house, there would be parties, splashing, sounds — and that a pool is an activity center, like a playground.

Apparently based on the planting changes proposed to address the Committee's screening concerns and perhaps the applicant's asserted

inability to put the pool in the back yard, the Committee voted 6 to 1 to recommend favorable action.

The member who cast the dissenting vote stated that the pool, hot tub, and pool equipment in the front yard is an 'unreasonable departure' from neighborhood character and sets an unsuitable precedent under criterion 1 of the Zoning Bylaw Section 9.5.7.

Planning Board

The Board voted 4 to 0 in favor of the project; one member abstained.

Prior to the vote, one member raised questions about damage to roots of trees from the proposed project.

A second member asked whether construction standards that would apply to the walls would ensure their long-term viability.

A third member, an architect, noted that the property, sitting high above Highland Avenue, presents an appealing view from the street. She likes the use of two walls to retain the pool and the slope, and views the overall project as well done.

A fourth member said the intent is to allow views of the house up the slope, similar in character to what the view is now.

The fifth member asked about removal of trees along the road and fencing along the pool deck.

Engineering Department

The Engineering Department issued three successive comment letters to the Board of Appeals. Without recounting the details, it appears that the third letter amounts to a confirmation that the Engineering Department is satisfied with the responses of the applicant to the first two letters. The third letter concludes: "If properly installed and maintained, the infiltration system should mitigate the runoff due to the increase of impervious area on the site."

Historical significance

The house at 326 Highland Avenue is described in entry WNT 279 of the Massachusetts Historical Commission's list of historic properties. The survey of the house, on Form B – Building, explains:

"Marshall W. Jones House possesses integrity of location, design, setting, materials, workmanship, feeling and associations. It is significant as a well conceived estate house whose eclectic design draws on, and unifies several period styles: Queen Anne, Colonial Revival, Tudor Revival, and Shingle. Important features include irregular massing, Classical columns and balustrades, cross gables with florid half-timbering and embossed vergeboards, and shingles wrapping

around windows and corners. The house meets criterion C of the National Register of Historic Places.”

The Form B also reports:

“The corner tower has a second-story Colonial Revival balcony supported on oversized brackets and has a bell-shaped roof. Hipped dormers have exposed rafter ends and gabled dormers have elaborate stick and stucco "half-timbering" in the Medieval Revival style, with finials and embossed vergeboards.”

The historical significance of the property was also recognized nationally by its listing on the National Register of Historic Places individually and as part of a multiple resources area.

The historical significance of the houses on either side of 326 Highland Avenue at 314-316 and at 332 has also been recognized in Form B – Building inventories under MHC identifiers WNT 280 and WNT 278.

DISCUSSION:

The applicant wants to put a swimming pool in his front yard at 326 Highland Avenue immediately in front of the house façade and near (on the order of 50 feet) to the edge of Highland Avenue. Because the front yard slopes sharply down from the house to the street, more than 500 square feet of the front yard would need to be regraded by more than 6 percent to accommodate the pool. Such a change of grade is not permitted in Winchester without site plan approval by this Board (Section 9.5.1(7) of the Zoning Bylaw).

The applicant evidently does not dispute what has been suggested in the review of the application by members of three boards of the town: Putting a swimming pool in a front yard in Winchester would be unusual if not unique. The applicant did not cite any instance of such a front yard swimming pool anywhere in the town.

To justify its request, the applicant argues:

1. He can install a swimming pool in the front yard of his property “as of right” under the Zoning Bylaw.
2. The pool cannot be put anywhere else on the property and especially not behind the house because blasting of ledge there to make way for the pool could damage the house.
3. Concerns about the project can be resolved by proposed planting and landscaping designed to hide the swimming pool from the street while allowing the house to be seen.
4. Three other town bodies have recommended approval of the site plan.

We address each of the four points in turn.

As of right

Item 6 of group VI of the Table of Use Regulations of the Zoning Bylaw indicates “Y” (meaning Yes) for the RDB district for “An uncovered swimming pool, subject to the provisions of Section 4.4.2.”

But that is not the whole story.

With respect to all “Y” items in the table, Section 3.1.2 of the Zoning Bylaw points the reader to Section 9.5.1 which makes clear that the applicant needs site plan approval given the proposed grade change.

That requirement is also apparent from the definition of “as-of-right siting” in Section 10 of the Zoning Bylaw:

“As-of-right siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited, but can be reasonably regulated by the inspector of buildings, building commissioner or local inspector, or if there is none in a town, the Select Board, or person or board designated by local ordinance or bylaw.”

Here, in withholding approval of the applicant’s site plan, the Board of Appeals has not prohibited the installation of a swimming pool but only indicated that it will not approve its placement in the front yard.

In any case, it is doubtful that the Zoning Bylaw permits a swimming pool as of right in the front yard in view of the wording of subsection 3 of Section 4.4.2. Under that subsection, “[i]f the lot cannot reasonably accommodate a pool without infringing the *side or rear yard requirements* [italics added]” the Board 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.* [italics added]”

Apparently, the drafter relied on the reader knowing that swimming pools would not be allowed in front yards in Winchester and therefore saw no need to prohibit that possibility in words.

Ledge in the back yard

The application did not show where or at what depth ledge exists in the front yard (where the pool is to be built) or back yard (where the ledge is said to make pool construction unfeasible). Therefore, the Board was not able to conclude that the pool could not be built in the back yard or a side yard.

Plantings to hide the pool

The applicant proposes plantings to hide the front yard pool with the goal of mollifying unhappy neighbors and concerned town boards. Yet absent from most of the eleven criteria for site plan review in Section 9.5.7 of the

Zoning Bylaw is any reference to the screening or hiding of features constituting a factor to be considered.

Although three criteria refer to visibility (7, 8, and 9), the Board did not rely on them in its decision to withhold approval:

“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”

And using plants to hide the pool is not relevant to criteria 1, 2, and 3 on which this decision is based.

Nor should it be.

The pool would be a permanent tangible addition to the property likely to remain in place for many decades. By contrast, plants are ephemeral. They grow and die, sometimes prematurely from diseases. And a future owner may decide to trim, replace, or remove plants that were, at the time of a Board decision, intended to hide man-made features. Addressing the ephemeral character of plants by requiring perpetual maintenance of a current planting plan as a condition of an approval would be unwise, improper, and unlikely to be enforced, and the Board could not reasonably rely on such a condition as a basis for approval.

Recommendations to approve

Under Section 9.5.5 of the Zoning Bylaw, recommendations regarding site plan reviews are made to the Board of Appeals by the Historical Commission, the Design Review Committee, and the Planning Board. The recommendations, and especially underlying comments of board members, are often helpful. Yet the Board of Appeals is not bound by the received recommendations when they would run counter to the Board's duty to apply its discretion based on the law and the facts of the proposed site plan.

Here, although the three town bodies voted to recommend approval of the site plan, negative comments about putting the swimming pool in the front yard were made by their members. The three favorable recommendations appear to have reflected acceptance of the applicant's assertions that (a) the pool could not be built in the back of the property because of ledge, and (2) even if putting a pool in the front yard were inappropriate, the possible resulting harm should be disregarded because the pool would be hidden by plantings.

However, as noted earlier, it is unclear that the pool could not be sited in the side or rear of the property, plantings are ephemeral, and the hiding of

the pool using plantings does not apply to the issues raised by standards 1, 2, and 3 of the Zoning Bylaw.

**Application of
criteria:**

Section 9.5.7

The criteria for granting site plan approval and the analysis (*in italics*) of each of them are shown below. Items 1, 2, and 3 were prominent in the Board's considerations:

1. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity.

Except for the southernmost segment ending at Route 38 and the northernmost segment ending at Forest Street, Highland Avenue is relatively level and hugs a hillside that on the right (when heading north) rises sharply to a ridge in the Middlesex Fells and on the left descends sharply to Washington Street.

In terms of character, many properties on the upper side of Highland Avenue have large-scale historic houses that were built in the late 19th and early 20th centuries and retain many of their original qualities. They include 326 Highland Avenue and the houses on either side, at 314-316 and 332 Highland Avenue. Although not in the nearby vicinity of 326 Highland Avenue, several blocks to the north across Mystic Valley Parkway, other well-maintained large historic houses also are sited high on steeply sloped properties along the hillside.

The materials used to build these houses were robust, durable, natural, and typical of materials used in Victorian and early 20th century buildings.

The siting of many of these houses respected and took advantage of the sloping front yards along the hillside. They did not then and do not now include front yard swimming pools, tennis courts, outdoor kitchens, garages, or other constructions that would be inconsistent with their character, siting, and materials.

A swimming pool in the front yard of the house at 326 Highland Avenue would be an unreasonable departure from the character, materials, and scale of the buildings in the vicinity.

2. Minimize any adverse effect on any historic resource.

Generally, the historic resources that may be affected by this standard are not limited to the particular house subject to an application. They may also include nearby houses and historic areas. Nor must the proposed construction or alteration be an addition to or physically attached to an historic resource to adversely affect it.

At least three historic resources would be affected adversely by this applicant's proposal: the three houses at 314-316, 326, and 332 Highland Avenue.

All three houses are described in Massachusetts Historical Commission Forms B-Buildings. The subject house at 326 is also listed on the National Register of Historic Places individually and as part of a multiple resources area. To be listed on the National Register of Historic Places, a building must possess integrity of location, design, setting, materials, workmanship, feeling, and association. National Register listing represents a higher level of recognition of historic significance than inclusion on a survey Form B in Massachusetts.

The proposed swimming pool would have a significant adverse effect on the integrity of the location, setting, and feeling of the house because of its location in front of the house, close to Highland Avenue and directly in front of the front façade of the house.

By its proximity to the houses at 314-316 and 332 Highland Avenue, the pool also would have an adverse effect on the setting and feeling of those structures.

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;

The proposed volume of cut and fill would not be minimized relative to the amount of cut and fill that would be required if the swimming pool were located on the nearly level portion of the property at either side or rear of the house. Such an alternate siting of the swimming might also preserve three mature trees proposed to be removed.

4. Provide adequate stormwater management and other utilities consistent with the functional requirements of the Planning Board Subdivision Rules and Regulations;

The Board considered that this criterion would have been met subject to the conditions stated in the Engineering Department memorandum of December 15, 2022.

5. Maximize pedestrian and vehicular safety, both on the site and egressing from it;

This criterion was not considered relevant.

6. Provide adequate access to each structure for fire and emergency service equipment;

This criterion was not considered relevant.

7. Minimize obstruction of scenic views from publicly accessible locations;

This criterion was not considered.

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;

This criterion was considered to be met.

9. Minimize glare from headlights and lighting intrusion;

This criterion was considered to be met.

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;

This criterion was not considered relevant.

11. Ensure compliance with the provisions of this Zoning Bylaw, including parking, signs, landscaping, and environmental standards.

This criterion was not considered in detail except as discussed elsewhere in this decision.

Section 1.1

The Board also found that the purpose of the Zoning Bylaw (recited in Section 1.1) namely "... to encourage the most appropriate use of land throughout the Town" would not be served by the proposed site plan; the most appropriate use of the front yard at 326 Highland Avenue would not be for a swimming pool.

Based on its analysis of these factors, the Board withholds approval of the site plan.

BOARD OF APPEALS, BY:

David L. Feigenbaum

DECISION DATED:
