



ZONING BOARD OF APPEALS

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

JOHN A. DONOVAN
KENDALL P. BATES
WILLIAM E. POLLETTA

ELLEN D. GORDON
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 208

SUMNER H. BABCOCK
ROBERT A. BASTILLE
CYNTHIA S. HUBBARD

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1998 AUG -4 10:14

ZBA 98-55
Petition of Wellesley Street Realty Trust
1 Ridge Hill Farm Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, July 23, 1998 at 8 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of WELLESLEY STREET REALTY TRUST requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow construction of a two story dwelling 80 feet by 37 feet, at 1 RIDGE HILL FARM ROAD, in a Single Residence District, which will have less than the required front yard setback from LIVINGSTON ROAD, as within a distance of 500 feet, the closest front setback is 50 feet at 92 Livingston Road.

On July 7, 1998, 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 Jerome Carr, Environmental Scientist from Carr Research Laboratory, Inc, who was accompanied by Dr. Harold Wenger and Larry Corda, trustees of the Wellesley Street Realty Trust.

Dr. Carr said that they have been before the Wetlands Protection Committee and received an Order of Conditions, which was appealed by the neighbors. The petitioner are now before the DEP seeking a superceding Order of Conditions. DEP has requested that the petitioners look into the possibility of moving the proposed house closer to Livingston Road by shortening the driveway to increase the width of the buffer zone between the house and the wetlands.

Using a topographical plan, Dr. Carr walked the Board through the project. The driveway will access Livingston Road. There is an intermittent pond, which is full for about three quarters of the year, to the right of the house. DEP said that the house, as sited, is very close to the pond, and asked that it be pulled forward. This would result in a reduction of the amount of impervious surface because the driveway would be shortened. It would also pull the house further out of the flood plain. Full compensatory storage will be provided for the work done in the flood plain, but moving the house forward will result in less of the house being in the flood plain, which would reduce flooding on neighboring properties. There is no intention of reducing the amount of excavation to compensate for flood storage, so moving the house would actually increase the amount of flood storage in the area. At the request of DEP, they would like to slide the house forward 10 feet, which would result in a 41 foot setback from Livingston Road.

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The Board asked if the house could not be sited in a different manner. Mr. Carr said that the front setback of the house must be equal to the nearest houses. The house does not fit any where else on the property due to the presence of wetlands. The house has been scaled back already in response to the Wetland Committee's concerns to allow a buffer for work space between the house and the wetland.

The Board asked if a floor plan was available, and if the petitioners could define the use of the 21 foot by 19 foot projection which is closest to the pond. Mr. Corda said that a floor plan had not been done, and that, although a final decision had not been made, the subject area might be a porch.

The Board suggested that if an additional 10 foot distance was needed from the pond, the porch could be reduced from 19 to 9 feet. The reduction in the size of the porch would allow the front setback of 51 feet to be maintained. According to the Zoning Bylaw, a variance requires the demonstration of a significant hardship, and removal of 10 feet of the porch is not unreasonable.

Dr. Wenger stated that they did not need to appear before the Board. They have come at the request of DEP to improve a conservation issue. The neighbors have expressed conservation concerns, and they are attempting to be compliant.

Dr. Carr said that DEP could approve the project without sliding the house forward, but DEP cannot act until a decision has been made by the Board of Appeals.

The Board noted that the Planning Board had recommended denial of the variance on the grounds that the house can be sited to meet setback requirements and maintain an adequate distance from the pond.

The Board was of the opinion that the only way this could be accomplished would be to reduce the size of the house. The proposed location is an attempt to build a large house on an environmentally constrained site. The size of the porch can be reduced to avoid encroaching on the pond area.

Carlo DeLucca, 107 Livingston Road, asked to see the elevation drawings. The Board said that no elevations had been submitted. The Board also objected to the location of the driveway on a street other than that of the house address.

The Board commented that the setbacks of the homes on the street provided a nice rhythm to the street. There are no fences and the lawns provide a continuous greenspace. The siting of the proposed house 41 feet from Livingston Road would disrupt that rhythm and have a definite negative visual impact.

The Board stated that it was reluctant to set a new precedent on frontage on a street because future owners of impacted houses could take advantage of the reduced front setback.

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The Board offered to allow the petitioners to withdraw the petition without prejudice in order to rethink their options. The layout of the house, and particularly the porch, should be re-examined, and an alternative plan devised, as adequate consideration has not been given to working with the site.

Dr. Carr rejected the offer, stating that the DEP needs a definite decision. DEP has asked that the petitioners consider moving the house. They have not mandated that the house be moved.

The Board was emphatic that its denial of the petition should not be viewed by DEP as support for the 5 foot setback from the pond, or used by the petitioners as a response to DEP that they have done everything to consider the DEP request. The Board has suggested an alternative which the petitioners have refused to accept.

Statement of Facts

The subject property is located at 1 Ridge Hill Farm Road, on the corner of Livingston Road, in a Single Residence District, on a 43,078 square foot lot. The site is located along and constitutes part of a naturally flowing Perennial Stream which carries water from Sabrina Lake, which is located approximately one-quarter mile upstream from the site, and which empties into the Charles River, which is located approximately one-quarter mile downstream of the site. The stream flows through a small pond located on the site.

The petitioner is requesting a variance to construct a two story dwelling with a footprint of 80 feet by 37 feet, which will have a minimum front setback of 41 feet from Livingston Road, as within a distance of 500 feet, the closest front setback is 50 feet at 92 Livingston Road.

A Plot Plan dated 5/21/98 drawn by Peter Michael Ditto, Registered Professional Land Surveyor; a Site Plan dated July 23, 1997, revised November 25, 1997, also drawn by Mr. Ditto; a copy of a letter from Rachel Freed, Environmental Analyst, Department of Environmental Protection, dated May 8, 1998; and a Memorandum entitled "Reasons for Variance" by Jerome B. Carr, PhD., dated May 29, 1998, were submitted.

On December 15, 1997, the Wetlands Protection Committee issued an Order of Conditions (DEP 324-254) for the project.

On July 21, 1998, the Planning Board reviewed the petition and recommended denial of the application. It was felt the house can be sited to meet the setback requirement and maintain an adequate distance from the pond.

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Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

Variations may only be granted by the Permit Granting Authority once they have found any or all of the following: (Section XXIV-D 1. as quoted from the Zoning Bylaw)

"1.

a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and

b. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw."

It is the opinion of this Authority that the petitioner's refusal to reduce the footprint of the proposed house, particularly in regard to the 21 foot by 19 foot projection located 5 feet from the pond, results in a self-created hardship as a 10 foot reduction of this projection would enable the petitioner to comply with the request of the DEP to increase the buffer between the house and the pond, while maintaining the required front setback of 50 feet from Livingston Road.

Furthermore, this Authority is concerned about the proximity of the structure to the wetland area, as is the DEP, and does not want the denial of this petition to be construed as approval of the location of the proposed dwelling. However, it is the opinion of this Authority that the increased width of the buffer area can be achieved by reducing that part of the structure adjacent to the pond rather than by moving the house closer to Livingston Road.

This Authority is of the opinion that allowing a precedent front setback of 41 feet on this particular street would be substantial detriment to the public good and would derogate from the intent and purpose of the Zoning Bylaw.

Therefore, it is the unanimous opinion of this Authority, as taken by vote at the Public Hearing, that this request for a variance be denied, and this petition is dismissed.

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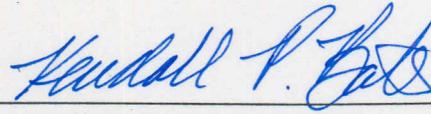
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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
Wetlands Protection Committee
Inspector of Buildings
Rachel Freed, DEP

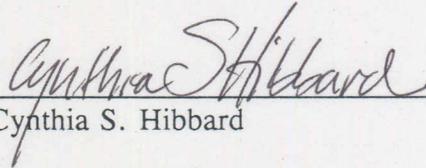
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Kendall P. Bates, Acting Chairman



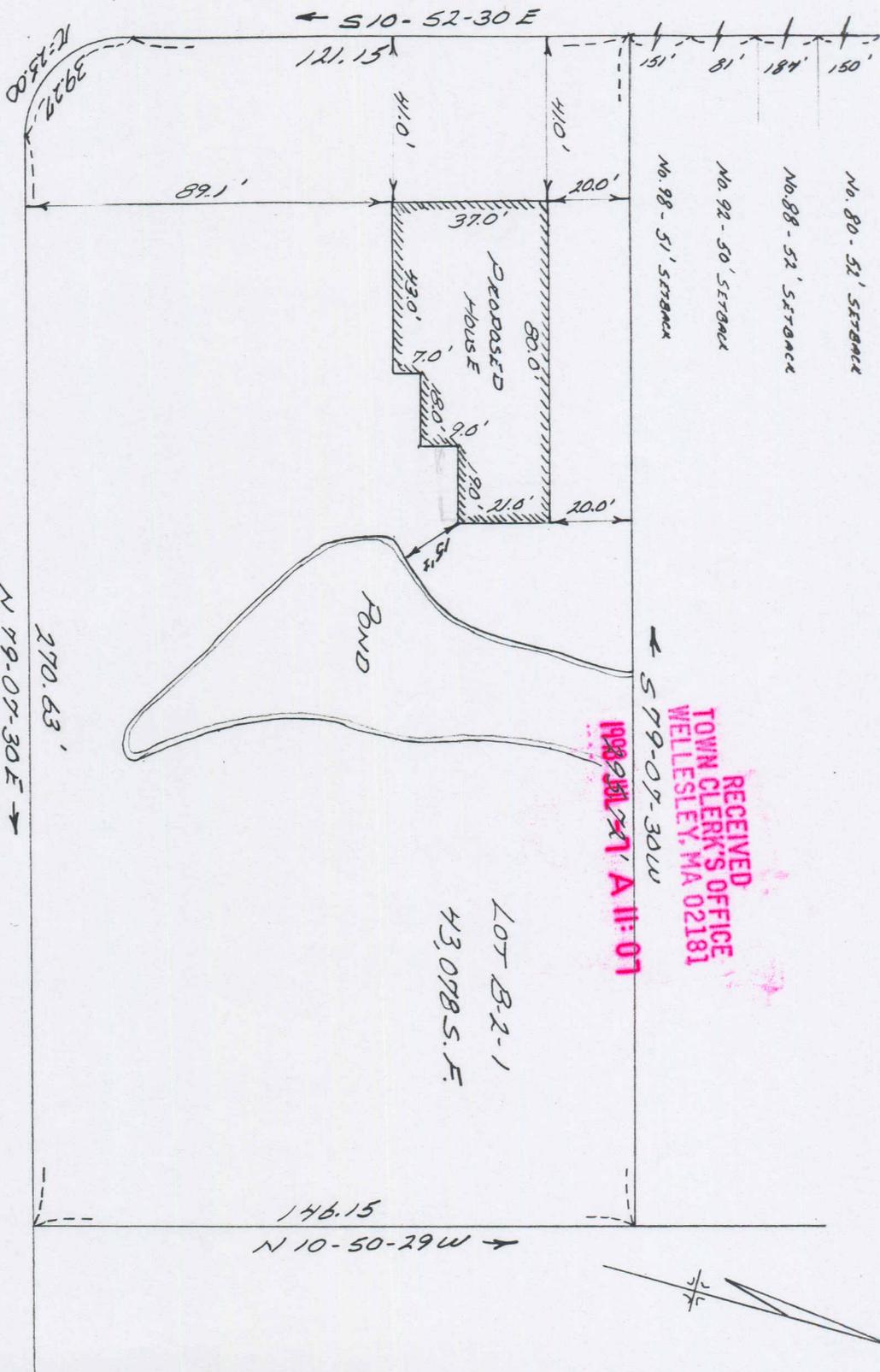
William E. Polletta



Cynthia S. Hibbard

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LIVINGSTON ROAD



No. 80-51' SETBACK
 No. 88-52' SETBACK
 No. 92-50' SETBACK
 No. 98-51' SETBACK

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 S 79-07-30 W

LOT B-2-1
 43,078.5 F.

LOT COVERAGE = $\frac{2530}{43078} = 6\%$



LEDGE HILL FARM ROAD

PREPARED BY: D.M.O.F ASSOCIATES
 86 SEAWARD ST.
 WELLESLEY MA 02181

Peter M. O'Neil
 5/22/88

PLAN SHOWING
 PROPOSED HOUSE
 WELLESLEY, MA.

SCALE: 1"=40' DATE: 5/22/88