



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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JUN 7 1990

ZBA 90-25  
Petition of Eva Merriam  
14 Pilgrim Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, April 26, 1990 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley, on the petition of EVA MERRIAM, requesting a variance from the terms of Section XIX and Section XVII and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow the pre-existing non-conforming dwelling at 14 PILGRIM ROAD, in a Single Residence District, with less than the required left side yard, to be brought into conformance with the current Zoning Bylaw. Said property abuts a separate lot soon to be conveyed, but presently held in common ownership with the subject lot.

On April 9, 1990, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was James Fullerton, attorney for Mrs. Merriam, who represented the petitioner. Mr. Fullerton said that the variance is requested from the 20 foot side yard requirement with a follow-on request for a variance for the conveyance of the adjoining lot, which, when complete, would create the non-conforming side yard.

Mr. Fullerton gave a short history of the ownership of the property from 1932 to the present. In 1989, Lot #3, the abutting lot also owned by Mrs. Merriam, was put on the market. An unconditional Purchase and Sale agreement was signed with Gordon Gifford by Mrs. Merriam, prior to obtaining legal counsel. Mr. Gifford applied for and was granted a building permit to construct a dwelling on Lot #3.

Mr. Fullerton said that when he was retained, he requested a plot plan be done to ensure that no zoning violations would occur from the conveyance of Lot #3. The Plot Plan showed that a violation would occur as 14 Pilgrim Road would be left as a non-conforming dwelling. The conveyance of Lot #3 would probably be in violation resulting in a tainted title to the lot. Mr. Fullerton said that he determined that Lot #3 could not be conveyed, as Mrs. Merriam would create her own hardship by the conveyance. Therefore, it was determined to bring the matter before the Board of Appeals.

Mr. Fullerton stated that it is possible, by reconfiguring Lot #3, to make the dwelling at 14 Pilgrim Road conform to the side yard setback and still leave Lot #3 as a buildable lot, but that action would result in creating a lot on which only a long, narrow building could be erected.

Mr. Fullerton enumerated the hardships and the bases on which the variance could be granted. He stated that if the Merriams had not bought Lot #3, or if the title were held in a different name, there would be no problem.

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Steven Allen, 3 Pilgrim Road, read a statement in opposition to the request on behalf of the neighbors at 3, 6, 7, 15, 18, and 19 Pilgrim Road and 365 Weston Road. He presented a copy of the statement to the Board and an additional letter signed by nine neighbors in opposition to the petition.

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WELLESLEY, MA 02151

#### Statement of Facts

The pre-existing non-conforming dwelling is located at 14 Pilgrim Road, in a Single Residence District, on a 10,000 square foot lot with a minimum left side yard clearance of 11 feet. The abutting property, Lot #3, Pilgrim Road, contains 11,175 square feet, and is held in common ownership with 14 Pilgrim Road. A pre-existing non-conforming porch/garage exists at the rear of the property at 14 Pilgrim Road with a minimum rear yard clearance of 5 feet. The abutting property at the rear is not held in common ownership.

In 1931, the subject lots were a portion of a subdivision owned by Harold C. Wiswall. In 1932, Victor and Eva Merriam purchased the property at 14 Pilgrim Road upon which the existing dwelling had been built in conformance with the 10 foot side yard setback required at that time. Lot #3 was purchased by the Merriams in May, 1933 and currently is a legal building lot which meets all zoning requirements.

In 1940, the Town adopted a 20 foot side yard requirement. Due to the fact that the two subject lots were held in common ownership at that time, the dwelling existing at 14 Pilgrim Road was not "grandfathered" under the provisions of either Section XIX or Section XVII of the Zoning Bylaw.

The petitioner is requesting a variance to allow the existing structures at 14 Pilgrim Road in order to bring the dwelling and the porch/garage into conformance with the current Zoning Bylaw and to further allow the conveyance of Lot #3.

A Plot Plan of the property at 14 Pilgrim Road dated February 27, 1990, drawn by Richard B. Betts, Registered Land Surveyor; a Plot Plan of Lot #3 dated January 19, 1990, drawn by Richard B. Betts, Registered Land Surveyor; a subdivision plan of land owned by Harold C. Wiswall, dated June 15, 1931, drawn by Gleason Engineering Corporation; a sketch of the reconfiguration of the lot line between 14 Pilgrim Road and Lot #3, dated April 23, 1990, prepared by the Everett M. Brooks Co., Inc.; and photographs were submitted.

In addition to the statement and petition in opposition to the request which were submitted at the hearing, a letter in opposition to the petition was received in the office of the Board of Appeals from Mr. and Mrs. Richard Sullivan, 2 Pilgrim Road.

The Planning Board, on April 10, 1990, voted to strongly oppose the granting of the variance request.

#### Decision

This Authority has made a careful study of the evidence submitted and is of the opinion that the existing dwelling and porch/garage at 14 Pilgrim Road are not in conformance with the current Zoning Bylaws of the Town.

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It is the opinion of this Authority that the nonconformance of the dwelling at 14 Pilgrim Road has existed since 1940 when the Town adopted a change in the side line setback requirement, and that the property will not become nonconforming due to the conveyance of Lot #3. The dwelling was built in conformance to zoning requirements in effect in 1932 and has been nonconforming since those requirements were changed in 1940. The petitioner was not responsible for the location of the dwelling on the lot, nor for the change in the zoning setbacks which created the nonconformance.

It is the opinion of this Authority that Lot #3 is presently a conforming buildable lot on which a dwelling conforming to current zoning setbacks can be erected. The reconfiguration of the lot line between 14 Pilgrim Road and Lot #3 would result in the conformance of the dwelling at 14 Pilgrim Road, but would severely compromise the salability of Lot #3, as the buildable area of the lot would be greatly reduced. Any structure built thereon would not be in keeping with the dwellings in the neighborhood and would be a detriment to the neighborhood. Said reconfiguration would thus result in a hardship to both the petitioner and the neighborhood.

This Authority is of the opinion that due to the location of the house and the porch/garage on the lot that literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioner. Furthermore, the allowance of a variance would not be detrimental to the neighborhood nor be in derogation of the intent or purpose of the Zoning Bylaw.

Therefore the requested variance from the terms of Section XIX of the Zoning Bylaw is granted to allow the existing dwelling at 14 Pilgrim Road with a minimum left side yard of 11 feet and the porch/garage with a minimum rear yard clearance of 5 feet as shown in the Plot Plan submitted and noted in the foregoing Statement of Facts.

It is the opinion of this Authority that there are no provisions in Section XXIV-D for a variance to be granted to convey Lot #3 and furthermore, that the Board of Appeals does not have the jurisdiction, authority or power to grant the relief requested by the petitioner in regard to the conveyance of Lot #3.

Therefore, the request for the variance to convey Lot #3 is dismissed.

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  
Inspector of Buildings  
edg

*John A. Donovan, Jr.*  
John A. Donovan, Jr., Chairman

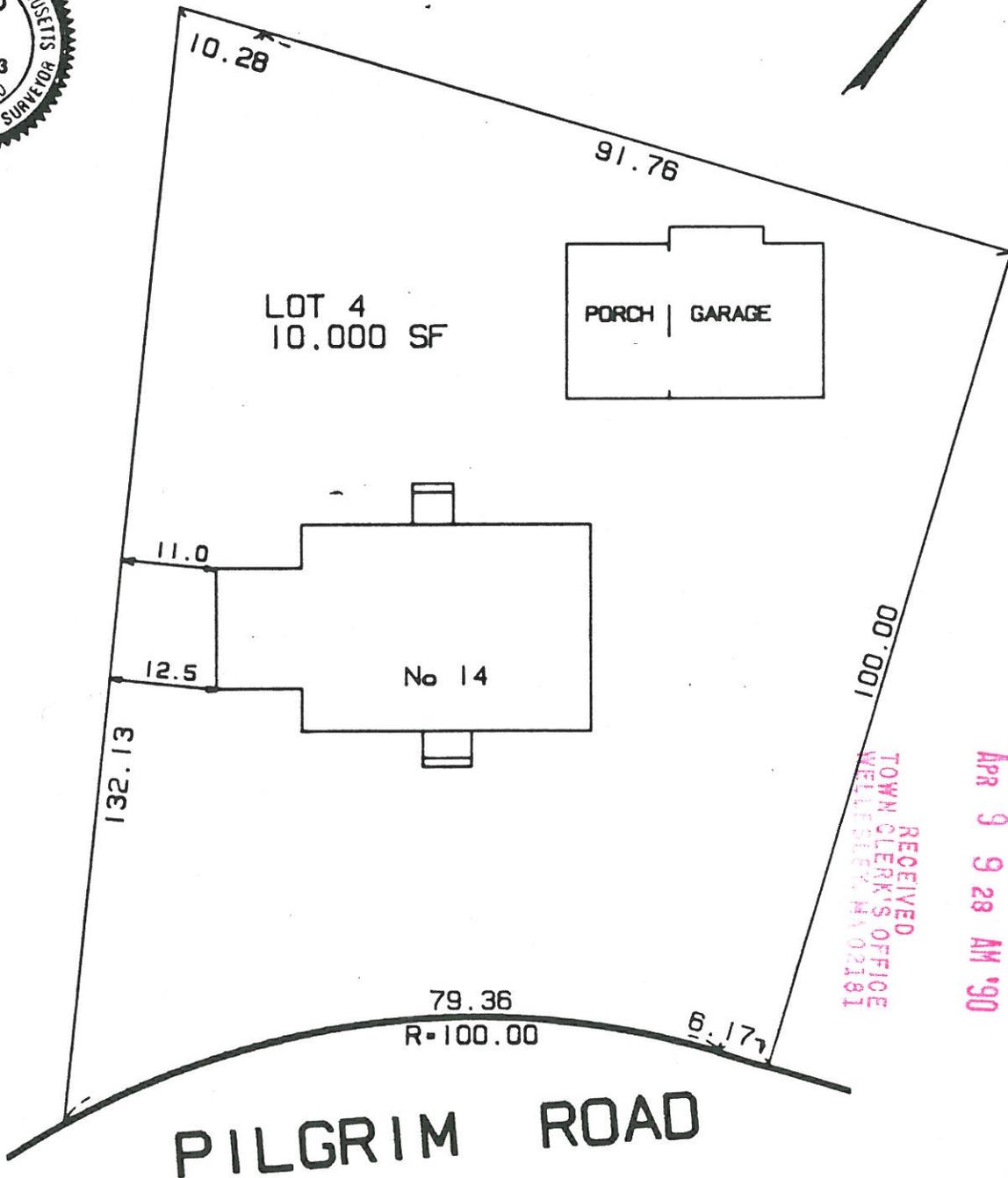
*Sumner H. Babcock*  
Sumner H. Babcock

*William E. Polletta*  
William E. Polletta

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MILLESTON, MA 02181  
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# PLAN OF LAND IN WELLESLEY MASS.

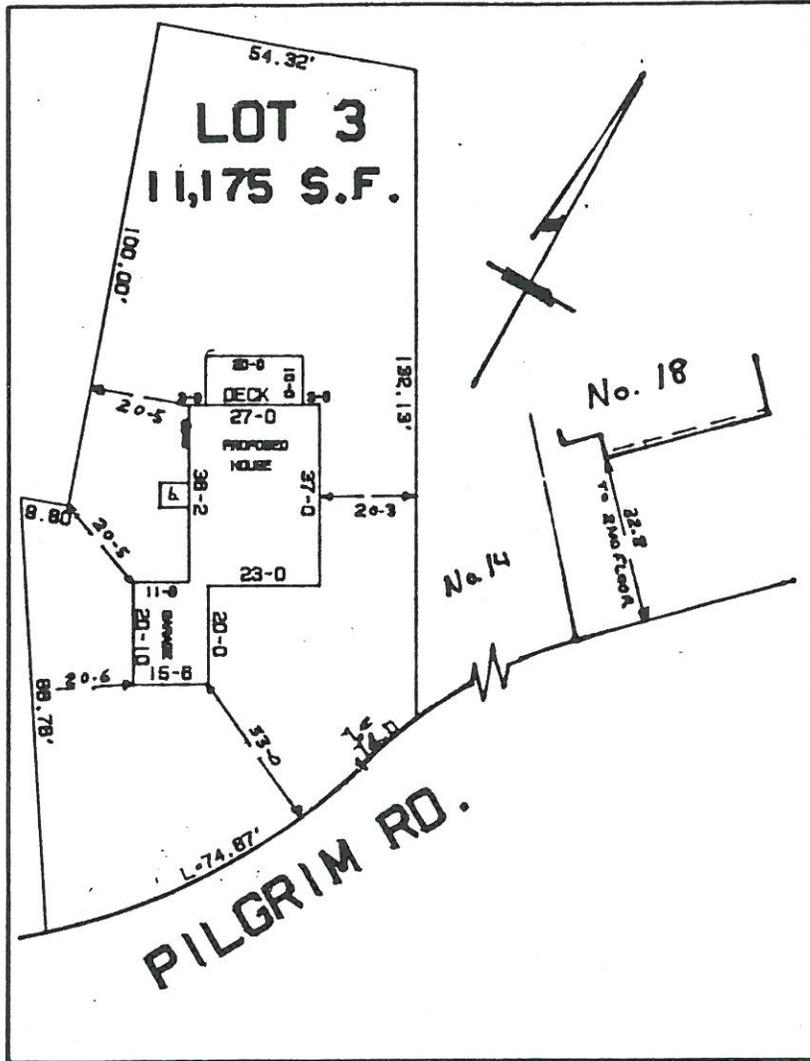
SCALE 1 IN = 20 FT. FEBRUARY 27, 1990  
EVERETT M. BROOKS CO. C.E.s  
NEWTONVILLE, MASS.



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CERTIFIED PLOT PLAN



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Date January 18, 1990  
EVERETT M. BROOKS CO., INC.  
259 WALNUT STREET  
NEWTONVILLE, MASS. 02160

*Richard B. Betts*  
RICHARD B. BETTS  
No. 11223  
REGISTERED PROFESSIONAL LAND SURVEYOR

# Plan of Land in WELLESLEY, MASS.

owned by  
**Harold C. Wiswall**

Scale 50 feet to an inch  
Gleason Engineering Corporation

June 15, 1931.

Original on file.



Norfolk Registry of Deeds  
DEDHAM, MASS.  
Received Aug. 10, 1931 with Par. Ref.  
Enid B. Wilson Gdn.  
to Harold C. Wiswall  
Filed as No. 604 1931  
Attest - *Walter J. O'Connell*