

TOWN OF WELLESLEY



MASSACHUSETTS

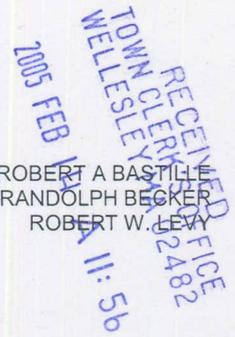
ZONING BOARD OF APPEALS

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

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ZBA 2004-92

Petition of Johannes & Amy Van Der Wal
15 Partridge Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, January 13, 2005 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of JOHANNES AND AMY VAN DER WAL requesting a Variance pursuant to the provisions of Section XXIV-D and Section XIX of the Zoning Bylaw to demolish the existing nonconforming two story dwelling with less than required left side and front yard setbacks, and construct a two and one-half story 42.5 foot by 45.5 foot by 24 foot by 70 foot dwelling with less than required left side and front yard setbacks, at 15 PARTRIDGE ROAD, in a 15,000 square foot Single Residence District.

On November 23, 2004, the petitioners 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 Johannes Van Der Wal, who said that they want to raze the current house and build a new one to accommodate their growing family. They have lived in Wellesley for seven years.

Mr. Van Der Wal said that the reason they are looking to raze the current structure is due to its many deficiencies. The house is between 80 and 100 years old. The foundation is showing signs of disrepair. The front sills of the house sit on dirt. They have been told that there are signs of rot. At the back of the house is block and concrete. They have water issues there with every major rainstorm. During a snowmelt they have water running through their basement for three to four weeks. When they bought the house there were holes drilled in the walls to allow the water to get out. The Board asked if the holes are still there. Mr. Van Der Wal said that they are there and they are functioning.

Mr. Van Der Wal said that the house is only wired for 60 amps. There are also issues with plumbing, water pressure and freezing.

Mr. Van Der Wal said that they are petitioning the Board for a Variance based on topography and lot shape. The lot has large steeply sloping angles on three sides. The slope of the lot from the front to the back of the house is 16 feet. The slope from the back lot line to the back of the house is 30 feet. They have a neighbor's lot on the western side that has a 17 foot slope. A catch basin for water from Oakland and Putney Streets has been created. The Board said that it had looked at the property and saw that there is bowl shape behind the house.

Mr. Van Der Wal said that the shape of the lot is irregular. It has six points. The point on the middle of the easterly point creates a large angle, which limits where they can put a conforming house.

Mr. Van Der Wal said that they wanted to site the new house on as much of a central location as they could on the existing lot. They placed the garage on the same footprint as the current structure, without decreasing the side setback. He said that there are two utility easements on the side. The Board asked if Mr. Van Der Wal had any history on the utility easement that comes up to their property and dead ends. Mr. Van Der Wal said that he talked with the Wellesley Department of Public Works' Engineering Department and was told that it was their sewerage line. He was told that placing the house at the bottom of the lot would negate the gravity fed sewerage line. Mr. Van Der Wal said that he believes that the easement connects with the other easement at the top.

The Board said that Partridge Road is a private, unaccepted road. Mr. Van Der Wal said that the property is located at the end of a dead end road, so there are no traffic issues. There are only three residences, including his own, on this road. The closest abutter, across the street, would be 80 feet away. The next closest neighbor would be 120 feet away. There are no neighbors to the right or left side. The Board asked if Mr. Van Der Wal was making a case for the front yard setback. Mr. Van Der Wal said that the existing house is only six feet away from the front property line. They have removed the deck at the front so that the new house will be 13 feet from the property line.

The Board asked if Mr. Van Der Wal realized that he would lose all grandfathered rights by demolishing the house. Mr. Van Der Wal said that he had met with Ellen Gordon initially and she had suggested that he center the house and make it no more nonconforming. He said that they are trying to keep the house as high as possible. They have eliminated the basement.

Mr. Van Der Wal said that the lot is ringed with trees. The Board said that in the wintertime the neighbors' houses are visible. Several neighbors could see the full height of the structure. Mr. Van Der Wal said that the current structure is one and one-half stories, cape style. It is 26 feet high. The new structure would be the lowest of all of the neighbors. The Board asked about the height calculations on Page 6 of the submitted plans. The calculations were done to the top of the gable and should be made to the top of the house on all four sides. The Board asked that the Van Der Wal's have their architect redo the height calculations.

Mr. Van Der Wal said that he met with the Planning Board. He also met with five neighbors that he thought would be most impacted by the project. All of them approved his plans. Their letters were submitted with the application. The Board said that they had also received a letter from a neighbor that Mr. Van Der Wal had not spoken with.

The Board said that the minimum setback on the west side of the house is 24.2 feet. The Board asked if the house could be moved over to meet the 20 foot setback.

The Board said that, because of the topography, it would be better to put the structure closer to the street. The Van Der Wals would have to put in some retaining walls to step down the foundation. The slope down to the garage seems very steep. There could be an opportunity to break that. The Board asked if Mr. Van Der Wal knows what the grade is for the new driveway. Mr. Van Der Wal said that he believes that it is roughly three feet from the street level to where it ends.

The Board said that the neighbors, the Chiltons, expressed concern over water from the Van Der Wals yard going into their yard. They are concerned that the proposed construction will make that situation worse. The Board noted that there does not seem to be any storm drains in the area. The Van Der Wals

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might have some responsibility to connect with a drain line from a catch basin or low point on the property to make sure that the water does not run out on the surface. Mr. Van Der Wal said that the current driveway is 130 feet long. He did not think that shortening the driveway to 36 feet would exacerbate the problem. The Board said that there will be an increase of impervious surface on the lot. The proposed structure would triple the lot coverage.

The Board asked what would happen to the roof water. Mr. Van Der Wal said that they currently have downspouts that go directly to the ground. He did not think that drywelling the water off of his roof would solve the runoff problems to Priscilla Circle. The Board said that the Van Der Wals have it in their power to not make the existing problem any worse. Because the proposal is for a teardown on an unaccepted street, the Planning Board will review the project for adequacy of services and will look at the stormwater issue.

The Board asked Mr. Van Der Wal if he had approached neighbors about purchasing some land. Mr. Van Der Wal said that he had asked the abutter at 17 Putney Road to sell him a slice of land. They declined the offer. The Board asked if Mr. Van Der Wal had approached the neighbor on Oakland Street. Mr. Van Der Wal said that there is a 17 foot hill on that side of the lot. The owners were adamant about not selling the land.

The Board asked if the Van Der Wals would have to bring in a good amount of fill. Mr. Van Der Wal said that they will be leveling the front yard. He spoke with the Planning Department and was told that because it is part of Partridge Road it is actually common ground and it is up to the neighbors to decide how to maintain it.

The Board asked if there was anyone present who wished to speak to the petition. Steve Chilton, 35 Priscilla Circle, said that he had written a letter to the Board. He said that they have lived in their house for 14 years. They are sympathetic to the Van Der Wals situation. Mr. Chilton requested that the Board defer their decision until after he has had a chance to meet with the Van Der Wals. He said that they have drainage problems because they are lower in the bowl than the Van Der Wals. The water patterns have varied over the years. Sometimes the water runs straight off of Partridge Road and sometimes into the woods. The Board asked if the Chilton's basement gets flooded. Mr. Chilton said that they do not have that problem. The water flows down to storm drains on Priscilla Circle. His property absorbs a lot of the water. In the past couple of years it has become more of a nuisance because of the debris that the water brings down. He had the Planning Department and the Engineering Department take a look at the problem a few years ago. The Town Engineer told him that Partridge Road does not have storm drains, and should have them.

The Board noted that Mr. Chilton had expressed another concern in his letter. Mr. Chilton said that the height of the proposed house might not be a problem. He would like to walk the property to get a sense of what it would look like. The proposed house looks to be much larger than the surrounding houses.

Mr. Chilton said that he is also concerned with the environmental issue of drainage during and after construction. He said that cutting into the slope could change the drainage patterns. With more lot coverage, there would be less soil for water absorption.

Jean Resnick, 17 Putney Road, said that she is one of the abutters. She said that the Van Der Wals have been very concerned about keeping them apprised of their plans. They have walked them through the lot and have kept them informed of what is going on. She said that she is supportive of the proposal.

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AMY VAN DER WAL

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The Board said that a concern is to minimize the relief to be granted. The Van Der Wal property does meet some of the criteria for a Variance with respect to shape and topography. The Board had suggested moving the house over to meet the side setback.

The Board said that the proposed design disturbs the contour at the back as little as possible. 5.5 feet on the left hand side is tight. The Board is concerned that emergency personnel may not have the ability to get around the house with their equipment. The side setback requirement is 20 feet and the Van Der Wals are asking for only 5.5 feet. By sliding the house over four feet, there is a chance to improve that situation. There is 26 feet on the other side to work with.

The Board said that it would be inclined to grant the relief in front of the house because of the topographical restraints of the lot.

The Board said that they would like to see a civil engineer's statement addressing water runoff.

The Board asked the Van Der Wals to come back with a new plot plan and height calculations for all four sides of the house. They encouraged the Van Der Wals to speak with Mr. Chilton.

The Board voted unanimously to continue the hearing until January 13, 2005.

On Thursday, January 13, 2005, Johannes and Amy Van Der Wal appeared before the Board at the Public Hearing, in the Great Hall, at the Town Hall, at 525 Washington Street, at 7:30 p.m.

Presenting the case at the hearing was Johannes Van Der Wal, who said that the Board had asked him to look at three issues. The first issue was to shift the structure to the west side so that it sits on the 20 foot setback. That shift is shown on the newly submitted plot plan.

The Board asked if the house plans were the same. The Board noted that the deck looks bigger. Mr. Van Der Wal said that the plans are the same. He said that the surveyor had included the steps this time on the plot plan.

Mr. Van Der Wal said that the second recommendation of the Board was to demonstrate that the structure would meet the 36 foot height restriction. Mr. Van Der Wal said that the architect has drawn the height from average grade from different views. The height of the structure is 33 feet from average finished grade.

The Board noted that in the elevation drawings for building sections "c" and "d", the height is calculated for the shorter section of the house, not to the top of the house. The height is calculated correctly for the other two sides of the house. The Board will need to have the correct calculations for the file.

Mr. Van Der Wal said that the third issue that they needed to address was the recommendation to hire a civil engineer to study the drainage. The civil engineer calculated that the new structure would increase the impervious surface by 719 feet, which is an increase of approximately 3% in structure. That translates to about a 5% increase in runoff during peak storm conditions. The civil engineer has recommended that the Van Der Wals add two drywells. The first drywell should capture water from the front gutters. The other drywell should capture the water from the rear gutters and from the french drain that is located in the driveway. They will be capturing all of the runoff that the new house creates. The civil engineer also

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recommended that they increase the grade in the backyard. That should decrease the chance of water running off into the neighbors' yards.

Mr. Van Der Wal said that he met with his neighbor, Steve Chilton. Mr. Chilton mailed his approval letter to the Board.

The Board discussed the steep slope of the driveway. There is no clear indication of what the actual drop is from the street to the garage. Mr. Van Der Wal said that the new driveway has a slope that is a minimum of three feet less than the current driveway.

Mr. Van Der Wal submitted a new plot plan that was signed and stamped by the surveyor.

The Board said that it would have to make findings because the petitioners are requesting a Variance. In order to grant a Variance, the Board has to make a determination that literal enforcement of the Zoning Bylaws would cause substantial hardship to the petitioner, owing to circumstances related to soil conditions, shape of the lot, or topography.

The Board made the finding that due to shape and topography of the lot, the conditions do not affect the Zoning District in which it is located.

The Board made the finding that relief for the left side yard setback and front yard setback could be granted without substantial detriment to the public good and without nullifying and substantially derogating from the intension of the Zoning Bylaw.

The Board made the finding that literal enforcement of the provisions of the bylaw could cause substantial hardship, financial or otherwise.

The Board said that it would approve the petition with the condition that the Van Der Wals implement the recommendations of the civil engineer with respect to the drywells and alteration of the grade in the backyard.

Statement of Facts

The subject property is located at 15 Partridge Road, with a minimum left side yard setback of 5.1 feet, and a minimum front yard setback of 6.4 feet, in a 15,000 square foot Single Residence District.

The petitioners are requesting a Variance to demolish the existing nonconforming two story dwelling with a minimum left side yard setback of 5.1 feet, and a minimum front yard setback of 6.4 feet, and to construct a two and one-half story 42.5 foot by 45.5 foot by 24 foot by 70 foot dwelling with a minimum left side yard setback of 8.9 feet, and a minimum front yard setback of 13 feet.

A Plot Plan dated 1/5/05, stamped by Jeffrey Bradford, Professional Land Surveyor, Existing Floor Plans and Elevation Drawings, Proposed Floor Plans and Elevation Drawings, dated 1/6/05, drawn by Lawrence DeHart, photographs, and Civil Engineer's Report, dated 1/5/05, prepared by Charles Gore, Registered Professional Engineer were submitted.

On November 30, 2004, the Planning Board reviewed the petition and had no objection to granting the request.

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Decision

This Authority has made a careful study of the materials submitted and the information presented at the Public 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 the shape of the lot with a width of 124.4 feet at its widest point, narrowing to 74 feet at midpoint, and the topography of the lot with a maximum elevation of 200 feet and a minimum elevation of 171 feet creates a severe hardship for the petitioners, as they could not build a livable house which would conform to the 20 foot left side yard setback and the 30 foot front yard setback.

It is the opinion of this Authority that the proposed structure will be less nonconforming than the existing structure, as the left side yard and front yard setbacks will be increased.

It is the opinion of this Authority that due to the hardship created by the shape of the lot and the topography of the lot, literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioners. Furthermore, the grant of a Variance would not affect the Zoning District in which it is located nor nullify or derogate from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted to allow demolition of the existing nonconforming structure and construction of the two and one-half story 42.5 foot by 45.5 foot by 24 foot by 70 foot dwelling with a minimum front yard setback of 13 feet, and a minimum left side yard setback of 8.9 feet, in accordance with the submitted Proposed Plot Plan, the last revision of the construction drawings, and subject to the following conditions:

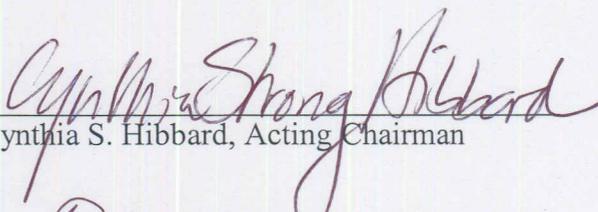
1. Elevation drawings showing the height calculated to the top of the house on all four sides be submitted.
2. The recommendations of the civil engineer with respect to the drywells and alteration of the grade in the backyard are implemented.

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.

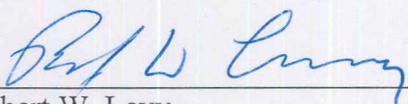
If the rights authorized by this variance are not exercised within one year of the date time-stamped on this decision, they shall lapse and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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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.

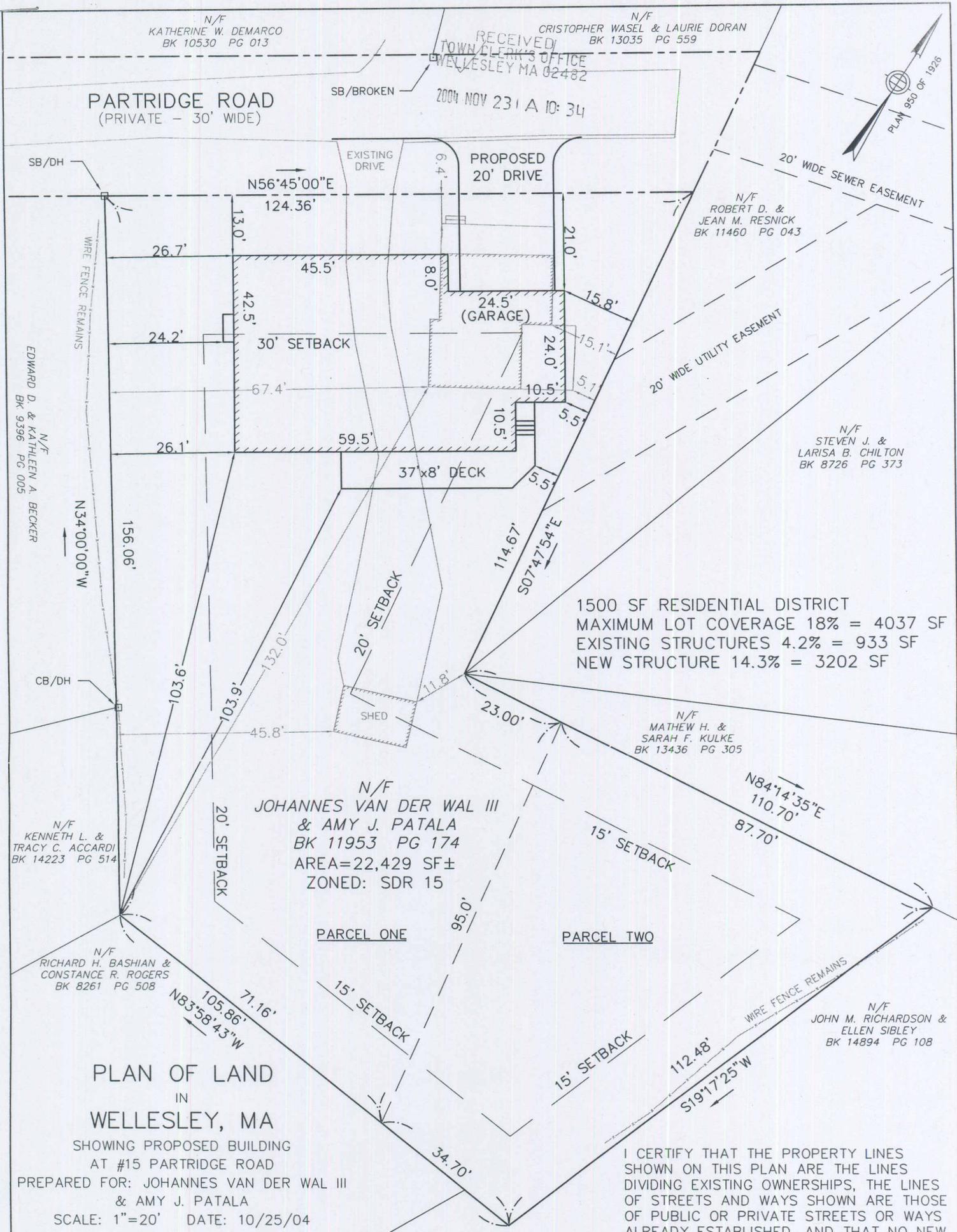

Cynthia S. Hibbard, Acting Chairman


Robert A. Bastille


Robert W. Levy

cc: Planning Board
Inspector of Buildings
lrm

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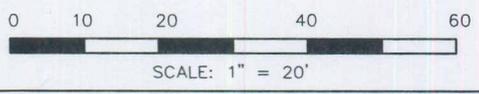
N/F KENNETH L. & TRACY C. ACCARDI BK 14223 PG 514

**PLAN OF LAND
IN
WELLESLEY, MA**

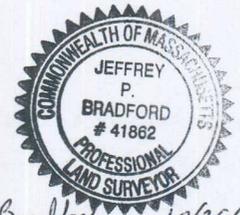
SHOWING PROPOSED BUILDING
AT #15 PARTRIDGE ROAD
PREPARED FOR: JOHANNES VAN DER WAL III
& AMY J. PATALA
SCALE: 1"=20' DATE: 10/25/04

PLAN REFERENCES

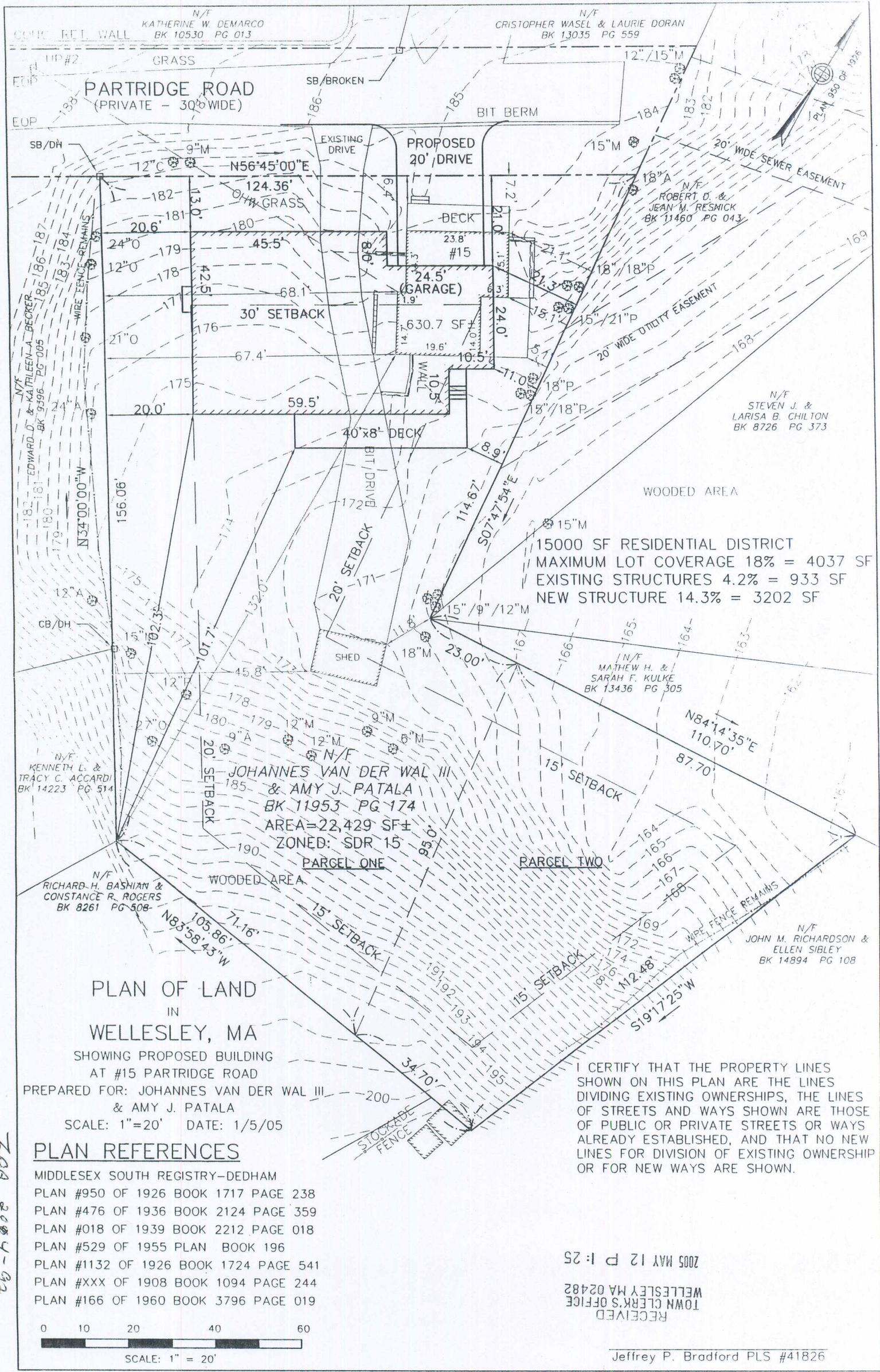
- MIDDLESEX SOUTH REGISTRY-DEDHAM
- PLAN #950 OF 1926 BOOK 1717 PAGE 238
- PLAN #476 OF 1936 BOOK 2124 PAGE 359
- PLAN #018 OF 1939 BOOK 2212 PAGE 018
- PLAN #529 OF 1955 PLAN BOOK 196
- PLAN #1132 OF 1926 BOOK 1724 PAGE 541
- PLAN #XXX OF 1908 BOOK 1094 PAGE 244
- PLAN #166 OF 1960 BOOK 3796 PAGE 019



I CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.



Jeffrey P. Bradford 10/26/04
Jeffrey P. Bradford PLS #41826



PARTRIDGE ROAD
(PRIVATE - 30' WIDE)

PROPOSED
20' DRIVE

DECK
#15
(GARAGE)

40'x8' DECK

SHED

JOHANNES VAN DER WAL III
& AMY J. PATALA
BK 11953 PG 174
AREA = 22,429 SF ±
ZONED: SDR 15

15000 SF RESIDENTIAL DISTRICT
MAXIMUM LOT COVERAGE 18% = 4037 SF
EXISTING STRUCTURES 4.2% = 933 SF
NEW STRUCTURE 14.3% = 3202 SF

PLAN OF LAND
IN
WELLESLEY, MA

SHOWING PROPOSED BUILDING
AT #15 PARTRIDGE ROAD
PREPARED FOR: JOHANNES VAN DER WAL III
& AMY J. PATALA
SCALE: 1" = 20' DATE: 1/5/05

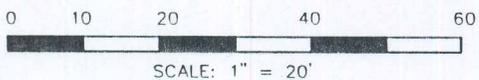
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