



ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2002-108
Petition of Curt R. Feuer
130 Woodlawn Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 12, 2004 in the Great Hall at the Town Hall, 525 Washington Street, Wellesley on the Remand by Order of Land Court dated December 15, 2003 (Case No. 287499) of the petition of CURT R. FEUER requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that the demolition of the existing nonconforming dwelling and construction of a new two-story 43 foot by 83 foot 4 inch dwelling with a 4 foot by 11 foot 5 inch front porch at 130 WOODLAWN AVENUE, on the corner of VALLEY ROAD, on an 18,223 square foot lot in a Single Residence District, in which the minimum lot size required is 20,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed structure meets all the required setbacks, height and percentage of lot coverage.

On January 21, 2004, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Leonard Frisoli, counsel for the petitioner, who was accompanied by Peter Holland, an employee of Mr. Feuer. Mr. Frisoli said the lot is missing about 1,800 square feet. The proposed structure meets all of the required setbacks, height and percentage of lot coverage, and therefore, presents no violation of any Zoning Bylaw. In his view, if there is no violation, according to MGL Chapter 40A, Section Six and Section XVII of the Wellesley Zoning Bylaw, they are entitled to a Special Permit.

Mr. Seegel said that the proposed structure meets the setback requirements, but does not meet the requirement of the Zoning Bylaw. Any structure on a nonconforming lot is, by definition, a nonconforming structure. The only reason this matter is before the Board is because the zoning district in which the property is located is a 20,000 square foot district. The lot has 1,777 square feet less than the required minimum. The existing house does not conform to the front setback requirement from Valley Road or the left side yard setback. The proposed structure meets all setback requirements.

Mrs. Hibbard stated that the new house appears to be built out to the maximum allowed, and would be substantially larger than the existing house.

Mr. Bastille noted that the Planning Board had reviewed the petition and made no further comment. The Board had reviewed the original petition and had been opposed on the grounds of the "500 foot" rule, which has been dismissed by Land Court. In his opinion, although the house conforms to zoning requirements, it is at odds with most of the homes in the neighborhood.

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Mr. Seegel read into the record three letters in opposition to the petition from Virginia E. Brogini, 126 Woodlawn Avenue, Kathy and Philip Riley, 10 Valley Road, and Zenus Crocker, 125 Woodlawn Avenue.

Mr. Seegel said that the Board does have a "say" in the size of the house. The relevant issue is whether or not the proposed structure has too much mass and bulk for the undersized lot on which it would be built, even though it meets the required percentage of lot coverage.

Mr. Frisoli stated that Mr. Feuer would allow stylistic changes, but would not reduce the size of the house.

Mr. Seegel noted that there are substantial white pine trees along the rear and side lot lines of the property. He would want to insert a condition that none of these trees be removed, if the Board granted the Special Permit.

Mr. Frisoli said that if any of the trees were located within the proposed foundation, he could not represent to the Board that they would not be removed. Mr. Seegel responded that without the screening provided by the trees, the Board would have difficulty in finding the huge mass of the proposed house would not be substantially more detrimental to the neighborhood.

Zenus Crocker, 125 Woodlawn Avenue, asked if the plan which was shown to the neighbors in 2002, had changed. Mr. Frisoli said it had not. Mr. Crocker stated that he was still opposed to the petition.

The Board discussed the increase in living area and footprint of the proposed house in relation to the existing house. The increase in coverage is approximately 30 percent.

Thomas Chesterton, 9 Highgate Road asked how the proposed house could conform to the front setback from Valley Road if it would be larger than the existing house. The Board said the new house would be longer and not as deep. Mr. Chesterton voiced approval of the condition regarding the maintenance of the trees.

Mr. Seegel proposed that the Special Permit be granted with the condition that no tree with a diameter of 10 or more inches on the southerly and westerly sides of the lot shall be taken down, destroyed, or adversely affected in any way, as these trees provide the buffer which prevents the proposed structure from being substantially more detrimental. In the event any tree is removed, the proposed structure would be substantially more detrimental, which would result in revocation of the building permit during construction. If any tree is within the foundation area, the petitioner must return to the Board for permission to remove it. Furthermore, a landscape plan showing all the trees having a diameter of 10 or more inches shall be submitted to the Board of Appeals prior to the issuance of any building permit.

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Statement of Facts

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The subject property is located at 130 Woodlawn Avenue, on an 18,223 square foot lot, in a Single Residence District in which the minimum lot size required is 20,000 square feet. The existing structure has a minimum front setback of 23 feet from Valley Road.

At a duly noticed Public Hearing on November 21, 2002, the petitioner requested and was allowed to withdraw without prejudice his petition to demolish the existing nonconforming dwelling and construct a new dwelling. Subsequent to the hearing, Robert W. Levy, a sitting member of the Board, became aware of a potential conflict of interest and suggested that the petitioner be given the opportunity to have his petition heard *de novo* by a new panel of the Board in which he would not participate.

On January 16, 2003, the Board heard the petition and voted to deny it on the grounds that the proposed structure did not comply with the front setback requirement known as the "500 foot" rule contained in Section XIX. Yard Regulations of the Wellesley Zoning Bylaw, in regard to the setback from Valley Road. At that time, the Board did not reach the issue of whether the proposed structure would be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On February 12, 2003, the petitioner filed an appeal to the decision of the Zoning Board denying the petition (ZBA 2002-108) in Land Court. Subsequently, counsel representing both parties agreed to stipulate that the "500 rule" did not apply to the locus. This Stipulation was filed with the Land Court on December 10, 2003.

On December 15, 2003, J. Lombardi, Land Court Judge, ordered that the matter be remanded to the Wellesley Zoning Board of Appeals, and that a decision be rendered within 100 days following the date of the hearing.

The petitioner is requesting a Special Permit/Finding that the demolition of the existing nonconforming structure with a minimum front setback of 23 feet from Valley Road and a minimum left side yard setback of 12 feet, and construction of a new two-story 43 foot by 83 foot 4 inch dwelling with a 4 foot by 11 foot 5 inch front porch on an 18,223 square foot lot in a Single Residence District in which the minimum lot size required is 20,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed structure has a conforming front setback of 40 feet from Woodlawn Avenue, a conforming front setback of 30.2 feet from Valley Road, a conforming left side yard setback of 20.2 feet and a conforming rear yard setback of 72.1 feet.

A Certified Plot Plan and a Proposed Plot Plan both dated 11/18/02, revised 1/7/2004, stamped by Clifford E. Rober, Professional Land Surveyor; Proposed Floor Plans and Elevations dated December 20, 2002, prepared by DSA Architects; photographs of the existing dwelling and renderings of the proposed dwelling were submitted.

On February 16, 2004, the Planning Board reviewed the petition and had no further comment.

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Decision

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This Authority has made a careful study of the materials submitted and the information presented at the hearing. Neither the existing structure nor the existing lot conforms to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that the proposed 43 foot by 83 foot four inch two-story dwelling with an 4 foot by 11 foot 5 inch front porch shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure as, although the new structure shall have a larger footprint, the siting of said footprint shall cure the nonconformance of the existing structure in regard to front and left side yard setbacks.

However, this Authority further finds that the additional mass and bulk of the proposed structure would be substantially more detrimental to the neighborhood should the screening provided by the substantial tree growth along the southerly and westerly lot lines be removed.

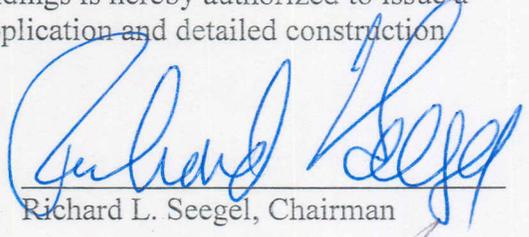
Therefore, a Special Permit is **granted**, as voted unanimously by this Authority at the Public Hearing, to demolish the existing nonconforming structure and construct a new 43 foot by 83 foot four inch two-story dwelling in accordance with the submitted Proposed Plot Plan and construction drawings, subject to the following **conditions**:

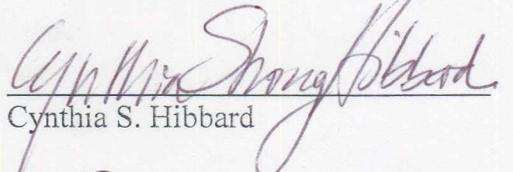
1. No tree with a diameter of 10 or more inches along the southerly and westerly sides of the lot is to be taken down, destroyed, or adversely affected in any way. In the event any tree in with a diameter or 10 or more inches is taken down, destroyed or adversely affected in any way, the building permit for construction shall be instantly revoked. If any such tree is within the proposed foundation area, the petitioner shall return to the Board of Appeals for permission to remove it.
2. Prior to the issuance of any Building Permit, two copies of a landscape plan showing all trees with a diameter of 10 inches or more along the southerly and westerly sides of the lot, with a count of said trees along each side line, shall be submitted to the office of the Board of Appeals.

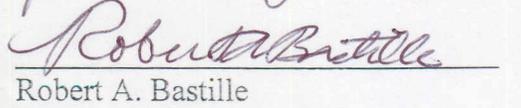
Subsequent to the fulfillment of Condition 2, the Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

Cc: Planning Board
Inspector of Buildings
edg


Richard L. Seegel, Chairman


Cynthia S. Hibbard

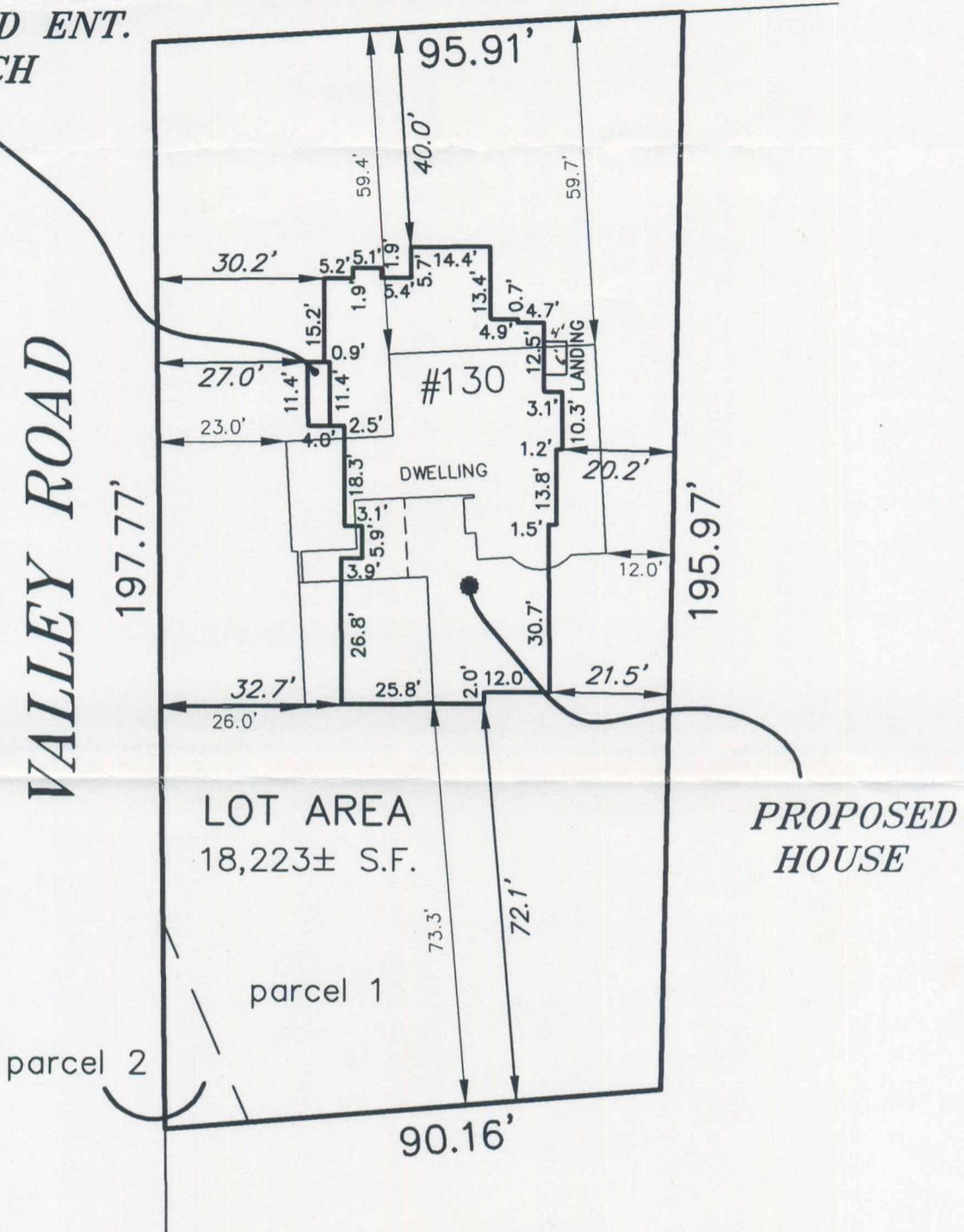

Robert A. Bastille



WOODLAWN AVENUE

PROPOSED
COVERED ENT.
PORCH

VALLEY ROAD



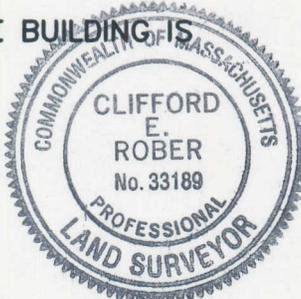
parcel 1	17,953± s.f.
parcel 2	270± s.f.
total	18,223± s.f.

PROPOSED ADDRESS #2 VALLEY ROAD
EXISTING ADDRESS #130 WOODLAWN AVENUE

EXISTING LOT COVERAGE = 12.8%
PROPOSED LOT COVERAGE = 16.7%

OWNER: CURT R. FEUER

I HEREBY CERTIFY THAT THE BUILDING IS
LOCATED AS SHOWN.



AMENDED CERTIFIED PLOT PLAN

IN
WELLESLEY, MA
(NORFOLK COUNTY)

SCALE: 1" = 30' DATE: 11/18/2002



ROBER SURVEY

1072A MASSACHUSETTS AVENUE
ARLINGTON, MA 02476
(781) 648-5533

1334PP1.DWG

Clifford E. Rober
CLIFFORD E. ROBER, PLS DATE

THIS PLAN MAY HAVE BEEN ALTERED IF
THE SIGNATURE IS NOT SIGNED IN BLUE.