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**TOWN OF WINCHESTER
BOARD OF APPEALS**

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TOWN CLERK

TOWN OF WINCHESTER

Decision No. 3021

Name of Applicant:

The Winchester Boat Club

Application For:

Special Permit to allow use of premises located at the Rear of 65 and 69
Cambridge Street and Everett Avenue for outdoor recreational use pursuant to
Section 4.14-14

Date of Hearing:

July 19, 1994 and June 21, 1994

Board Conducting Hearing and Rendering Decision:

Ann M. Matarese, Chairman; John A. Prokos; Matthew H. Lynch

Decision:

Special Permit Granted, with Conditions and Limitations set forth below

Vote of the Board: Unanimous

Conditions and Limitations:

The Special Permit is granted, subject to the following conditions and limitations:

(1) Plantings and Fencing. The Applicant shall install and maintain plantings in accordance with the Landscape Plan (hereinafter defined) along the properties owned by the Gutheries, McIntyres, and Carrolls, except that there shall be 20 (rather than 17) 6-7' white pines installed along the Carrolls' property. (Much of this work has already been accomplished). The Applicant shall also install and maintain evergreen plantings having a height of approximately six feet along the six new parking spaces to be placed behind the clubhouse as shown on the Site Plan (hereinafter defined). The Applicant shall replace the plantings that have died, as appropriate, in season. The Applicant shall maintain an active plant maintenance program to reasonably maintain the club's plantings that are the

subject of this decision. In addition, the Applicant shall install a six foot wooden stockade-type fence along the Beaton property near the brook.

(2) Refuse Collection and Disposal. Refuse shall be stored in containers to be located near the Clubhouse and disposed of regularly by licensed haulers (but only between the hours of 9:00 a.m. and 6:00 p.m.).

(3) Signs. No signs are proposed or approved as part of this special permit.

(4) Ingress and Egress from Everett Avenue. No pedestrian or vehicular access shall be permitted from Everett Avenue, except for emergency and maintenance vehicles as and to the extent necessary or appropriate. There shall be no curb cut at the Everett Avenue access, unless required by the Town Engineer. The Applicant shall install a gate with a lock at the location of the existing stone wall located along Everett Avenue to carry out the foregoing, which gate shall be designed to be compatible with the neighborhood, in consultation with a representative of the neighborhood, and approved by the Town Engineer in his reasonable discretion. The gate shall be locked and the Club shall maintain appropriate procedures to limit the availability of the key to the gate.

(5) Parking The Club shall continue its policy of encouraging its members to use only one car per family; and shall establish and maintain a Club rule (with appropriate enforcement mechanisms) that members shall not be dropped off on Everett Avenue. The Club has indicated that it supports the Town of Winchester's establishing a ban on parking from the corner of Cambridge Street along Everett Avenue as far as the brook. In addition, the Club shall add six new parking spaces adjacent to the Clubhouse as shown on the Site Plan. Except for this additional parking located on the adjacent lot, no asphalt paving or concrete paving for motor vehicles is proposed or approved as part of the Special Permit.

(6) Lighting/Public Address. No additional outside lighting or public address system is proposed or approved as part of the Special Permit.

(7) Activities. The following activities shall not be allowed as outdoor recreational uses on the premises: archery, basketball, golf, tennis, and organized baseball and soccer games. No swimming pool shall be placed on the land and there shall be no facilities to sell food. Uses within the ordinary and customary sense of "outdoor recreational use" are permitted, subject to the herein conditions and limitations.

(8) Time Limit On Use. Use of the land shall generally cease by 9:30 p.m., except for special occasions such as July 4th and Labor Day, when activities shall cease by 12:00 midnight.

(9) Structures. 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.

Facts and Reasons:

The Applicant seeks a Special Permit under Section 4.14-14 of the Town of Winchester Zoning By-law so as to be permitted to use certain premises described below for outdoor recreational use. The premises are located in the RDB (Single Residence) zoning district in which outdoor recreational use is a Special Permit use. The premises are shown on a plan entitled "Plan of Land in Winchester, Mass." dated April 9, 1994 and prepared by Keenan Survey (the "Keenan Plan"), a copy of which is on file with the Board's records. The affected land is comprised of (i) Lot 2 (containing 68,340 +/- SF) excepting that portion of Lot 2 shown as Lot A (containing 15,069 +/- SF); and (ii) Lot 4 (containing 1,628 +/- SF) (under agreement), all as shown on the Keenan Plan (total of 54,899 +/- SF). The Applicant has previously obtained (through a deemed grant) a Special Permit to use Lot A for outdoor recreational use. The Club acquired the land in or around June, 1992.

The Winchester Boat Club was originally organized in or around 1900 and has been a private social club offering boating, swimming and other recreational activities to its members since that time. Through the efforts of the club and its members over the decades, thousands of children have learned to swim and sail. The club's by-laws currently restrict membership to a total of 325 families and the membership is approximately 305 at the present time. The club has not expressed an intention to increase its membership as a result of the zoning relief sought.

The proposed use of the land is for outdoor recreational use. The only structures that are proposed to be constructed are a pedestrian bridge to cross the brook that flows through the property to the Mystic Lakes, and a gate where the premises abuts Everett Avenue. There is an existing shed on the premises which is to be removed.

At each of the two dates upon which the hearing took place, the Applicant was represented by Paul F. Amico, Esq. and certain of the neighbors were represented by John T. Dawley, Esq. The Board received many written submissions, most notably the following documents, all of which are included in the Board's records: (i) two memorandums from Mr. Amico, one dated May 17, 1994, and one dated July 19, 1994, (ii) an undated memorandum from Peter Wild, Certified Arborist, describing landscaping work completed and to be completed, (iii) a set of three plans showing proposed and completed landscaping work also prepared by Mr. Wild (collectively, the Wild memorandum and plans are referred to as the "Landscape Plan"), (iv) a site plan showing the existing conditions of the

Applicant's existing facilities on Cambridge Street (the "Site Plan"), (v) a petition containing approximately 185 names of residents (many not neighbors) in support of the application, (vi) a petition containing approximately 63 signatures (59 neighbors) in opposition to the application, and (vii) numerous letters and correspondence from counsel to the applicant and to the neighbors, as well as from abutters, neighbors and other residents and public officials expressing both support and opposition for the application, including several documents relating to traffic safety and accidents along Cambridge Street and Everett Avenue.

In addition to written documents, the Board heard testimony from numerous neighbors, abutters, and residents during the two days upon which the public hearing was conducted. Approximately 25 persons in addition to counsel spoke in favor of, or in opposition to, the application, including Mr. Boodakian and Mrs. Swanson on behalf of the Club, and Mrs. Carroll, Mrs. D'Agostino, Mrs. Guthrie, and Mrs. Beaton in opposition. Both meetings, held in the Waterfield Room of the Town Hall, were well attended, with approximately one hundred people present on each day.

The applicant and many of the objecting neighbors met before, during and after the public hearing and there was agreement on many issues. Remaining opposition to the application focused on access to the premises from Everett Avenue and screening of neighboring properties. The applicant made many concessions to meet the objections of the neighbors and had installed a large part of the landscaping prior to the public hearings.

The Board is authorized under Section 4.1-14 of the Winchester Zoning By-law to grant a special permit authorizing outdoor recreational use of the premises as provided in Section 8.5 of the By-law. Under Section 8.5 the Board is authorized to grant the special permit upon certain determinations and findings, which are hereinafter set forth at length. First, the Board determines that the grant of the permit would comply with all other provisions of the By-law and would not adversely affect the public health, safety, welfare, comfort or convenience of the community. To the extent required under Section 9 of G.L. c. 40A (the Zoning Act), the Board finds and determines that the proposed use is in harmony with the general purpose and intent of the by-law.

Second, the Board finds that satisfactory provision and arrangements have been made, with the Conditions and Limitations set forth herein, covering the issues described in Section 8.52, which are described in detail, as appropriate, below.

(a) Ingress and Egress. The board is directed to consider ingress and egress to the property and proposed structures with particular reference to automotive safety and convenience, traffic flow and control, and access in case of fire or catastrophe. The subject of ingress and egress to and from property Everett

Avenue was a focus of the hearing. Testimony was given and submissions made as to whether and the extent to which Boat Club traffic was responsible for traffic problems and traffic accidents in the area. The Applicant proposed pedestrian access for Everett Avenue, together with vehicular access for emergency and maintenance purposes. There was general agreement that there is a substantial amount of traffic congestion and parking problems on Everett Avenue during the summer months, and that there is not adequate room on the Club's existing site to park the cars bringing people to the Club. The congestion includes both parked cars on the side of Everett Avenue and additional cars traveling to and from the Club. There was concern expressed that a pedestrian access on Everett Avenue would make the existing situation worse, by encouraging club members to drop off children at this access point, and there is no space within which to get off the traveled portion of Everett Avenue. There was also concern expressed that new safety problems would be introduced by permitting the pedestrian access. Accordingly, the Board determined to preclude regular use of the Everett Avenue for access to the property. The Board considered at great length the pedestrian access issue but determined that traffic safety concerns prevented approval of this request. In addition, the Board conditioned grant of the special permit upon the Club adopting and maintaining procedures to restricting use of Everett Avenue as a drop off area.

The Board determined that permitting the Everett Avenue access to be used for emergency and maintenance vehicles is satisfactory. Because the site is separated from the main clubhouse by a brook and the bridge to be constructed is for pedestrian use only, there would be no other way in which to allow either ambulances or landscaping trucks on to the site. Despite the congestion concerns, access in case of fire or catastrophe is a specific charge of this Board. Moreover, modern landscape maintenance methods requires truck access from time to time.

(b) Off-Street Parking and Loading. As noted above, there is no off-street parking or loading on the site itself, other than the additional six parking spaces on the neighboring lot. With respect to these additional parking spaces, the noise and glare that may be associated therewith is addressed with the additional landscaping buffer being required.

(c) Refuse Collection and Disposal. Specific provision for refuse collection and disposal has been made in the Conditions and Limitations.

(d) Screening and Buffering. This issue was also a focus of the hearing. Prior to its application, the Applicant committed to installation of a large and extensive landscaping program to provide screening and buffering for neighboring residential properties. The Board determined that fencing rather than landscaping along the Beaton property was appropriate and required the installation of additional trees along the Carroll property. The screening and buffering required by the Board is consistent with that requested by counsel to the neighbors in the

exchange of correspondence prior to the public hearing. The overall landscaping program required under the Special Permit is extensive, but appropriate to the site and the proposed use, given the close proximity of single family residential uses and the relatively close quarters.


(e) Signs. No signs are included or approved as part of the Special Permit.

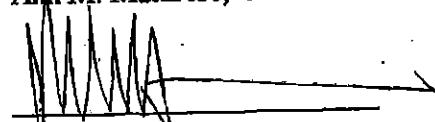
(f) Yards and Other Open Space. Because the application is to permit outdoor recreational use, there is abundant yard and open space. There is a public benefit in maintaining the view from Everett Avenue directly to the Mystic Lakes by use of the land for outdoor recreational use rather than for housing.

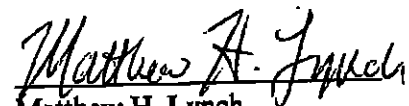
(g) General Compatibility with the Neighborhood. Although the premises are located in a district in which single family residential use is permitted as of right, and single family residential use is the predominant if not exclusive use in the area (other than the Club itself), the legislative body of the Town--the Town Meeting--has determined that outdoor recreational use is a use that would be permitted in the district upon only the showing required for a special permit, and the applicant need not make any showing of hardship to be granted such a special permit. Non-commercial outdoor recreational use of land within a single family district is not, generally speaking, incompatible with single-family use. It should be noted, moreover, that there is no requirement that the proposed use be identical with the existing land uses, merely that it be "compatible".

There are three private clubs having outdoor recreational uses in Town, and each is located in an exclusively residential area. Moreover, the Club's use of its main building predates many of the houses in the area, and the residential use has as much come to the recreational use as the other way round. More importantly, the land is located on the shore of the Mystic Lake immediately adjacent to the Boat Club. The lake is part of the neighborhood, and it is axiomatic that use by a boat club of land on a lake is compatible with the lake. There is no other land that the Club could conceivably use that is adjacent to its existing facility. The alternative use, which the Applicant has described as being three house lots, would surely be consistent with the neighborhood in that it would be residential and such use would be permitted under the by-law as of right. Such residential use, however, would not take advantage of the lake to the same extent as the Club is proposing, and would necessarily entail greater residential density and use than is proposed. The structures will be compatible with the neighborhood in that the existing (rundown) shed is to be removed, the gate is to be designed to be compatible, and the only other structure to be installed is a low pedestrian foot bridge over the brook.

Board of Appeals


Ann M. Matarese, Chairman


John A. Prokos


Matthew H. Lynch

Date of Decision:

September 26, 1994.

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TOWN OF WINCHESTER
BOARD OF APPEAL

DECISION NO. 3021 (as amended)

Name of Petitioner:

Winchester Boat Club, Inc.

Application For:

Special Permit to allow use of premises located at the Rear of 66 and 69 Cambridge Street and Everett Avenue for outdoor recreational use pursuant to Section 4.14-14.

Dates of Hearing:

July 19 and June 21, 1994; an additional hearing was conducted on March 18, 1997, after a remand order of the Massachusetts Land Court issued in Case #217794, Winchester Boat Club v. Winchester Zoning Board of Appeals.

Board Conducting Final Hearing and Rendering Decision:

John A. Prokos, Vice Chair; James Gray Wagner;
Christopher H. Mulhern

Decision: Granted.

Vote of the Board: Unanimous

Limitations and Conditions:

The following conditions and limitations apply to the grant of this Special Permit:

- (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, except that there shall be 20 (rather than 17) 6-7' white pines installed along the Carrolls' property. The Petitioner shall also install and maintain evergreen plantings having a height of approximately six feet along the six new parking spaces to be placed behind the clubhouse as shown on the Site Plan (hereinafter defined). The Petitioner shall, during the appropriate planting season, replace any plantings that die. The Petitioner shall maintain an active plant maintenance program to maintain reasonably the club's plantings that are the subject of this decision.

- (2) Refuse Collection and Disposal. Refuse shall be stored in containers to be located near the Clubhouse and disposed of regularly by licensed haulers (but only between the hours of 9:00 a.m. and 6:00 p.m.)
- (3) Signs. No signs are proposed or approved as part of this special permit.
- (4) Ingress and Egress from Everett Avenue. No vehicular access shall be permitted from Everett Avenue, except for emergency and maintenance vehicles, as and to the extent necessary or appropriate. The Petitioner shall construct an entrance and double gate of cedar wood at the opening in the stone wall at Parcel B abutting Everett Avenue. The proposed entrance is shown on the plot plan. The gate shall be approximately 12 feet wide and 4 feet high. One section of the gate will be 8 feet wide and shall be constructed so that it remains closed while allowing pedestrians and bicycles to pass through a 4-foot wide gate section. The 8-foot section shall be open only to allow access to Parcel B for maintenance or emergency vehicles.
- (5) Parking. The Petitioner shall continue its policy of encouraging its members to use only one car per family, and shall establish and maintain a Club rule (with appropriate enforcement mechanisms) that members shall not be dropped off on Everett Avenue. The Petitioner has indicated that it supports the establishment by the Town of Winchester of a ban on parking from the corner of Cambridge Street along Everett Avenue as far as spaces adjacent to the Clubhouse as shown on the Site Plan. Except for this additional parking located on the adjacent lot, no asphalt paving or concrete paving for motor vehicles is proposed or approved as part of the Special Permit.
- (6) Lighting/Public Address. No additional outside lighting or public address system is proposed or approved as part of the special permit.
- (7) Activities. The following activities shall not be allowed as outdoor recreational uses on the premises: archery, basketball, golf, tennis, and organized baseball and soccer games. No swimming pool shall be placed on the land, and there shall be no facilities to sell food. Uses within the ordinary and customary sense

of "outdoor recreational use" are permitted, subject to the herein conditions and limitation.

- (8) Time Limit on Use. Use of the land shall generally cease by 9:30 p.m., except for special occasions such as July 4th and Labor Day, when activities shall cease by 12:00 midnight.
- (9) Structures. 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.

Facts:

The Petitioner seeks a Special Permit under Section 4.14-14 of the Town of Winchester Zoning By-Law so as to be permitted to use certain premises described below for outdoor recreational use. The premises are located in the RDB (Single Residence) zoning district in which outdoor recreational use is a use allowed only by Special Permit. The premises are shown on a plan entitled "Plan of Land in Winchester, Mass.," dated April 9, 1994 and prepared by Keenan Survey (the "Keenan Plan"), a copy of which is on file with the Board's records. The affected land is comprised of (i) Lot 2 (containing 68,340 +/- SF) excepting that portion of Lot 2 shown as Lot A (containing 15,069 +/- SF; and (ii) Lot 4 (containing 1,628 +/- SF). The Petitioner has previously obtained (through a deemed grant) a Special Permit to use Lot A for outdoor recreational use. The Club acquired the land in or around June, 1992.

The Winchester Boat Club was originally organized in or around 1900 and has been a private social club offering boating, swimming, and other recreational activities to its members since that time. Through the efforts of the club and its members over the decades, thousands of children have learned to swim and sail. The club's by-laws currently restrict membership to a total of 325 families, and the membership is approximately 305 at the present time. The club has not expressed an intention to increase its membership as a result of the zoning relief sought.

The proposed use of the land is for outdoor recreational use. The only structures that are proposed to be constructed are a pedestrian bridge to cross the brook that flows through the

property to the Mystic Lakes, and a gate where the premises abuts Everett Avenue. There is an existing shed on the premises, which is to be removed.

At each of the first two dates upon which the hearing took place, the Petitioner was represented by Paul F. Amico, Esq. Certain of the neighbors were represented by John T. Dawley, Esq. The Board received many written submissions, most notably the following documents, all of which are included in the Board's records: (i) two memoranda from Mr. Amico, one dated May 17, 1994, and one dated July 19, 1994, (ii) an undated memorandum from Peter Wild, Certified Arborist, describing landscaping work completed and to be completed, (iii) a set of three plans showing proposed and completed landscaping work also prepared by Mr. Wild (collectively, the Wild memorandum and plans are referenced herein as the "Landscape Plan"), (iv) a site plan showing the existing conditions of the Petitioner's existing facilities on Cambridge Street (the "Site Plan"), (v) a petition containing approximately 185 names of residents (many not neighbors) in support of the application, (vi) a petition containing approximately 63 signatures (59 neighbors) in opposition to the application, and (vii) numerous letters and correspondence from counsel to the Petitioner and to the neighbors, as well as from abutters, neighbors, and other residents and public officials expressing both support and opposition for the application, including several documents relating to traffic safety and accidents along Cambridge Street and Everett Avenue.

In addition to written documents, during the 1994 hearings, the Board heard testimony from numerous neighbors, abutters, and residents during the two days upon which the public hearing was conducted. Approximately twenty-five persons, in addition to counsel, spoke in favor of, or in opposition to, the application, including Mr. Boodakian and Ms. Swanson on behalf of the Club, and Ms. Carroll, Ms. D'Agostino, Ms. Guthrie, and Ms. Beaton in opposition. Both meetings, held in the Waterfield Room of the Town Hall, were well attended, with approximately one hundred people present on each day.

The Petitioner and many of the objecting neighbors met before, during, and after the public hearings, and they reached agreement on many issues. Remaining opposition to the application focused on access to the premises from Everett Avenue and screening of neighboring properties. The Petitioner made many concessions to meet the objections of

the neighbors and had installed a large part of the landscaping prior to the public hearings.

The Board conducted a hearing on March 18, 1997 in response to a decision of the Massachusetts Land Court. The Petitioner prosecuted an appeal under G. L. c. 40A, § 17, asserting that the conditions imposed on the grant of the special permit under this Board's original decision, dated September 26, 1994, were unlawful. The Land Court issued a decision, after trial de novo, annulling the Board's original decision. The principal issue addressed by the Land Court was the condition prohibiting access from Everett Avenue, which the court held to be an abuse of the Board's discretion. The Board considered at the March 18, 1997 hearing whether to grant the special permit with conditions consistent with the Land Court's written memorandum of decision.

At the March 18, 1997 hearing, several neighbors and others encouraged the Board not to abrogate the conditions relating to access on Everett Avenue. The principal concern was the safety of children at and near the intersection of Everett Avenue and Cambridge Street. The opponents to granting access asserted that several serious accidents have occurred in this area. The opponents to access also asserted that the Land Court did not hear full evidence of the safety issues that would support the original condition. No one spoke to the other conditions proposed to be amended after the remand from the Land Court.

Discussion:

The Board is authorized under Section 4.1-14 of the Winchester Zoning By-law (the By-law) to grant a special permit authorizing outdoor recreational use of the premises as provided in Section 8.5 of the By-law. Under Section 8.5, the Board is authorized to grant the special permit upon certain determinations and findings, which are set forth at length below.

First, the Board determines that the grant of the permit would comply with all other provisions of the By-law and would not adversely affect the public health, safety, welfare, comfort or convenience of the community. Consistent with the requirements of Section 9 of G. L. c. 40A (the Zoning Enabling Act), the Board finds and determines that the proposed use is in harmony with the general purpose and intent of the By-law.

Second, the Board finds that satisfactory provision and arrangements have been made, with the Conditions and Limitations set forth above, covering the issues described in Section 8.52, which are described in relevant detail below.

(a) Ingress and Egress. The Board is directed to consider ingress and egress to the property and proposed structures with particular reference to automotive safety and convenience, traffic flow and control, and access in case of fire or catastrophe. The subject of ingress and egress to and from property Everett Avenue was a focus of the 1994 hearings, the Land Court case, and the 1997 hearing. Testimony was given and submissions were made as to whether and the extent to which Boat Club traffic was responsible for problems and traffic accidents in the area. The Petitioner proposed pedestrian access from Everett Avenue, together with vehicular access for emergency and maintenance purposes. There was general agreement that there is a substantial amount of traffic congestion and parking problems on Everett Avenue during the summer months and that there is not adequate room on the Club's existing site to park the cars bringing people to the Club. The congestion includes both parked cars on the side of Everett Avenue and additional cars traveling to and from the Club. There was concern expressed that a pedestrian access on Everett Avenue would make the existing situation worse, by encouraging club members to drop off children at this access point, and there is no space within which to get off the vehicular-traveled portion of Everett Avenue. The original decision of the Board sought to respond to safety concerns by prohibiting regular access to the property from Everett Avenue. The Land Court specifically held that such a condition was not supported by the actual circumstances, after hearing evidence on the issue and making its determination *de novo*. Whether this Board agrees or not with the Land Court decision, it is bound to follow the law, in this case, the binding decision of the Land Court. Simply put, the Board was overruled by a court of superior jurisdiction and power to the Board.

The Board determined that permitting Everett Avenue access for emergency and maintenance vehicles is satisfactory. Because the site is separated from the main clubhouse by a brook, and the bridge to be constructed is for pedestrian use only, there would be no other way in which to allow either ambulances or landscaping trucks on the site. Despite the congestion concerns, access in case of fire or catastrophe is a specific charge of this Board. Moreover, modern landscape

maintenance methods require truck access from time to time, and upkeep of the landscaping presents a benefit to neighbors.

(b) Off-Street Parking and Loading. As noted above, there is no off-street parking or loading on the site itself, other than the additional six parking spaces on the neighboring lot. With respect to these additional parking spaces, the noise and glare that may be associated therewith is addressed with the additional landscaping buffer being required.

(c) Refuse Collection and Disposal. Specific provision for refuse collection and disposal has been made in the Conditions and Limitations.

(d) Screening and Buffering. This issue was also a focus of the 1994 hearings. Prior to its application, the Petitioner committed to installation of a large and extensive landscaping program to provide screening and buffering for neighboring residential properties. The Board determined that fencing rather than landscaping along the Beaton property (n/f) was appropriate and required the installation of additional trees along the Carroll property (n/f). The screening and buffering required by the Board is consistent with that requested by counsel to the neighbors in the exchange of correspondence prior to the 1994 public hearings. The overall landscaping program required under the Special Permit is extensive, but it is appropriate to the site and the proposed use, given the close proximity of single family residential uses and the relatively close quarters.

(e) Signs. No signs are included or approved as part of the Special Permit.

(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.

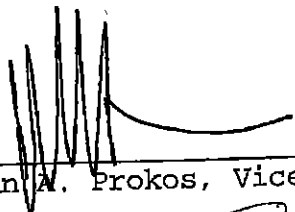
(g) General Compatibility with the Neighborhood. Although the premises are located in a district in which single family residential use is permitted as of right, and single family residential use is the predominant if not exclusive use in the area (other than the Club itself), the legislative body of the Town -- the Town Meeting -- has determined that outdoor recreational use is a use that would be permitted in

the district upon only the showing required for a special permit, and the Petitioner need not make any showing of hardship to be granted such a special permit. Non-commercial outdoor recreational use of land within a single family district is not, generally speaking, incompatible with single-family use. Where properly sited and planned, recreational use complements the single family use, as it often does in a planned development. It should be noted, moreover, that there is no requirement that the proposed use be identical with the existing land uses, merely that it be "compatible."

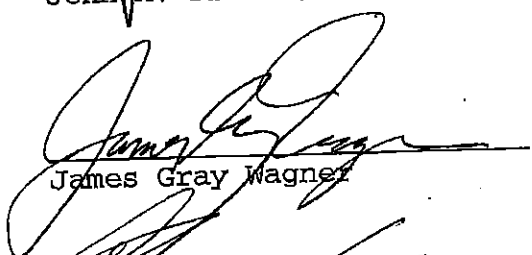
There are three private clubs having outdoor recreation uses in Town, and each is located in an exclusively residential area. Moreover, the Club's use of its main building predates many of the houses in the area, and the residential use has as much come to the recreational use as the other way around. More importantly, the land is located on the shore of the Mystic Lake, immediately adjacent to the Boat Club. The lake is part of the neighborhood, and it is axiomatic that use by a boat club of land on a lake is compatible with the lake. There is no other land that the Club could conceivably use that is adjacent to its existing facility. The alternative use, which the Petitioner has described as being three building lots, surely would be consistent with the neighborhood in that it would be residential, and such use would be permitted under the By-law as of right. Such residential use, however, would not take advantage of the lake to the same extent as the Club's proposal, and such construction would necessarily entail greater residential density and use than is proposed. The structures will be compatible with the neighborhood in that the existing (rundown) shed is to be removed, the gate is to be designed to be compatible, and the only other structure to be installed is a low pedestrian foot bridge over the brook.

For the foregoing reasons, the special permit is granted, subject to the above limitations and conditions.


BOARD OF APPEAL



John A. Prokos, Vice Chair



James Gray Wagner




Christopher H. Mulhern

Date of Decision: April 16, 1997

Date May 14, 1997
I hereby certify that 20 days
have elapsed from the date
this certificate was issued
and that no appeal has been
filed in this office.

A True Copy, Attest:



Town Clerk