



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman
ROBERT R. CUNNINGHAM
KENDALL P. BATES

ELLEN D. GORDON
Executive Secretary
Telephone
431-1019

Aug 8 9 20 AM '90
RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02181

ZBA 90-65
Petition of Maruschka Fallai
2 Lake Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, July 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 MARUSCHKA FALLAI requesting a Finding pursuant to the provisions of Section XVII and Section XXIV-D of the Zoning Bylaw that the extension of the pre-existing non-conforming dwelling at 2 LAKE ROAD, in a Single Residence District, shall not be substantially more detrimental than the existing non-conforming structure is to the neighborhood. Said change in structure shall consist of the raising of the ridge line of the roof on the existing one-story dwelling approximately 8 feet to accommodate a one and one-half story addition, approximately 34 feet by 44 feet, on the existing foundation. Said addition will include a tower with a roof ridgeline of 14 feet 10 inches above the existing roof. Said addition will conform to all setback requirements.

On July 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 were Scott McDermott, attorney for the petitioner; Ron Margolis, project architect; and Margo Fallai, mother of the petitioner. Mr. McDermott questioned the need for a Finding, as the proposed addition not only does not increase the non-conforming nature of the structure, but will comply with all zoning setback requirements.

Mr. Margolis presented a model which showed the proposed dwelling and the dwelling at 1A Lake Road as located in relation to each other and Morses Pond. He said that the non-conformance of the house is that it is within 15 feet of the side lot line instead of the required 20 feet. The addition will be built on the existing foundation, but inset 20 feet from the lot line on the non-conforming side. The height of the house will be raised about 8 feet, with the exception of the tower portion which rises an additional 6 feet 10 inches, but on the existing foundation. The height of the house and tower are within the limit of 40 feet.

Mr. Margolis added that a presentation had been made to all of the neighbors, who approved of the addition; and a presentation had been made separately to Mr. and Mrs. Moscow, the abutters at 1A Lake Road, who would be most directly affected by the addition.

Richard Moscow, 31 Slocum Road, Lexington, owner of the abutting property at 1A Lake Road, expressed opposition to the petition, stating that his concern was not with the new roof line, but with the tower which would block the view of Morses Pond from his porch.

ZBA 90-65
Petition of Maruschka Fallai
2 Lake Road

AUG 8 9 20 AM '90

Shirley Moscow, 21 Slocum Road, Lexington, also expressed opposition, stating that the actual position of the two houses was closer than shown on the model. She said that the new construction would act as a fence or retention wall in relation to their property, as well as blocking their view of the pond. RECEIVED TOWN CLERK'S OFFICE WELLESLEY, MA 02181

No other person present had any comment on the petition.

Statement of Facts

The non-conforming dwelling is located at 2 Lake Road, in a Single Residence District, on a 12,914 foot lot with a minimum right side yard clearance of 15.07 feet. The property is surrounded by Morses Pond on three sides.

In July, 1988, prior owners, Gregory and Catherine Sipp, requested and were granted a variance to raise the ridge line of the roof approximately 10 feet to accommodate a second-story addition on the existing foundation coming no closer than 15.07 feet from the right side lot line (ZBA 88-49). This variance was never exercised and has since lapsed.

The petitioner is requesting a Finding that the extension of the pre-existing non-conforming structure would not be substantially more detrimental to the neighborhood than the existing structure. The extension would involve raising the ridgeline of the existing roof approximately 8 feet to accommodate a 1 and 1/2 story addition over the main portion of the dwelling and construction of a tower which would rise approximately 14 feet 10 inches above the existing roof. All construction would be done on the existing foundation, with the right side of the addition inset to 20 feet, meeting the side yard zoning requirement.

A Plot Plan dated June 29, 1990, drawn by Louis F. Bruno, Registered Land Surveyor; construction drawings and elevations dated May 11, 1990, drawn by the firm of Margolis & Fishman; and photographs were submitted.

On July 18, 1990, the Wetlands Protection Committee issued a Negative Determination of Applicability with conditions.

On July 17, 1990, the Planning Board voted to offer no comment on the petition.

Decision

This Authority has made a careful study of the evidence presented. The existing structure is non-conforming as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that the proposed extension, to be constructed on a pre-existing non-conforming foundation, in and of itself conforms to all zoning requirements in regard to yard and height regulations.

It is the further opinion of this Authority that the controlling phrase in Section XVII (Non-conforming Uses and Structures) of the Zoning Bylaw on which a Finding shall be based is that the extension of the pre-existing non-conforming structure shall not be substantially more detrimental than the existing non-conforming use to the neighborhood. Although the direct abutters are opposed to the petition, they do not comprise "the neighborhood", which has registered no opposition to the petition.

ZBA 90-65
Petition of Maruschka Fallai
2 Lake Road

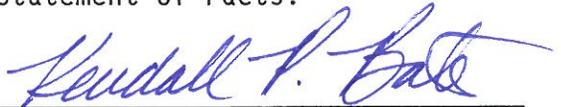
Therefore, for the foregoing reasons, this Authority unanimously finds that the proposed extension of the pre-existing non-conforming structure is not substantially more detrimental than the existing non-conforming use to the neighborhood.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon his receipt and approval of a building application and construction plans and subject to the following conditions:

1. That all conditions stated in the Negative Determination of Applicability issued by the Wetlands Protection Committee on July 18, 1990 be complied with.
2. That all construction be in accordance with the Plot Plan and construction drawings submitted as noted in the foregoing Statement of Facts.

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
edg


Kendall P. Bates, Acting Chairman


Franklin P. Parker


William E. Polletta

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02181

Aug 8 9 20 AM '90

Docket

5

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

RECEIVED & FILED
10-10-91
CLERK OF THE COURTS
NORFOLK COUNTY

SUPERIOR COURT
CIVIL ACTION
NO. 90-2320

SHIRLEY B. MOSKOW,
Plaintiff,

v.

MARUSCHKA FALLAI, et al.,
Defendants.

JUDGMENT

Whereas this Court allowed Defendant Maruschka Fallai's Motion for Summary Judgment by Order dated March 26, 1991, and whereas this Court further allowed Defendant Wellesley Zoning Board of Appeals' Motion for Summary Judgment by Order dated September 20, 1991, both motions being unopposed by Plaintiff, it is ADJUDGED and ORDERED that the instant appeal from the decision of the Wellesley Zoning Board of Appeals allowing Ms. Fallai's petition to construct an addition to her home is dismissed.

By the Court *Charles J. Graham*
Justice

Attest:

Nancy J. Delaney
Nancy J. Delaney,
Assistant Clerk

Dated: *October 10*, 1991

A TRUE COPY
Attest: *Mary A. Pacheco*
Deputy Assistant Clerk

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02181

PLAN OF LAND

IN

WELLESLEY, MA

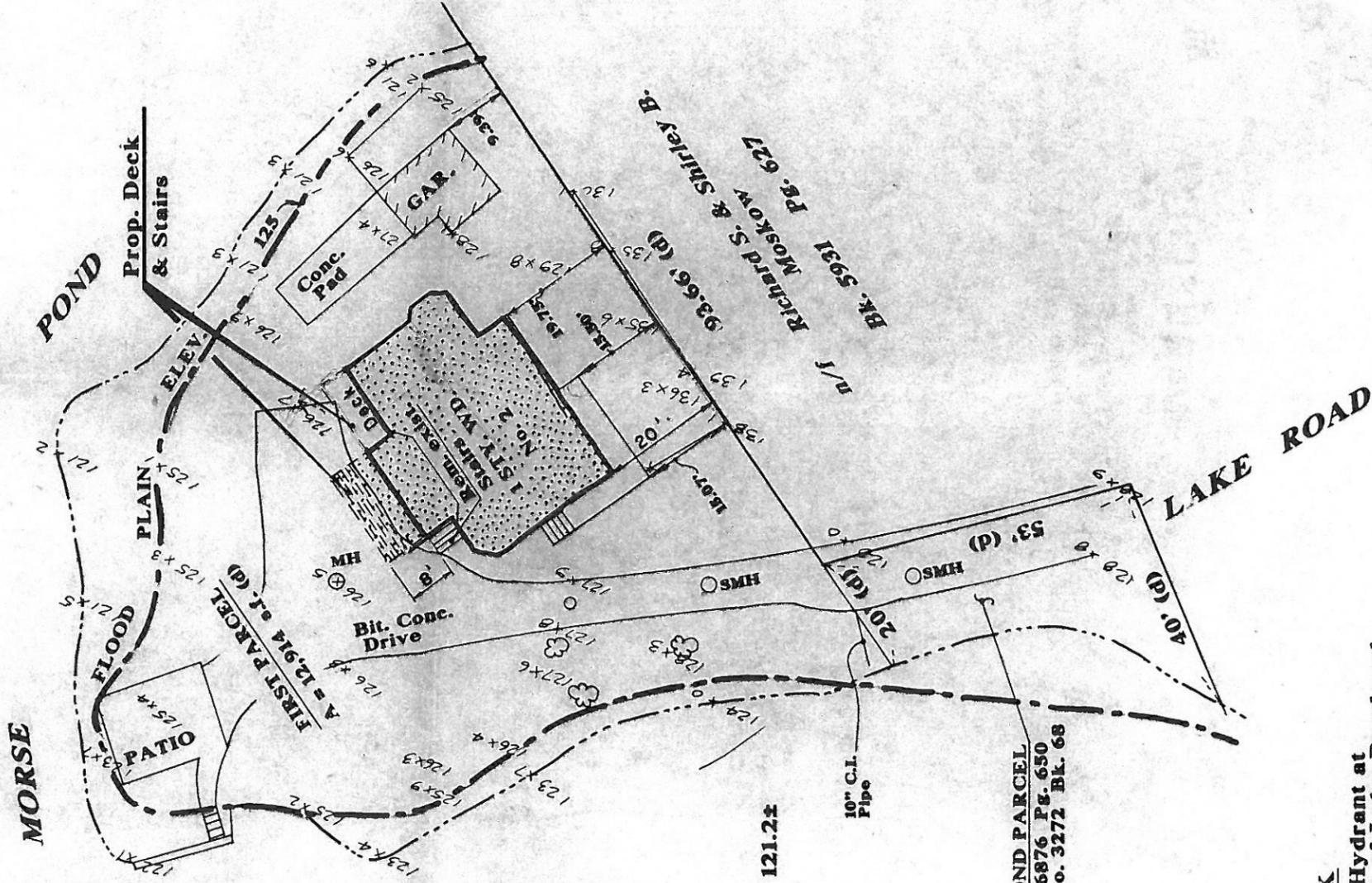
OWNED BY

MARUSCHKA FALLAI

Scale: 1 inch = 20 feet

Date: June 29, 1990

Prepared by: **LKF Consultants, Inc.**
One Central Street
Middleton, MA 01949



W.S. Elev. = 121.2±
May 2, 1988

SECOND PARCEL
Bk. 6876 Pg. 650
Pln. no. 3272 Bk. 68

BENCH MARK

Spindle on Hydrant at
Intersection of Lake Road and
Russell Road. Elev. = 153.47
U.S.C. & G.S. MSL Base



Louis F. Basso