TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 95-7
Petition of Pamela M. and Scott D. Stewart
53 Whittier Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, January 19, 1995 at 8:10 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of PAMELA M. AND SCOTT D. STEWART requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow demolition of an existing 22.5 foot by 17 foot one-story addition; and construction of a two-story addition approximately 51.8 feet by 31.2 feet, with less than the required right side yard setback, at their nonconforming dwelling with less than the required right side yard setback, at 53 WHITTIER ROAD, in a Single Residence District.

A variance is also requested to allow construction of a bay window approximately 3 feet by 6 feet with a depth of 2.7 feet, which would have less than the required left side yard setback on the left side of their dwelling, which presently conforms to zoning requirements.

On January 3, 1995, 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 were Pamela and Scott Stewart. Mrs. Stewart explained that the dimensions of the family room to be demolished were incorrect on the plot plan. They had received a variance last year to construct a 22.5 foot by 17 foot family room, but never built it. The existing family room to be demolished is 13.5 feet by 13.5 feet.

Mrs. Stewart said that the house is very small, and more space is required for their four children. The new addition will be an extension of the existing line of the house, and will be less nonconforming due to the fact that the lot line angles away from the house.

Mrs. Stewart stated that the bay window is requested to provide an area for the kitchen table. The addition will include an expanded kitchen/family room area. The bay window cannot be seen as the left side of the property is heavily wooded, and the abutting neighbors have no objections.

The Board asked if the addition could not be built in conformance, as recommended by the Planning Board. Mrs. Stewart explained that if the addition were to conform to the right side setback, they would lose three feet of critical living space.

The Board commented that, in regard to the bay window, it has a problem creating a

nonconforming situation, as an unfavorable precedent would be established, and that similar petitions have been denied.

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No other person present had any comment on the petition.

Statement of Facts

The subject nonconforming dwelling is located at 53 Whittier Road, in a Single Family District, on a 17,272 square foot lot, and has a minimum right side yard clearance of 11.5 feet. The petitioners are requesting a variance to demolish the existing 14 foot by 13.7 foot one-story addition and to construct a two-story addition approximately 51.8 feet by 27 feet, which would have a minimum right side yard clearance of 17.2 feet.

A variance is also requested to construct a bay window approximately 3 feet by 6 feet with a depth of 2.7 feet which would have a minimum left side yard clearance of 17.4 feet, to be located on the right side of the dwelling, which has a conforming left side yard clearance of 20.1 feet.

In February, 1989, the Stewarts were granted a variance (ZBA 89-2) to construct a one-story 14 foot by 13.7 foot addition which had a minimum right side yard clearance of 19.4 feet. In November, 1993, they were granted a variance (ZBA 93-80) to demolish the previous addition; construct a two-story 17 foot by 23 foot addition with a minimum right side yard clearance of 17.2 feet and a one-story 5 foot by 5.2 foot addition with a minimum right side yard clearance of 11.5 feet. The one-story addition was constructed, but the two-story addition was never built.

A Plot Plan dated November 17, 1994, drawn by George N. Giunta, Registered Land Surveyor; Floor plans and Elevations dated 12/22/94, drawn by David Perry Architects; and photographs were submitted.

On January 10, 1995, the Planning Board reviewed the petition and voted to recommend denial of the petition as the Board felt that modifications could be made to the plan that would eliminate the need for a variance.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject dwelling does not conform to the current Zoning Bylaw as noted in the foregoing Statement of Facts.

In regard to the variance request for the two-story addition, it is the opinion of this Authority that the proposed addition conforms to the present lines of the house and does not alter the relationship of the house to the right side lot line.

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It is the opinion of this Authority that because of the shape of the lot and the location of the house on the lot, a literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioners and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

In regard to the variance request for the bay window, it is the opinion of this Authority that the proposed bay window does not conform to the present lines of the house and would negatively alter the relationship of the house to the left side lot line. It is the further opinion of this Authority that to allow a conforming side yard to become nonconforming would substantially derogate from the intent and purpose of the Zoning Bylaw, as it would set an undesirable and unfortunate precedent for the disposition of future petitions, and that there is no hardship as to shape of the lot, topography or soil conditions sufficient to grant this portion of the petition.

Therefore, the requested variance for the two-story addition is granted subject to construction in accordance with the submitted architectural drawings, on the condition that the submitted plot plan be revised to reflect both the correct dimensions and location of the addition to be demolished and the elimination of the proposed bay window. Submission of the revised plot plan to the office of the Board of Appeals must be accomplished before the issuance of any building permit.

The requested variance for the bay window is hereby denied for the above mentioned reasons and this portion of the petition is dismissed.

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

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.

Kendall P. Bates

Kendall P. Bates, Acting Chairman

Sumner H. Babcock

Sumner H. Babcock

William E. Polletta

William E. Polletta

cc: Planning Board
Inspector of Buildings
edg

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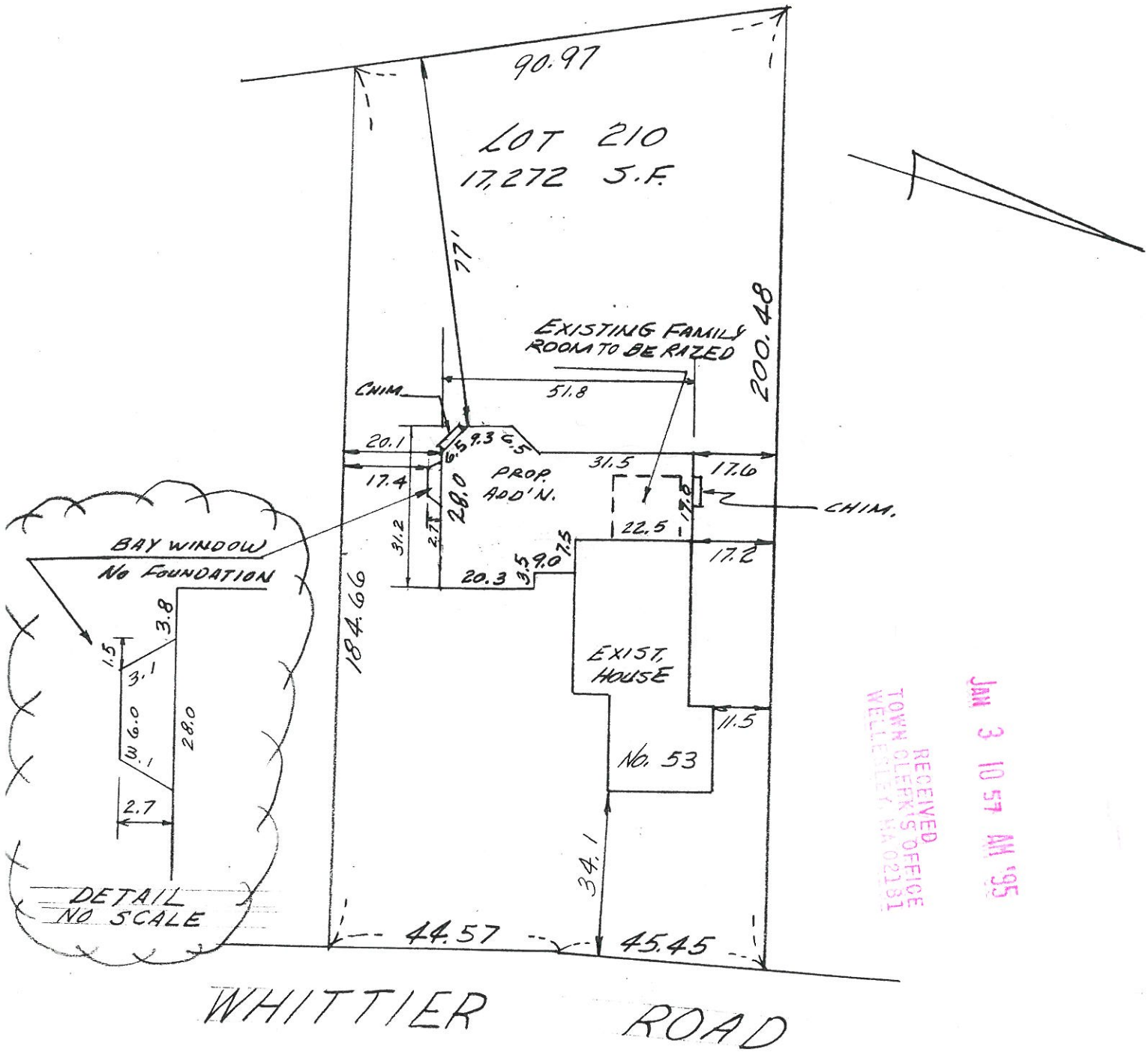

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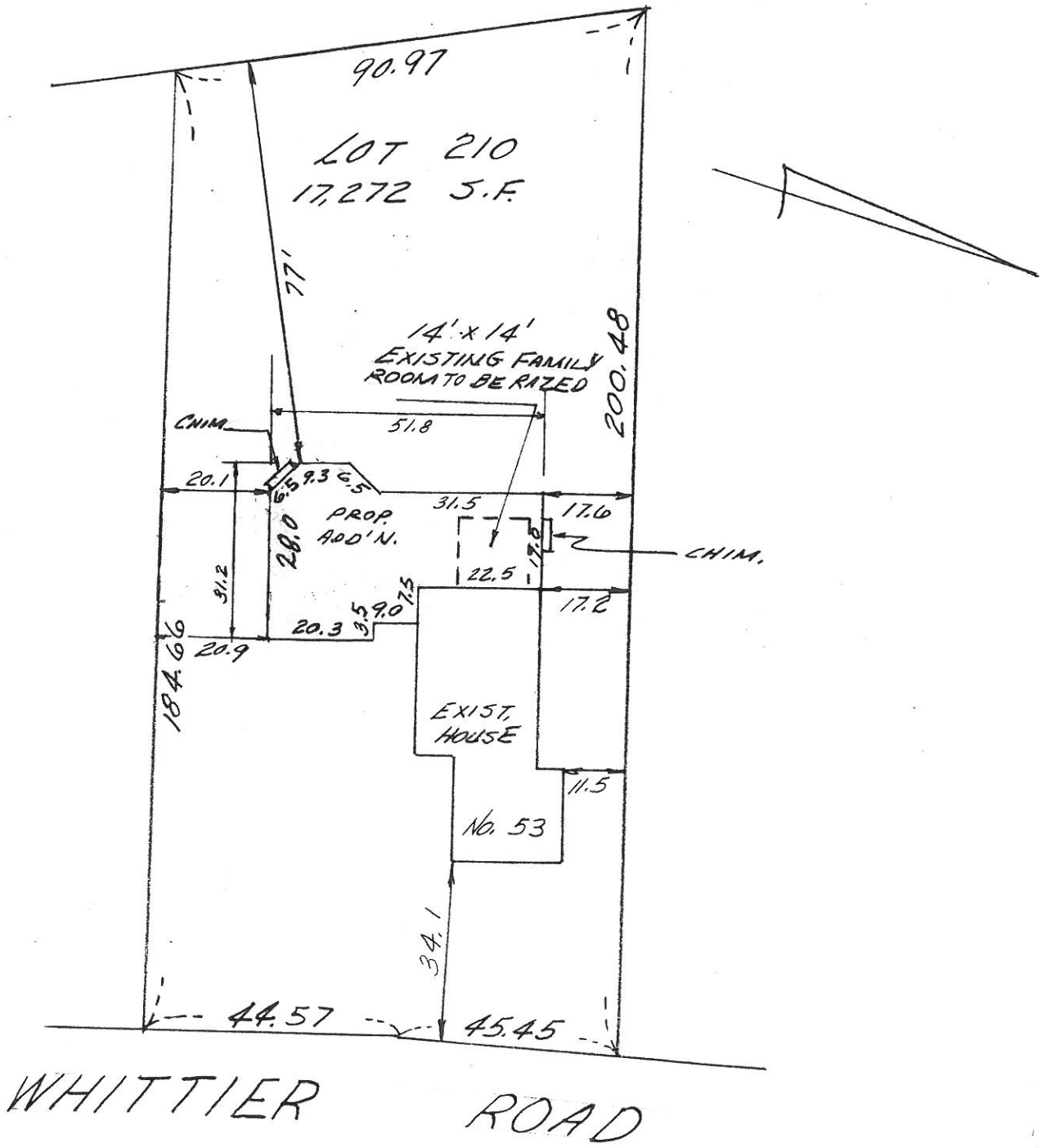
PLOT PLAN OF LAND
IN
WELLESLEY —— MASS.

NOV. 17, 1994 SCALE 1" = 30'

NEEDHAM SURVEY ASSOCIATES, INC.
281 CHESTNUT ST
NEEDHAM, MASS.

COMMONWEALTH OF MASSACHUSETTS
GEORGE N. GIUNTA
No. 27011
REGISTERED LAND SURVEYOR



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