



ZONING BOARD OF APPEALS

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

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ZBA 2015-67
 Petition of 3 C Realty Trust
 26 Park Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 6, 2015, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of 3C REALTY TRUST requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing structure and construction of a two-story structure with attic that will meet all setback and height requirements, on a 13,360 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet, at 26 PARK AVENUE, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On July 21, 2015, 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 were James and Rob Cerulle, 3 C Realty Trust, the Petitioner.

Rob Cerulle said that the request is for a special permit to build a house on a nonconforming lot. He said that he and his brother have been builders in town for 20 years. He said that they have built over 25 houses and all of them have been on conforming lots. He said that this is their first time before the ZBA for a nonconforming lot. He said that they have a good reputation with the Building Department. He said that they have been responsible builders in making sure that what they built fit into the neighborhood.

Mr. Cerulle said that when they purchased the property they spent some time with the neighbors to try to get a feel for what they would or would not want to see. He said that they looked at a previous design that they had used on Halsey Avenue and Patton Road on 10,000 square foot lots. He said that added a little bit of room to the design. He said that because of the smaller footprint, they used conventional framing in the attic instead of a truss system to allow for a bedroom and a bath. He said that it will meet all of the setback requirements and will be below allowed lot coverage.

Mr. Cerulle said that a neighbor had written a letter to the Board. He said that they had conversations with the neighbors on the other side who are currently out of the country. He said that they will be meeting with them when they get back. The Board asked about the location of the neighbor's driveway at 30 Park Avenue. Mr. Cerulle said that it is on the left side and the proposed driveway at 26 Park Avenue will be on the right side of the lot.

The Board said that the only nonconformity is the size of the lot.

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The Board said that the Proponent has allowed for some flexibility around the perimeter in case of any mistakes with staking the foundation.

The Board said that the average lot size on Park Avenue is just over 15,000 square feet. The Board said that the TLAG for this project is 4,386 square feet, which is below the threshold for a 20,000 square foot Single Residence District.

The Board said that the lot coverage is approximately doubling. The Board said that the Plan of Land deals with it by saying that there will be 960 square feet of increased building footprint times 1 inch of rain divided by 12. The Board said that the plans show that it will be dealt with by a Cultec System. The Board asked how the drainage system will work. James Cerulle said that they hired an engineer who came up with the design. He said that the rain from the house will go into a conduit which will be a corrugated or solid pipe to the drywell. The Board said that the plan does not provide a lot of information about what happens to the water. The Board said that it usually sees drainage calculations before and post development and it sees the pipes from wherever the water is collected to go into the Cultec. The Board said that a couple of rectangles are shown toward the front of the lot but there is no legend that says that they are the Cultecs and there is no information about how the system works. Rob Cerulle said that they used the same engineer as the house on the other side. He said that they will get the information that the Board needs to see from Field Resources. The Board said that the details are fuzzy and do not seem to be technically correct. The Board confirmed that it is the Petitioner's representation that the infiltration system will handle any increase in runoff from impervious surfaces that will be the result of a larger home. Rob Cerulle said that they asked Field Services to over engineer the system.

Susan Sabin, 40 Seaver Street, said that she lives in the Kingsbury Condominiums which are directly across from 26 Park Avenue. She said that she was concerned that construction vehicles might block the entrance to the yard at 40 Seaver Street. The Board said that if access is being impeded, the Police should be called. Rob Cerulle said that he will give Ms. Sabin his and his brother's cell phone numbers so that she can reach them when construction is going on. He said that they will make sure that no one blocks the access to the Kingsbury Condominiums. The Board confirmed that Ms. Sabin was concerned about access to the pathways. The Board said that if Ms. Sabin cannot get in touch with Rob or James Cerulle, she can call the Building Inspector or the Police for enforcement.

Ms. Sabin said that there is also a log fence that is vulnerable. She said that it has already been replaced at huge expense. She said that they want to protect that as well.

The Chairman read the Planning Board recommendation. He said that the Planning Board recommended that the ZBA defer action of the special permit until information on the size of the existing and proposed home is provided, which will allow for the proposal to be compared to other homes in the area. He said that Total Living Area plus Garage (TLAG) information was provided late this afternoon.

The Chairman said that the Planning Board also recommended that ZBA proportionately reduce the TLAG trigger that is provided in the bylaw and then compare that to what the Proponent is doing. A Board member said that he did not think that was a reasonable or necessary thing to do. Another Board member said that he attended several of the hearings when TLAG was under consideration at the Planning Board level and they made a specific decision that TLAG be calculated by Zoning District, not on lot size.

He said that a 20,000 square foot lot in a 10,000 square foot district would still be subject to the same TLAG as a 10,000 square foot lot in the district. He said that if the Board were to accept the Planning Board's proposal, it would be fair that an oversized lot would get upsized. He said that this particular Applicant is exempt from Large House Review (LHR).

The Board said that the criteria for granting the special permit is the finding that the proposal will not be substantially more detrimental to the neighborhood than the existing nonconformities. The Board said that although it is not a requirement, the Board almost always asks about TLAG calculations because it is a measure of how it compares to the rest of the neighborhood and that is part of the decision in regard to whether it is substantially more detrimental to the neighborhood.

Michael Zehner, Planning Director, said that the Planning Board has been trying to quantify comparable size of homes. He said that their perception of TLAG in this instance is that it is the threshold for review when you have a conforming lot and that it was determined to be the average home size for that Zoning District. He said that nonconforming lots are exempt from LHR because the presumption is that it is a higher or equal standard than LHR because the ZBA has to determine whether the proposed structure will be substantially more detrimental. He said that the Planning Board has come to realize that TLAG is the only thing that they have to compare mass. He said that, for this recommendation, there is a lot in a 20,000 square foot district that is not subject to LHR because it is undersized. He said that they are allowed to build a larger home than the lot would normally bear. He said that the lot is a 33 percent reduction from the minimum lot size and they are building a home that is large house for this lot. The Board said that they are still subject to lot coverage restrictions. Mr. Zehner said that the Planning Board was suggesting that the ZBA consider the standards when determining if it will be substantially more detrimental. The Board said that the bylaw does not say that. Mr. Zehner said that they are trying to quantify and compare homes. The Board said that it looks at how the lot compares to the district, how the total living area compares to the lot and how the TLAG compares to the lot. Mr. Zehner said that he had not heard how the TLA or the TLAG of this house compare to other homes in the neighborhood. The Board said that it is about the same size as the house two doors down. The Board said that the average lot size on Park Avenue is 15,200 square feet, which is about three quarters of the district. The Board said that the largest lot is 25,000 square feet. The Board said that the smallest lot is significantly smaller but it is an outlier. The Board said that the TLAG compared to the TLA is going from 1,400 to 4,300, which is a large increase but it is proportional to what the Board sees on a month to month basis.

A Board member said that he was not convinced that it is a reasonable approach to say that someone with a smaller lot has to build a smaller home, particularly if they are able to meet all of the setback requirements. He said that the bylaw regulates the distance to property lines and lot coverage. The Chairman said that the Planning Board might think about a floor for really small lots. He said that might be a balance between what the bylaw currently says and the thesis that the Planning Board put forth.

Maria Marmarinos, 2 Wildon Road, said that the Board made a statement that a really small lot should not have to have a small house. She said that while respecting the setbacks, people could build vertically on a lot. She said that intensity of land use needs to be considered on a piece of property and what it can actually carry as a burden in terms of costs of materials, building and construction on a piece of property that was meant to have a small house. She said that it compares to McDonald's super sizing food and people having problems with caloric intake. She said that Wellesley has houses with caloric intake problems. The Board said that the place to make that argument is to the Planning Board to get changes in

the Zoning Bylaw (ZBL). The Board said that the proposed house will conform to all setbacks, height and lot coverage. The Board said that if it says no to this structure, it is saying that the ZBL is not compatible with the neighborhood. The Board said that the origin of the issue that Ms. Marmarinos raised is the ZBL itself.

Ms. Marmarinos said that a Board member made a blanket comment that one should not have to be restricted to a small house on a small lot. She said that she would argue that it is okay to look at them on a case by case basis. The Board said that happens by coming before the ZBA. The Board said that a large number of lots in Wellesley are nonconforming. The Board said that the lots were existing before the initial Zoning Bylaw and were modified over the years. The Board said that the question is whether the owners of the nonconforming lots should be restricted to what would otherwise meet the Zoning requirements and be held to a higher standard than the owners of a larger lot.

Ms. Marmarinos said that the Board needs to be cognizant that there is a lot of speculative building in the town. She said that speculative developers do not have the same regard for the history of the neighborhood or the consideration of the neighbors. The Board said that is why the solution to the problem is to change the ZBL. The Board said that its actions are constrained by what the bylaw says.

Ms. Marmarinos asked about regulation of trees. The Board said that there is a Tree Preservation Bylaw. The Board said that there is a tree lawn in the front, side and rear yard setbacks and the bylaw says what can and cannot be done in that zone if there is a trigger for the bylaw to apply. The Board said that the ZBL does try to treat some of the issues but the Board is constrained by what the bylaw says. The Board said that ZBA is not a policy Board. The Board said that ZBA interprets the bylaw and acts on it.

Statement of Facts

The subject property is located at 26 Park Avenue, on a 13,360 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing structure and construction of a two-story structure with attic that will meet all setback and height requirements, on a 13,360 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 7/10/15, a Height Calculation Plan, dated 11/7/14 and a Tree Bylaw Mitigation Plan, dated 6/29/15, stamped by Bradley J. Simonelli, Professional Land Surveyor, Proposed Floor Plans and Elevation Drawings, dated 7/13/15, prepared by HPA Design, Inc., and photographs were submitted.

On August 5, 2015, the Planning Board reviewed the petition and recommended that the Zoning Board of Appeals defer action on the special permit.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that demolition of an existing structure and construction of a two-story structure with attic that will meet all setback and height requirements, on a 13,360 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing structure and construction of a two-story structure with attic that will meet all setback and height requirements, on a 13,360 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet, subject to the following conditions:

1. Contact information shall be provided to the neighbor across the street, Susan Sabin, 40 Seaver Street, Kingsbury Condominiums.
2. Construction staff shall be managed in a way that will not impede access to the walkways at Kingsbury Condominiums or cause construction workers to pull onto the neighbors' property or otherwise obstruct traffic.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed constructions plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

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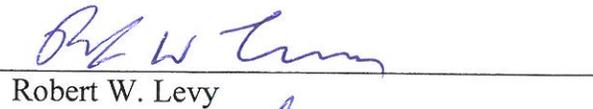
ZBA 2015-67
Petition of 3 C Realty Trust
26 Park Avenue

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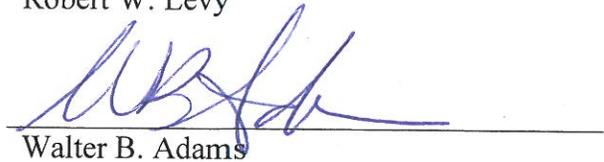
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



J. Randolph Becker, Acting Chairman

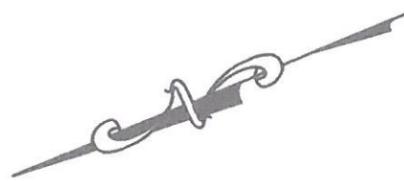


Robert W. Levy

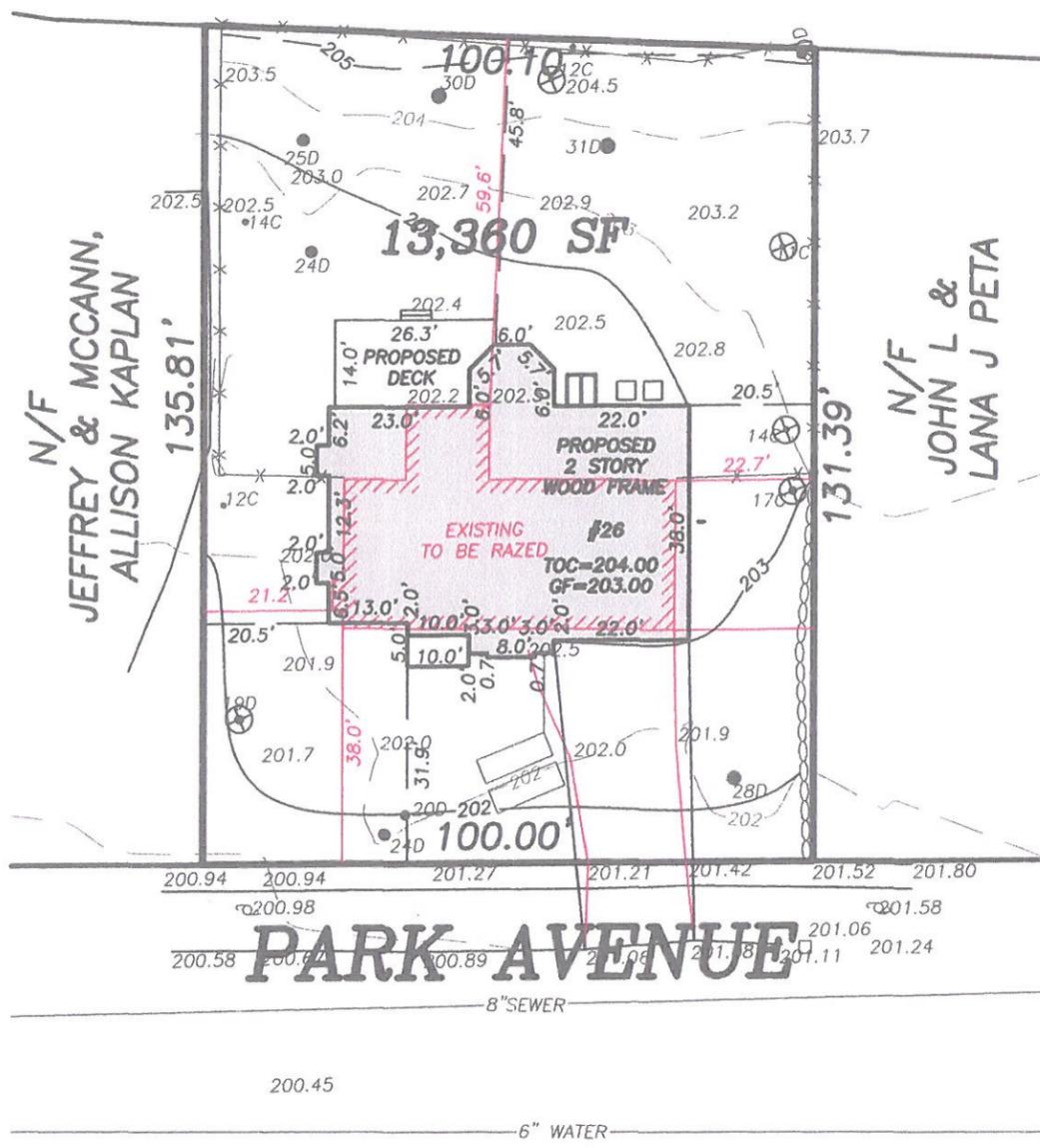


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm



N/F
TRAVIS R &
JENNIFER G METZ



ZONING INFORMATION: SINGLE RESIDENCE 20 (SR20)

	BYLAW	EXISTING	PROPOSED
MINIMUM LOT AREA	20,000 SF	13,360 SF	13,360 SF
MINIMUM LOT FRONTAGE	60 FEET	100.00 FEET	100.0 FEET
MINIMUM FRONT SETBACK	31.9 FEET*	38.0 FEET	31.9 FEET
MINIMUM SIDE YARD	20 FEET	21.2 FEET	20.5 FEET
MINIMUM REAR YARD	20 FEET	59.6 FEET	45.8 FEET
MAXIMUM BUILDING COVERAGE	2672 SF (20%)	9.9%	18.3%
MAXIMUM BUILDING HEIGHT	36 FEET		
MAXIMUM BUILDING HEIGHT	2 1/2 STORIES		

*FRONT SETBACK DETERMINED BY 500 FOOT RULE

EXISTING BUILDING COVERAGE = 9.9%
PROPOSED BUILDING COVERAGE = 18.3%
EXISTING BUILDING COVERAGE = 1484 SF
PROPOSED BUILDING COVERAGE = 2444 SF

INCREASED BUILDING FOOTPRINT = 960 S.F.

$(960 \text{ S.F.} \times 1'') / 12 = 80 \text{ Cu. Ft.}$

MITIGATED WITH 2 CULTEC CONTRACTOR 150 XLHD RECHARGER DRYWELL CHAMBERS (OR SUITABLE REPLACEMENT) CAPACITY OF 53.79 CU FT EACH. RECHARGE WILL MITIGATE COMPLETELY FOR THE ADDITIONAL PROPOSED FOOTPRINT SEE DRYWELL DETAIL FOR SPECIFICATIONS AND PLAN FOR LOCATIONS. LOCATIONS AS SHOWN MAY BE ADJUSTED AFTER SOIL TEST PITS ARE PERFORMED PRIOR TO CONSTRUCTION.

ZONING BOARD OF APPEALS
PLAN OF LAND
26 PARK AVENUE
WELLESLEY, MASS.



MAP 76 PARCEL 62

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ZONING INFORMATION: SINGLE RESIDENCE 20 (SR20)

Field Resources, Inc.
LAND SURVEYORS

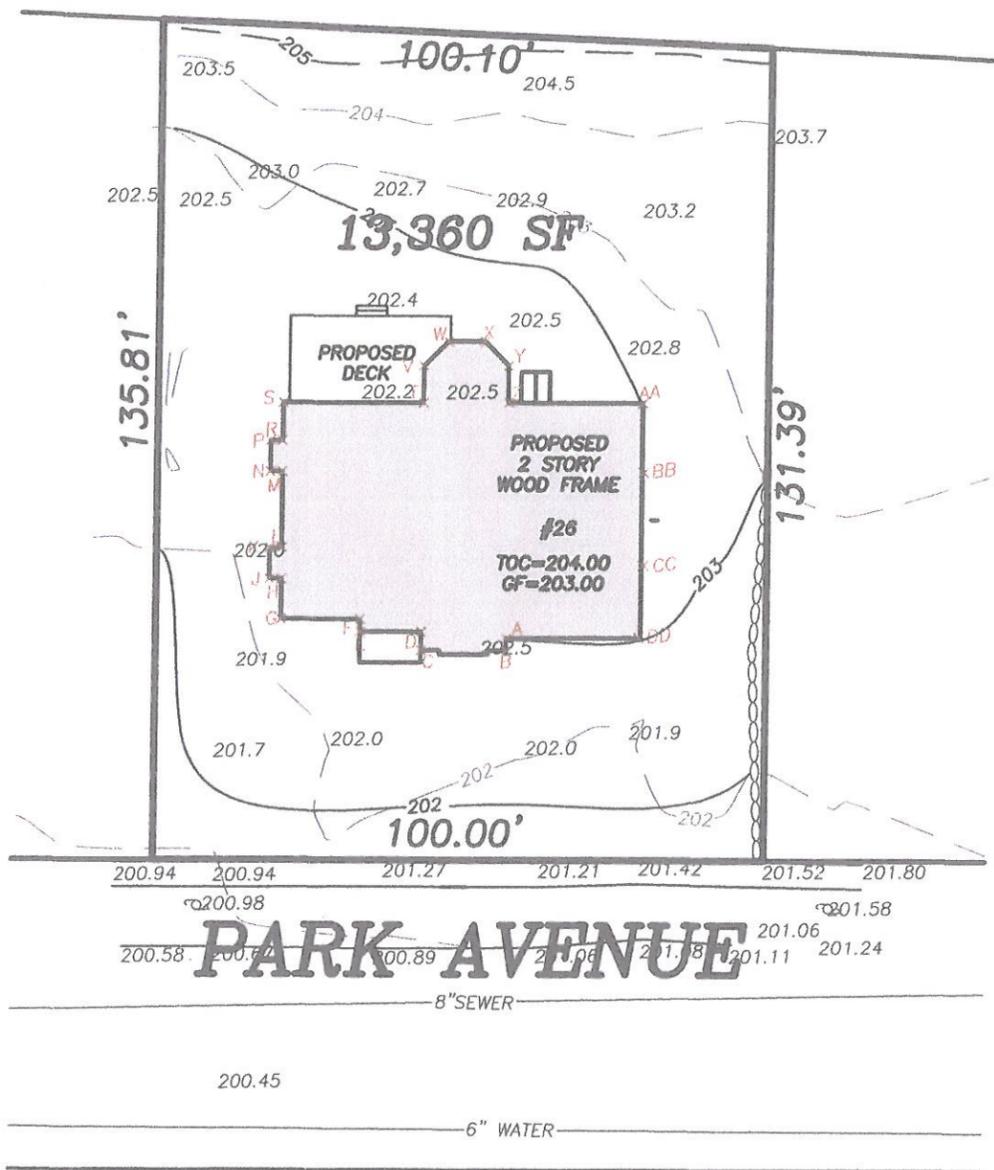
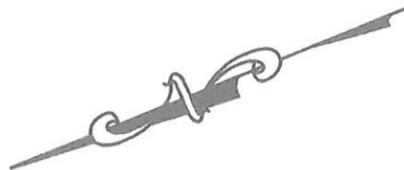
JULY 10, 2015

SCALE 1"=30'

P.O. BOX 324
AUBURN, MA
508 832 4332

281 CHESTNUT ST.
NEEDHAM, MA.
781 444 5936

fieldresources@hotmail.com

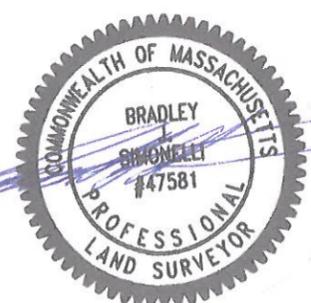


ELEV STATION	EXISTING ELEVATION	PROPOSED ELEVATION
A.....	202.5.....	203.0
B.....	202.5.....	202.9
C.....	202.5.....	202.8
D.....	202.5.....	202.7
E.....	202.5.....	202.6
F.....	202.3.....	202.5
G.....	202.3.....	202.4
H.....	202.1.....	202.3
J.....	202.1.....	202.3
K.....	202.0.....	202.3
L.....	202.0.....	202.3
M.....	202.1.....	202.3
N.....	202.1.....	202.3
P.....	202.1.....	202.3
R.....	202.1.....	202.3
S.....	202.2.....	202.4
T.....	202.2.....	202.4
V.....	202.2.....	202.5
W.....	202.5.....	202.6
X.....	202.5.....	202.7
Y.....	202.6.....	202.8
Z.....	202.6.....	202.9
AA.....	202.7.....	203.0
BB.....	202.6.....	203.1
CC.....	202.5.....	203.1
DD.....	202.5.....	203.0

EXISTING
 GRADE PLANE = $5260.8 / 26 = 202.33$
 TOC TO GRADE = $204.00 - 202.33 = 1.67$
 ALLOWABLE BUILDING = $36.00 - 1.67 = 34.33$

PROPOSED
 GRADE PLANE = $5267.8 / 26 = 202.60$
 TOC TO GRADE = $204.00 - 202.60 = 1.40$
 ALLOWABLE BUILDING = $36 - 1.40 = 34.6$

BASED UPON COMPARATIVE ANALYSIS THE EXISTING GRADE PLANE PROVIDES MORE RESTRICTIVE ENVIRONMENT FOR THE BUILDING HEIGHT THE MAXIMUM ALLOWABLE STRUCTURE ABOVE THE TOP OF CONCRETE IS 34.33 FEET.

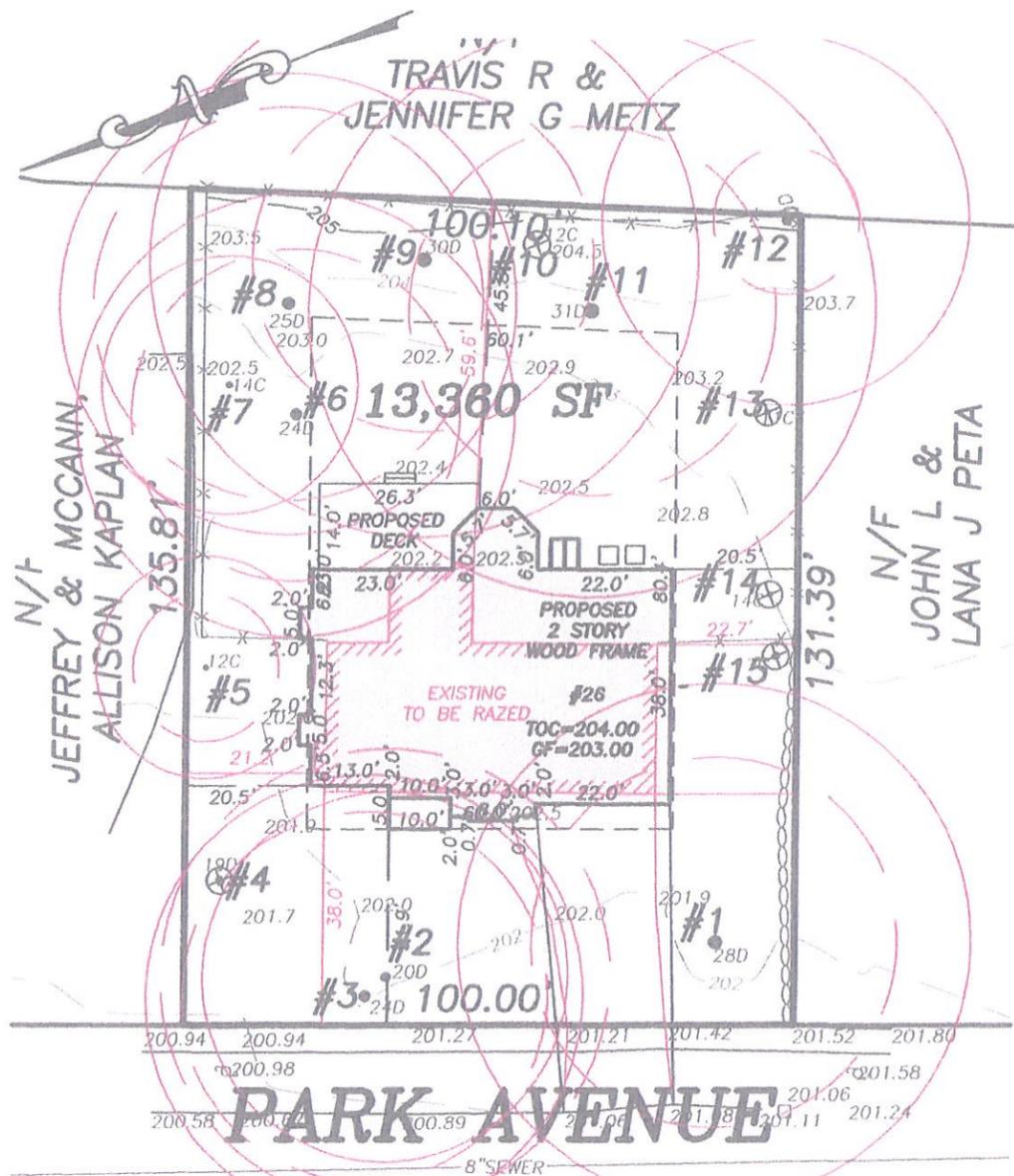


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HEIGHT CALCULATION PLAN
 SHOWING GRADE PLANES
 18 PARK AVENUE
 WELLESLEY, MASS.

Field Resources, Inc.
 LAND SURVEYORS

NOVEMBER 7, 2014 SCALE 1"=30'
 P.O. BOX 324 281 CHESTNUT ST.
 AUBURN, MA NEEDHAM, MA.
 508 832 4332 781 444 5936
 fieldresources@hotmail.com



TREE LIST:

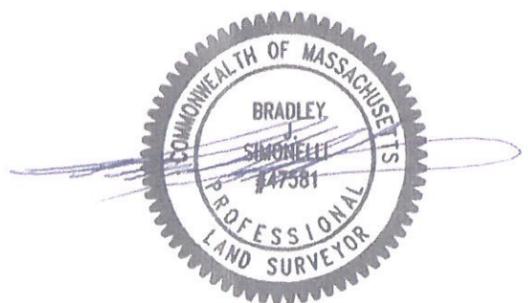
- #1 29" RED OAK, 65 FEET TALL
- #2 21" RED OAK, 60 FEET TALL
- #3 23" RED OAK, 60 FEET TALL
- #4 18" RED OAK, 45 FEET TALL (HAZARD TO BE REMOVED)
- #5 12" NORWAY SPRUCE, 40 FEET TALL
- #6 24" RED OAK, 24 FEET TALL
- #7 N/A"
- #8 25" WHITE OAK, 55 FEET TALL
- #9 30" RED OAK, 60 FEET TALL
- #10 11" CANADIAN HEMLOCK, 30 FEET TALL(HAZARD TO BE REMOVED)
- #11 31" RED OAK, 70 FEET TALL
- #12 18" EASTERN SASSAFRASS, 50 FEET TALL
- #13 11" CANADIAN HEMLOCK, 30 FEET TALL(HAZARD TO BE REMOVED)
- #14 12"& 9" CANADIAN HEMLOCK, 35 FEET TALL(HAZARD TO BE REMOVED)
- #15 12"& 9" CANADIAN HEMLOCK, 35 FEET TALL(HAZARD TO BE REMOVED)

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 WELLESLEY MA 02482

**TREE BYLAW
 MITIGATION PLAN**
 26 PARK AVENUE
WELLESLEY, MASS.

NOTES:

- 1) THE RED DASHED CIRCLES AROUND THE TREES REPRESENT THE DRIP EDGE AND THE SOLID RED CIRCLES REPRESENT THE CRITICAL ROOT ZONES. TREES SHOWING A CROSSED OUT RED CIRCLE ARE TO BE REMOVED.
- 2) REFER TO ATTACHED TREE REPORT PROVIDED BY KRAY SMALL, A MASSACHUSETTS CERTIFIED ARBORIST, FOR SPECIFIC INFORMATION ON EACH TREE. (IE HEIGHT, HEALTH, ETC.)



Field Resources, Inc. LAND SURVEYORS	
JUNE 29, 2014 P.O. BOX 324 AUBURN, MA 508 832 4332	SCALE 1"=30' 281 CHESTNUT ST. NEEDHAM, MA. 781 444 5936 fieldresources@hotmail.com

149-14 ZONING INFORMATION: SINGLE RESIDENCE 20 (SR20)