



## ZONING BOARD OF APPEALS

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

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ZBA 2016-68  
Petition of Bruno & Pamela Pakey  
28 Emerson Road

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WELLESLEY MA 02482  
2016 OCT 20 P 1:15

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday September 8, 2016 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Bruno & Pamela Pakey requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing one-story structure and deck and construction of a one and one-half story addition and a two-story addition that will meet all setback requirements, on an existing nonconforming structure with less than required right side yard setbacks, on a 14,250 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, in a Water Supply Protection District, at 28 Emerson Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Petitioner is requesting a Special Permit pursuant to the provisions of Section XXIID and Section XXV of the Zoning Bylaw for construction/reconstruction of a retaining wall that will exceed four feet in height and will be located within ten feet of the property line.

On August 22, 2016, 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 Bruno and Pamela Pakey, the Petitioner, Leah McGavern, Architect, and Paul Galloway.

The Board discussed continuing the petition so that the Applicant can go before the Design Review Board (DRB), as required in the bylaw for a wall over four feet.

The Board voted unanimously to continue the petition to October 6, 2016, provided that the retaining wall has been approved by the DRB and detailed information on the wall and the fence on top are submitted prior to the public hearing.

### October 6, 2016

The Chairman said that the petition would not be continued because one of the members who heard the petition at the September 8, 2016 Public Hearing was unable to attend this hearing. He said that the petition would be heard de novo.

Presenting the case at the hearing were Bruno Pakey, the Petitioner, and Paul Galloway, Builder.

Mr. Pakey said that the request is to demolish an existing one-story structure on the back of the house and replace it with a one and a half and a two-story addition that will meet all Zoning requirements and will not be more detrimental. He said that at the previous hearing, the Board was in agreement that plans for the structure were good. He said that there was debate about the driveway and the retaining wall. He said that they will have to deconstruct a wall to make it easier for cars to turn around. He said that because the wall is more than four feet high and within 10 feet of the property line, there was a request to provide a plan, which has been submitted.

A Board member confirmed that the proposal is to demolish the existing stone retaining wall and replace it with a new retaining wall with reinforced concrete with a stone face. Mr. Pakey said that the new retaining wall will be a stronger structure than the existing wall. The Board member said that the proposed wall will be approximately nine feet high. He said that he contacted the Architect regarding the requirement to have a 42-inch guard rail. He said that a nine foot drop to the driveway is a dangerous condition. He said that a revised plan was submitted.

A Board member asked if the request is for a special permit for a retaining wall or to alter a pre-existing nonconforming structure. A Board member said that the existing retaining wall will be removed. He said that the footprint of the wall will be slightly modified. He said that the existing wall curves at the edge and the Petitioner has requested that they be allowed to square it off to facilitate turning around in the driveway. A Board member said that the bylaw provides that, for retaining walls which are nonconforming, significant changes or alterations shall be made in conformity with the bylaw. He said that this should be treated as a special permit.

A Board member said that the bylaw was stimulated by walls that were adjacent to neighbors' properties that were in excess of four feet. He said that this is in the reverse because it will be a hole in the property and will be nothing that the neighbor can see. He said that it is a matter of building code to make the railing 42 inches. He said that the work is closer than 10 feet to the side lot line.

Mr. Galloway said that an existing structure on the back of the house is starting to fail. He said that the proposal is to remove it and add 600 square feet of new construction. He said that it will not increase a nonconformity.

The Board asked if the abutter who is most affected by the plans had been contacted. Mr. Pakey said that he spoke with the neighbor, who is happy that the wall will be stronger.

There was no one present at the public hearing who wished to speak to the petition.

The Board made the following findings: (1) the subject property is a 14, 250 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet; (2) there is an existing nonconforming side yard setback of 9.8 feet; (3) the existing retaining wall is within 10 feet of the left property line; (4) the retaining wall is otherwise in compliance with the provisions of the bylaw; (5) the requested retaining wall will not adversely impact adjacent property or the public; (6) the report of the Design Review Board has been received and the requested retaining wall is consistent with that report and those criteria contained in Section XXII, Design Review, Part C., Design Criteria, of the Zoning Bylaw; (7) the proposed retaining wall is the minimum structure necessary to allow a subject property to be

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reasonably utilized; (8) the proposed construction shall not substantially more detrimental to the neighborhood than the existing nonconforming structures.

Statement of Facts

The subject property is located at 28 Emerson Road, on a 14,250 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, in a Water Supply Protection District, with a minimum right side yard setback of 9.8 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing one-story structure and deck and construction of a one and one-half story addition and a two-story addition that will meet all setback requirements, on an existing nonconforming structure with less than required right side yard setbacks, on a 14,250 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Petitioner is requesting a Special Permit pursuant to the provisions of Section XXIID and Section XXV of the Zoning Bylaw for construction/reconstruction of a retaining wall that will exceed four feet in height and will be located within ten feet of the property line.

A Plot Plan, dated 6/27/16, stamped by Verne T. Porter, Jr., Professional Land Surveyor, Typical Retaining Wall Section, SK-1, dated 9/16/16, revised 9/30/16, stamped by John R. Minton, Registered Architect, Existing & Proposed Floor Plans and Elevation Drawings, dated 6/3/16, prepared by McGavern Design, and photographs were submitted.

On September 7, 2016, the Planning Board reviewed the petition and recommended that action be deferred. On October 6, 2016, the Planning Board reviewed the petition and recommended that the special permit be granted.

On September 28, 2016, the Design Review Board reviewed the project and recommended approval of the retaining wall as presented.

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 one-story structure and deck and construction of a one and one-half story addition and a two-story addition that will meet all setback requirements, on an existing nonconforming structure with less than required right side yard setbacks, on a 14,250 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, in a Water Supply Protection District, 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.

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Petition of Bruno & Pamela Pakey  
28 Emerson Road

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Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing one-story structure and deck and construction of a one and one-half story addition and a two-story addition that will meet all setback requirements, on an existing nonconforming structure with less than required right side yard setbacks, on a 14,250 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, in a Water Supply Protection District, in accordance with the submitted plot plan and construction drawings.

It is the opinion of this Authority that construction/reconstruction of a retaining wall that will exceed four feet in height and will be located within ten feet of the property line will otherwise be in compliance with the provisions of Section XXIID, will not adversely impact adjacent property or the public, that the report of the Design Review Board has been received and that the requested retaining wall is consistent with that report and those criteria contained in Section XXII, Design Review, Part C., Design Criteria, of the Zoning Bylaw; and the proposed retaining wall is the minimum structure necessary to allow a subject property to be reasonably utilized.

Therefore, a Special Permit is granted for construction/reconstruction of a retaining wall that will exceed four feet in height and will be located within ten feet of the property line, in accordance with the submitted plot plan and Typical Retaining Wall Section, dated 9/30/16, stamped by John R. Minton, Architect.

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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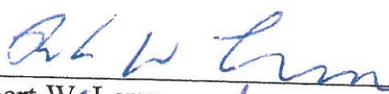
ZBA 2016-68  
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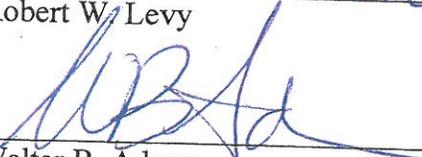
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APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

  
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David G. Sheffield, Acting Chairman

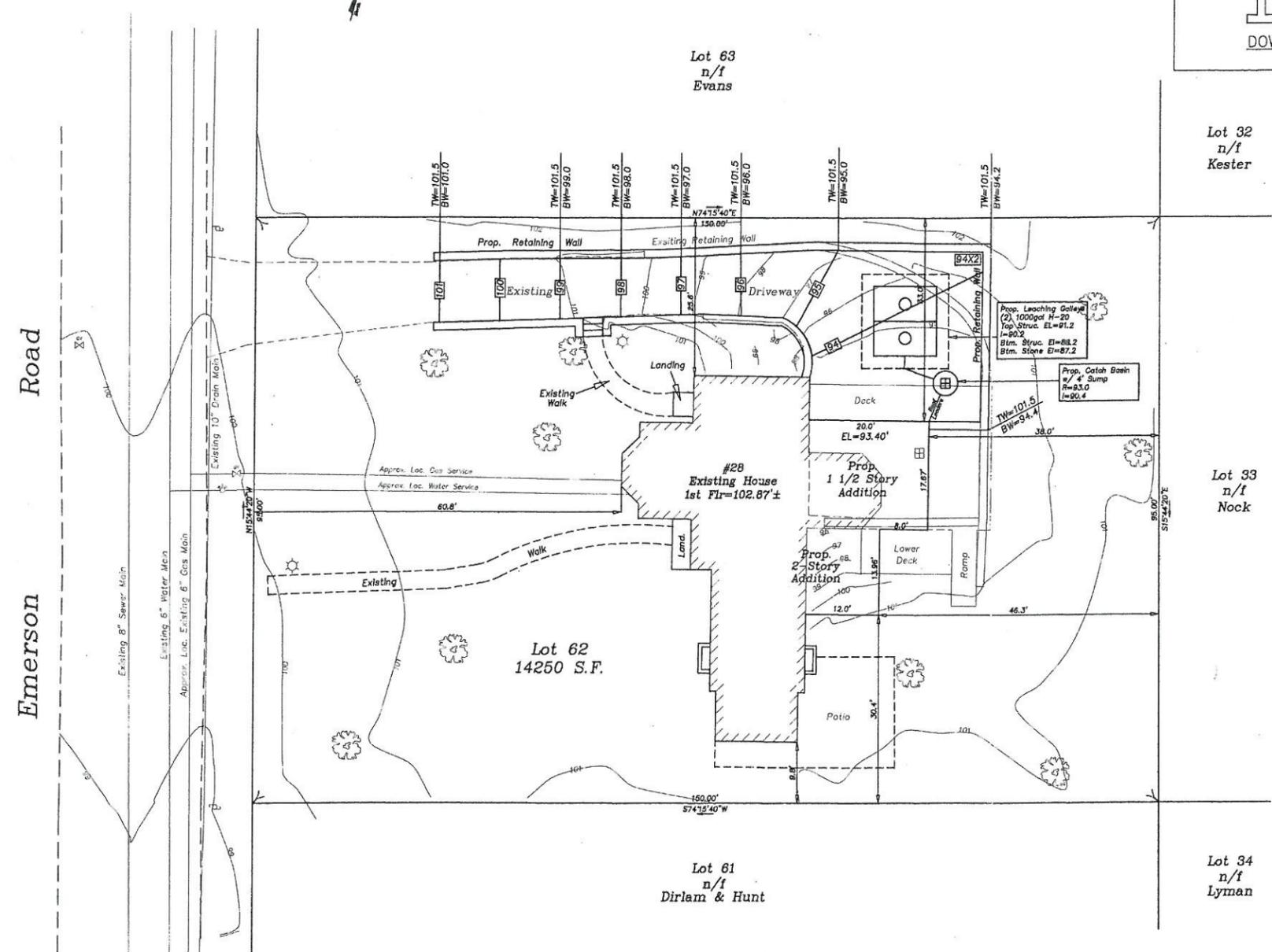
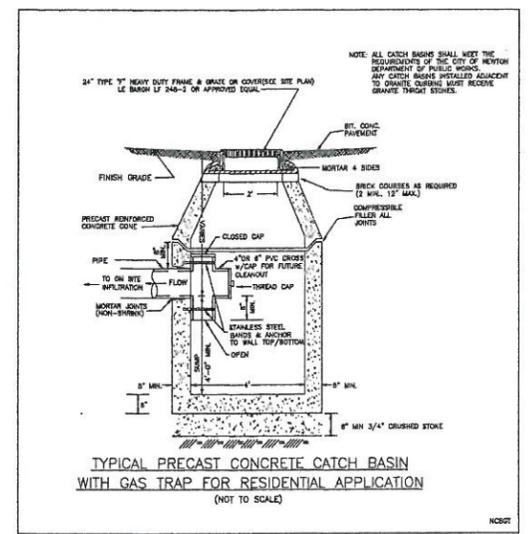
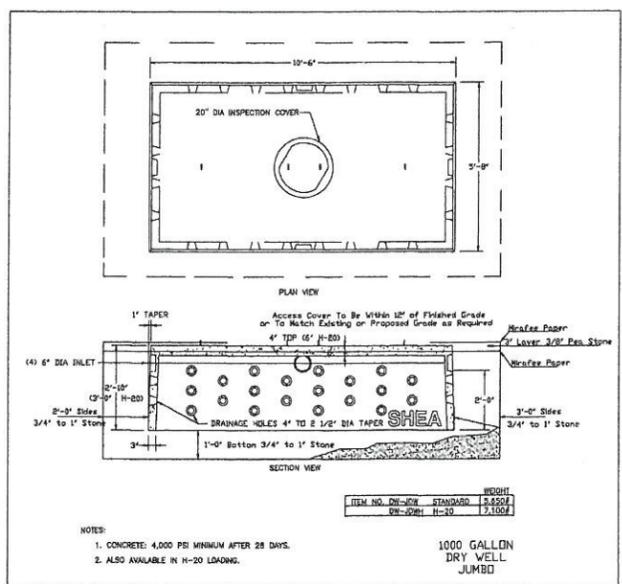
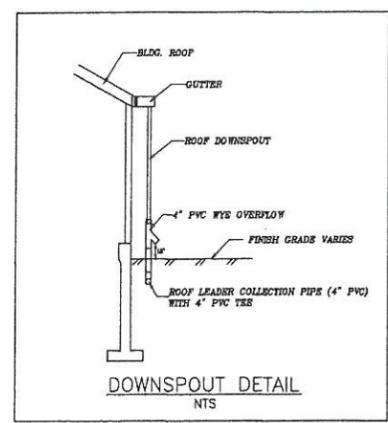
  
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Robert W. Levy

  
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Walter B. Adams

cc: Planning Board  
Inspector of Buildings

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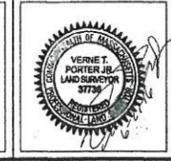


Zoning District: SR-15  
Old Lot Status

Lot Coverages:  
Allowed = 20% or 2850 S.F.  
Existing = 9.33% or 1329 S.F.  
Proposed = 12.01% or 1712 S.F.

Existing utilities shown are from field locations and available plans of record and may or may not be correct. Field verify all locations prior to any excavation.

REVISIONS	
DATE	DESCRIPTION

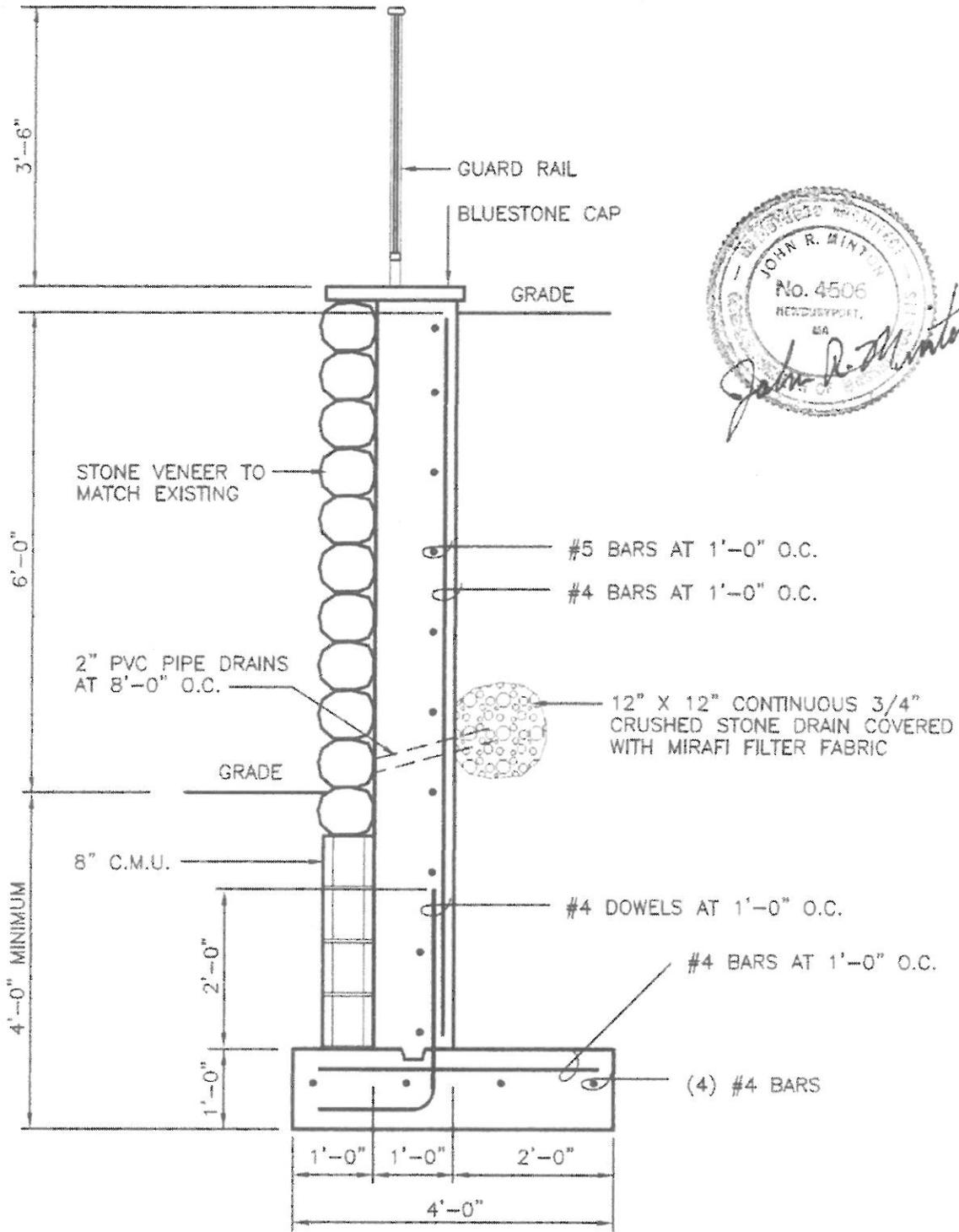


28 Emerson Road  
Wellesley, Massachusetts  
Proposed Conditions Plan

Scale: 1"=10' June 27, 2016  
VERNE T. PORTER Jr., PLS  
Land Surveyors - Civil Engineers  
354 Elliot Street Newton, Massachusetts 02464

Project: 16045  
Checked By: V. Porter Jr.  
Drawn By: D. Millian

Sheet 1 of 1



**TYPICAL RETAINING WALL SECTION**

SCALE: 1/2" = 1'-0"

**JOHN MINTON, RA**  
 101 Northern Boulevard  
 Newbury, MA 01951

978-462-2001  
 FAX 978-499-4953  
 EMAIL JMINTONRA@AOL.COM

**28 EMMERSON ROAD**  
 WELLESLEY, MA

ISSUE DATE: 9/30/2016  
 JOB NUMBER: V16-23  
 DRAWN BY: JM

**SK-1**