



ZONING BOARD OF APPEALS

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

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ZBA 2013-21
 Petition of Henry Bobek
 50 Upson Road

Record Owner of Property: Raymond L. & Florence K. Cyphers

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 4, 2013, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of HENRY BOBEK requesting modification of a Variance (ZBA 55-1) pursuant to the provisions of Section XIVE and Section XXIV of the Zoning Bylaw and Section 7 of M.G.L. Chapter 40A to permit demolition and reconstruction of the single family dwelling at 50 UPSON ROAD, on a 9,776 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet. The proposed two story construction will conform to all applicable dimensional and density requirements of the Zoning Bylaw.

On March 18, 2013, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

The Board discussed previously issued Variances. The Board said that it has to amend the original Variance. The Board said that a Variance was granted for this property in 1955. The Board said that the decision is unclear about whether the relief was for the lot or for the structure to be built. The Board said that once the Variance was granted, it became a legal lot and a valid building lot. The Board said that it is not an existing nonconforming lot. The Board said that the Variance was granted under different statutes.

Presenting the case at the hearing was Henry Bobek, Architect, (the "Petitioner"), representing the owner, Hillcrest Development. He said that George Giunta, Jr., Esq., who wrote the Narrative Summary, was unable to attend the Public Hearing.

Mr. Bobek said that he came before the Board on March 7, 2013, prior to realizing that there was an existing Variance. He said that they had submitted the application as if this was an existing nonconforming lot. He said that, at that time the Board suggested that the Petitioner take the percent difference from 10,000 square feet and the existing lot size, using the 3,600 square foot Large House Review threshold, and take 98 percent of 25 percent to yield 24.5 percent lot coverage. He said that they redesigned the house to make it proportional.

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Mr. Bobek said that the Board had also asked that information showing the calculations for the 500 foot Rule be submitted. He said that the proposed house will be 30.5 feet from the front property line. He said that there are two houses within 500 feet with a 30.2 foot front yard setback. He said that the front porch will be less than 50 square feet and will not project more than five feet from the face of the structure.

Mr. Bobek said that another concern of the Board had been that the house was not exactly centered. He said that they moved the house so that it is now 20.65 feet on both sides. He said that they have worked on a number of homes in Needham with tight setbacks. He said that they are familiar with staying within the required setbacks and making sure that the foundations are properly pinned.

The Board said that lot coverage is maxed out on the property.

Mr. Bobek said that the massing is not maxed out. He said that they tried to be very respectful of the neighbors. He said that, after speaking with the neighbor, they moved the garage further away from the back property line. He said that the garage elevation steps down. He said that there is a topographical change of almost six feet from the paving to the neighbor's back yard. He said that there is a six foot fence at the back. He said that the garage structure will be 12 feet high.

The Board said that the only façade with a lot of windows is the front. The Board said that windows help with scaling buildings but with the topography involved here, the lack of them is not a major concern. The Board said that, with the massing and the rooflines, there are no other places to put windows other than on the garage. Mr. Bobek said that there is only one window in the master bedroom at the northwest corner. He said that he did that as a privacy issue. He said that he could put a window in the walk in closet.

The Board asked if there was a reason why there are no windows on the garage elevation that is closest to the front of the structure. Mr. Bobek said that he was concerned about furniture placement in the bedroom. He said that the room already has two large windows in the front.

The Board discussed a possible teardown at 54 Upson Road and the fact that two houses could be built that face each other with blank walls. The Board suggested that Mr. Bobek look at adding windows.

Mr. Bobek said that some of the planned communities have houses faced in such a way that, when you are in the side yard, you do not look into the neighbors' windows. He said that in that context, this concept works very well. He said that, if house next door is a teardown and they take the same approach, their back yard will have a significant amount of privacy.

Mr. Bobek said that there is a significant increase in the topography between the property and 48 Upson Road. He said that there is a strong evergreen hedge on that side. He said that there is a lot of privacy between the property and the neighbor there.

The Board said that, although it is not a Zoning issue, it would like to see some windows on the west elevation to balance the whole thing. Mr. Bobek said that he could add transom lights to the garage doors.

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Peter Leveille, 68 Upson Road, said that a lot of the neighbors on the street are concerned that the house is too big for the lot. He said that it will be an eyesore for the neighborhood. He said that he was under the impression that there was a precedent set on Mayo Road. He said that it was a nonconforming lot where the existing structure was demolished and a new structure was built on the same footprint.

The Board said that this lot is unique and does not compare to the lot on Mayo Road. The Board said that this lot is a couple of hundred square feet shy of being a valid lot. The Board said that, back in 1955, a previous Board, under the existing law as it was, granted a Variance. The Board said that today this lot would not meet the legal requirements for a Variance. The Board said that it is bound by the previous Board's decision that the lot was entitled to a Variance to make it a legal lot. The Board said when it got a new plan for a new house, it was limited to determining if it meets all the setbacks and the 500 foot rule.

The Board said that the house on Mayo Road was different because it never had a Variance. The Board said that it was an undersized lot. The Board said that the proposal was to tear down and build a new house that would meet all of the setback requirements. The Board said that it determined that because of the small lot size, it would allow the Petitioner to build on the same footprint.

Mr. Leveille said that the neighborhood has been suffering from large houses on small lots, especially on Colby Road. He said that he moved in five years ago and it was a really nice neighborhood. He said that they have now lost a lot of foliage and the character has changed. He said that he thought that is a negative thing. He said that he would appreciate it if the house has a smaller footprint.

Mr. Bobek said that the Total Living Area plus Garage (TLAG) is 98 percent of 3,600 square feet. He said that there was no TLAG requirement because the Petition was before the Board for modification of the Variance. He said that lot coverage will be 2,390 square feet, which is 24.4 percent. He said that he did list the square footages on the top corner of Sheet 1 of 3.

Mr. Bobek said that the first and second floors add up to 3,522 square feet of TLAG. He said that 98 percent of 3,600 is 3,528 square feet.

The Board said that the TLAG is maxed out and the basement or attic may not be finished. Mr. Bobek said that was correct. He said that there is a section on Page 2 that shows that the attic cannot be counted for TLAG because of the height. He said that they wanted to go with stick built versus truss frame. He said that the building height is rather low.

The Board said that the basement height of 8 feet 3 inches is sufficient, so the Board will add a condition that the basement may not be finished. The Board said that would require a new Special Permit because of the change in TLAG.

Mr. Leveille said that there is a significant grade along the basement. He asked where the basement will start from. Mr. Bobek said that there is a calculation that is used with the TLAG that asks for an average of spots measured every 10 feet around the building. He said that the proportion between the exposed surface and the distance from the slab has to be less than one-quarter to not count. He said that he believed that someone in the future can apply for a permit to finish the basement, but they are not doing that here.

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Mr. Leveille said that there is a house on Colby Road that has six feet of exposed basement. Mr. Bobek said that there is very little exposed basement. He said that the plan reflects the grade at the building itself. He said that the topography is shown on the plot plan.

Mr. Bobek said that they put a stone retaining wall further back to try to make the side yard flat where the patio is. He said that the patio will be at the large area that is at elevation 106. He said that the elevation is 109-110 at the rear of the lot. The Board said that the elevation at the rear of the garage is 105 to 106.

Mr. Bobek said that the topography creates some privacy to the neighbors to the west and north.

Martha Waldron, 54 Upson Road, said that she lives in the house next door. She said that it is not being torn down and is being actively lived in. She asked about the height of the retaining wall. The Board said that the height of the wall between 50 and 54 Upson Road is not shown. The Board said that the wall runs along the back of the property as well.

Mr. Bobek said that the wall will be very short. He said that, at a maximum it will appear to be approximately two feet. He said that the main purpose of the wall is for the driveway. He said that the grade at 54 Upson Road is higher. He said that they will not see the wall from 54 Upson Road. He said that the wall is for the benefit of 50 Upson Road so that the cars are not going over a steep driveway in the wintertime. He said that at the garage doors the elevation is at 104 on 50 Upson Road and is at 107 on 54 Upson Road.

Ms. Waldron said that both homes were built high up on the slope. She said that it is difficult to see that on the plans. The Board said that the topography is shown on the plot plan.

Ms. Waldron asked about lowering the lot. The Board said that the house will be moving closer to the street. The Board said that the gradient around the house will be two to two and a half feet lower than the gradient around the current house. Mr. Bobek said that, since the grade for 54 Upson will remain the same, the house will appear lower. He said that on the other side of the house it will be two feet higher.

Ms. Waldron said that the neighbors across the street had been concerned about the appearance of the proposed house. The Board said that it will be a taller house with its entrance a little lower and closer to the street.

Fenny Lin, 68 Upson Road, said that she was concerned about safety during the building process. She said that she hoped that there will be some specifications around parking and lumber trucks. She said that the house is located at a bend in the road. She said that there is low visibility. She said that there are many children in the neighborhood. The Board said that the road is narrow. Ms. Lin said that there are no sidewalks.

Statement of Facts

The subject property is located at 50 Upson Road, on a 9,776 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet.

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The Petitioner is requesting modification of a Variance (ZBA 55-1) pursuant to the provisions of Section XIVE and Section XXIV of the Zoning Bylaw and Section 7 of M.G.L. Chapter 40A to permit demolition and reconstruction of the single family dwelling, on a 9,776 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet. The proposed two story construction will conform to all applicable dimensional and density requirements of the Zoning Bylaw.

A Plot Plan & Plan of Existing House Location Adjacent to 50 Upson Road, dated 2/4/13, revised 3/11/13, stamped by A. Matthew Belski, Jr., Professional Land Surveyor, Proposed Floor Plans & Elevation Drawings, dated 3/11/13, prepared by Signature Designs, & photographs were submitted.

On April 2, 2013, the Planning Board reviewed the petition and recommended that modification of the Variance be granted.

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 modification of the Variance may be granted to permit the demolition and reconstruction of a single family dwelling, on a 9,776 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet. The proposed two story construction will conform to all applicable dimensional and density requirements of the Zoning Bylaw.

Therefore, the requested modification of a variance is granted to allow for demolition and reconstruction of a single family dwelling that will conform to all applicable dimensional and density requirements of the Zoning Bylaw, subject to the conditions:

1. As a condition of this approval, the basement shall remain unfinished.
2. During construction, all vehicles are to be parked on the site, not on Upson Road.

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.

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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Petition of Henry Bobek
50 Upson Road

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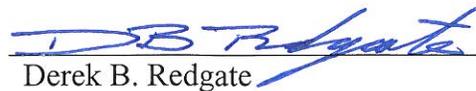
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman

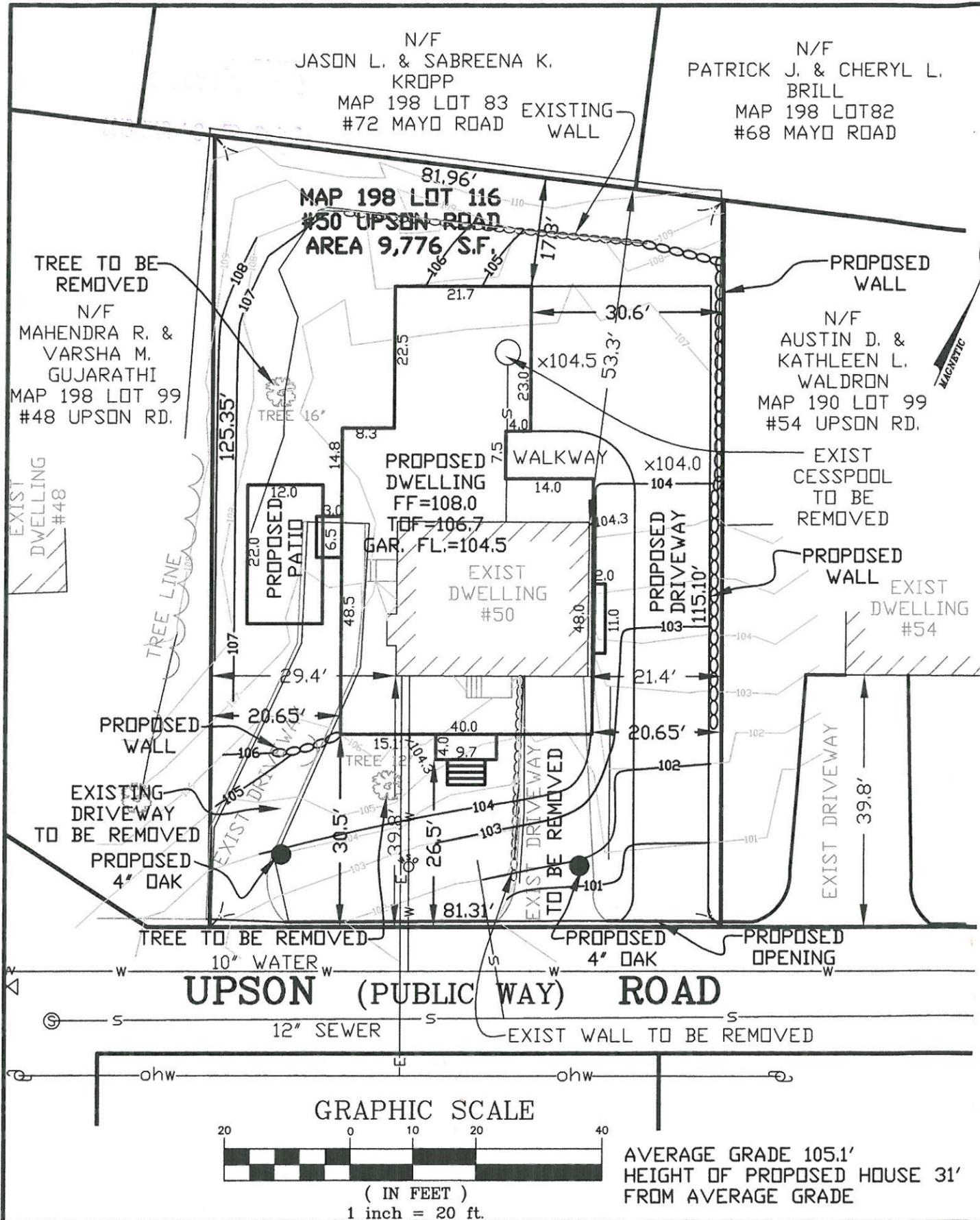


David G. Sheffield



Derek B. Redgate

cc: Planning Board
Inspector of Buildings
lrm



THE SURFACE EVIDENCE OF THE UTILITIES SHOWN HAS BEEN LOCATED BY FIELD SURVEY. THE LINWORK REPRESENTING ALL UNDERGROUND STRUCTURES AND PIPES HAS BEEN SHOWN HEREON IN ITS APPROXIMATE LOCATION BASED ON AVAILABLE RECORD PLANS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

ZONING DESIGNATION:
SINGLE RESIDENCE - SRD 10

ASSESSORS REFERENCE:
PARCEL ID: 198 - 116

OWNER:
HILLCREST DEVELOPMENT
DANIUS KUPER
70 HILLCREST ROAD
NEEDHAM, MA. 02492

APPLICANT:
HILLCREST DEVELOPMENT
DANIUS KUPER
70 HILLCREST ROAD
NEEDHAM, MA. 02492

**RESIDENTIAL SUBDISTRICT - SINGLE RESIDENCE - SRD 10
DIMENSIONAL REGULATIONS**

	REQUIRED	EXISTING	PROPOSED
AREA DISTRICT	10,000 S.F.	9,776 S.F.	9,776 S.F.
MINIMUM FRONTAGE	60'	81.31'	81.31'
MINIMUM FRONT YARD WIDTH	60'	81.31'	81.31'
MINIMUM FRONT YARD DEPTH	30'	39.8'	30.5'/26.5'
MINIMUM SIDE YARD WIDTH	20'	21.4'	20.65'
MINIMUM REAR YARD DEPTH	10'	53.3'	17.3'
LOT COVERAGE	25% (MAX.)	7.9%	24.4%
BUILDING COVERAGE IN S.F.	-	770 S.F.	2,390 S.F.

- NOTES:**
- ELEVATIONS BASED ON AN ASSUMED DATUM.
 - TWO TREES TO BE REMOVED.
 - DIGSAFE IS TO BE NOTIFIED 72 HOURS IN ADVANCE OF EXCAVATION. (CALL 811)
 - EXISTING FRONT YARD SETBACKS: HOUSE #50 39.8'; HOUSE #54 39.8'; HOUSE #62 30.2'; HOUSE #68 30.2'.

- REFERENCES:**
- PLANS AND DEEDS RECORDED AT THE NORFOLK COUNTY REGISTRY OF DEEDS:
- PLAN OF LAND IN WELLESLEY No. 4252B, SHEET 7, DATED: FEBRUARY 1914.
 - PLAN No. 4252-4, A COPY OF A PORTION OF WHICH IS FILED WITH CERTIFICATE No. 55097, BOOK 276.

PROPOSED PLOT PLAN

**50 UPSON ROAD
WELLESLEY, MA 02482**

PREPARED BY
MIKHAIL R. DEYCHMAN
41 SAYBROOK STREET
BRIGHTON, MA 02135
TEL.: 857-498-0951

DATE: FEBRUARY 04, 2013
SCALE: 1"=20'
REV. 03/11/13

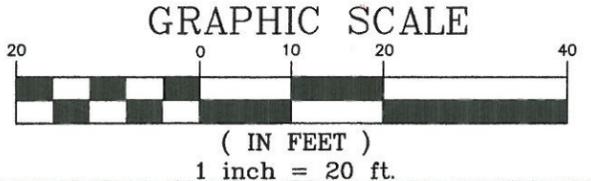
SHEET 1 OF 2



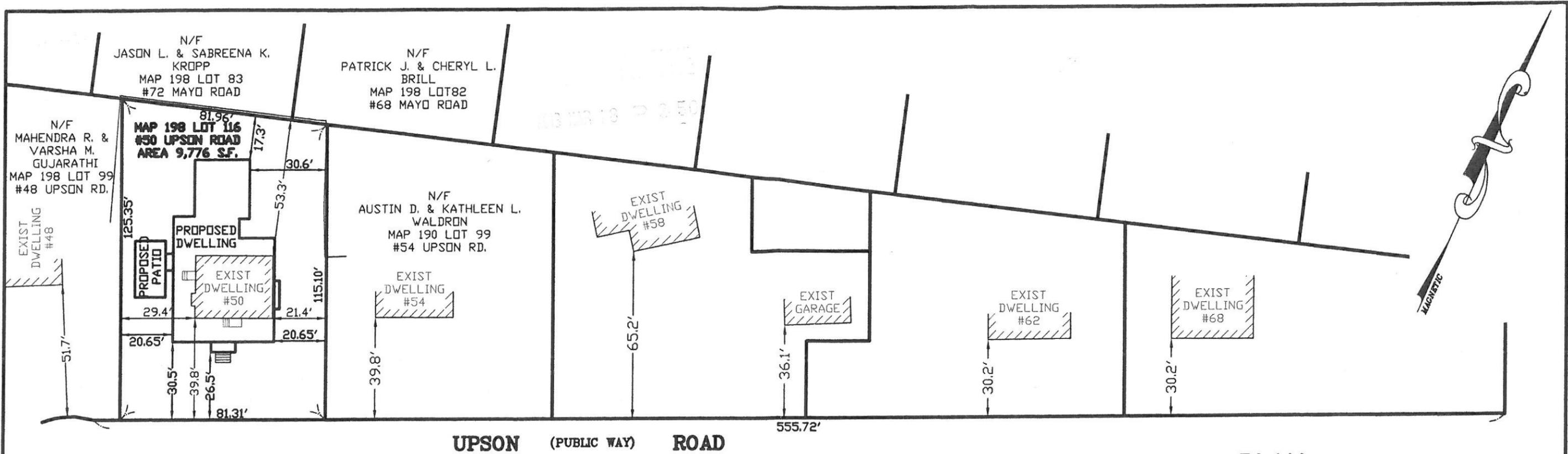
LOCUS MAP
SCALE: 1"=500'±



3/11/13



AVERAGE GRADE 105.1'
HEIGHT OF PROPOSED HOUSE 31'
FROM AVERAGE GRADE



UPSUN (PUBLIC WAY) ROAD

GRAPHIC SCALE



(IN FEET)
1 inch = 40 ft.

**PLAN
OF EXISTING HOUSE LOCATIONS
ADJACENT TO 50 UPSUN ROAD
WELLESLEY, MA 02482**

PREPARED BY
MIKHAIL R. DEYCHMAN
41 SAYBROOK STREET
BRIGHTON, MA 02135
TEL.: 857-498-0951

DATE: FEBRUARY 04, 2013
SCALE: 1"=40'
REV. 03/11/13

SHEET 2 OF 2

ZONING DESIGNATION:
SINGLE RESIDENCE - SRD 10

ASSESSORS REFERENCE:
PARCEL ID: 198 - 116

OWNER:
HILLCREST DEVELOPMENT
DAINIUS KUPER
70 HILLCREST ROAD
NEEDHAM, MA. 02492

APPLICANT:
HILLCREST DEVELOPMENT
DAINIUS KUPER
70 HILLCREST ROAD
NEEDHAM, MA. 02492

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