



Nov 1 8 16 AM '96

## ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02181

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ZBA 96-75

Petition of Robert and Aileen Capozzi  
45 High Ledge Avenue

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, October 24, 1996 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of ROBERT AND AILEEN CAPOZZI requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow a change in the location of their front door from 45 HIGH LEDGE AVENUE to 116 WOODSIDE AVENUE, which will result in a minimum left side yard clearance of 10.5 feet, which was previously a conforming rear yard clearance. There will be no change in the footprint.

On October 7, 1996, 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 Robert and Aileen Capozzi. Mr. Capozzi said that in August they bought the house, which was built by Fullerbrook Construction. They are happy with the house, except for the issue of the address. The house is on the corner of High Ledge Avenue, which becomes a paper street in this location, and Woodside Avenue, which is a dead end at the top of their property.

Mr. Capozzi stated that the change in the address came as a surprise, as they were expecting to buy a house on Woodside Avenue. When the builder told them that the plans were approved with the address on High Ledge, even though there is no street sign visible anywhere, they thought they could live with the change. The problems started after they moved in. They discovered that the High Ledge house numbers are not in sequence, running from 1 to about 30; then to 74, and then 45. They are the only house on their section of High Ledge, which is not marked by signs, and has caused a great deal of confusion to anyone looking for their house.

The physical location of the house is such that the actual front door faces Woodside Avenue. The Building Inspector would not allow a change in the street address as the effect would be to make the conforming rear yard setback a nonconforming left side yard setback.

The Board commented that it appears that the Capozzis were caught up in the builder's ploy to get the house on the lot.

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Richard Gerard, 65 High Ledge Avenue, said that his house is about 700 feet from that of the petitioners with houses between the two properties. He has lived in his home without any problems since 1935. He believes that the petition should be denied as it is possible to find the property given proper instructions, and because this is new construction built to conform to the Zoning Bylaws.

The Board disagreed, stating that as the front entrance is located on Woodside, rather than High Ledge, it is obvious that the builder wanted to take advantage of the site. The house is extremely difficult to find, and the siting of the house is not logical, with the result that the Capozzis are denied a proper address.

Mr. Gerard said he is working on having a second High Ledge Avenue sign installed because the Capozzis have complained that no one can find them.

Sara Costa, 95 Overbrook Drive, said that she attended all the Planning Board hearings on the subdivision creating this lot. At the hearings, the neighbors were under the impression that the house would have a Woodside Avenue address. She asked if the change in address would have any impact on the roads.

The Board responded that the decision would simply allow a practical solution to the Capozzi's problem. The Zoning Board has no power in regard to any town road.

Marie McInerney, 14 Colby Road, said that she owns a 6,113 square foot lot numbered 113 Woodside Avenue, which abuts the rear of the Colby Road property. She wanted to go on record as objecting to the subdivision and is in opposition to the overbuilding in Wellesley.

Leo Villa, 115 Woodside Avenue, said he has no problem with the change in the Capozzi address, particularly as he is always giving directions to people looking for the Capozzi house.

#### Statement of Fact

The subject property is located at 45 High Ledge Avenue on the corner of Woodside Avenue, in a Single Residence District, on an 11,297 square foot lot, which was created by a Subdivision Plan approved by the Planning Board on May 1, 1995. The existing conforming dwelling is sited with the obvious "front" door on the Woodside Avenue elevation, while the High Ledge Avenue elevation contains double garage doors and a small separate entrance. When the petitioners signed a Purchase and Sale agreement, it was for a property identified as "116 Woodside Avenue".

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Subsequently, in order to be granted a building permit, the builder had to agree to change the "front" of the house to High Ledge Avenue so that the setback of 10.5 feet could be considered the conforming rear yard setback. Fronting High Ledge Avenue, the house would have conforming setbacks of 30 feet from High Ledge Avenue, 30 feet from Woodside Avenue, 20 feet from the right side lot line and 10.5 feet from the rear lot line. If the house fronted Woodside Avenue, it would have conforming front setbacks of 30 feet from both streets, 20 feet from the rear, but a nonconforming left side yard setback of 10.5 feet. Therefore, although the actual front entrance of the dwelling faces Woodside Avenue, the nominal front of the dwelling faces High Ledge Avenue with an address of 45 High Ledge Avenue.

The petitioners are requesting a variance to allow a change in the location of the "front" of the dwelling from High Ledge Avenue to Woodside Avenue, which will result in a nonconforming left side yard clearance of 10.5 feet.

A Plot Plan dated June 11, 1996, drawn by Marc N. Nyberg, Registered Land Surveyor; and photographs were submitted.

On October 17, 1996, the Planning Board reviewed the petition and recommended that the petition be dismissed, as a variance is an improper form of relief. If the petitioners seek relief concerning assignment of a house number, it should be through the Office of the Board of Selectmen.

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject dwelling conforms to the current Zoning Bylaw.

It is the opinion of this Authority that the petitioners have a definite hardship as to identification of their property, which has not been self-created, and to which they were not a party.

It is the further opinion of this Authority that this is a unique situation involving new construction on a lot configured so as to require that the "front" of the house face High Ledge Avenue in order to obtain a building permit, and shall not be used as a precedent for future petitions requesting changes of address for properties located on corner lots.

It is the opinion of this Authority that due to the shape of the lot and the location of the "front" 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.

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Therefore, the requested variance is granted, as voted unanimously by this Authority at the Public Hearing, for a the dwelling to have a minimum left side yard of 10.5 feet, resulting in the recognition of the "front" of the house as facing Woodside Avenue, and the ability of the petitioners to request a change of address from 45 High Ledge Avenue to 116 Woodside Avenue.

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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John A. Donovan, Jr., Chairman

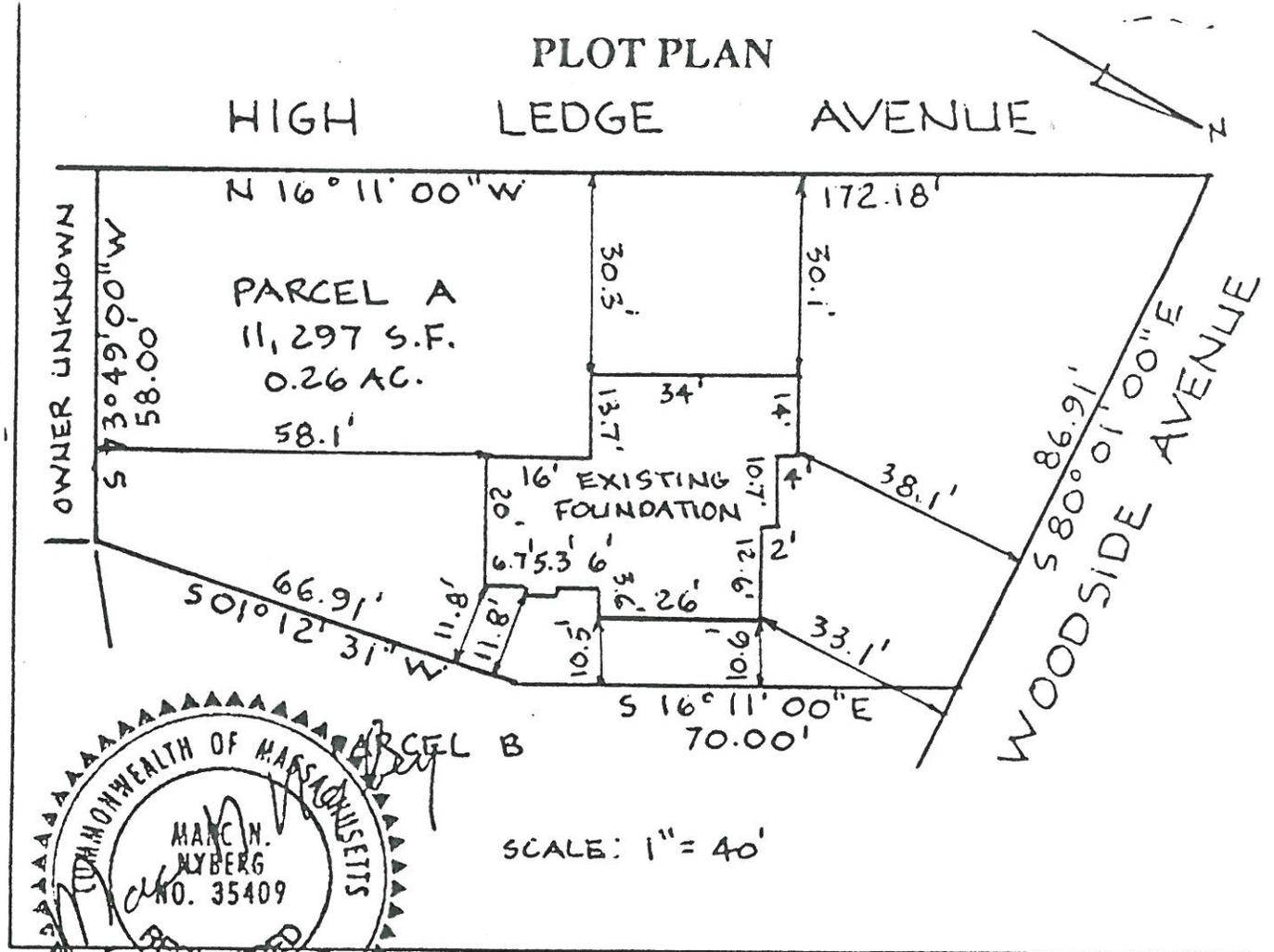
  
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Kendall P. Bates

  
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Robert A. Bastille

cc: Planning Board  
Inspector of Buildings  
edg

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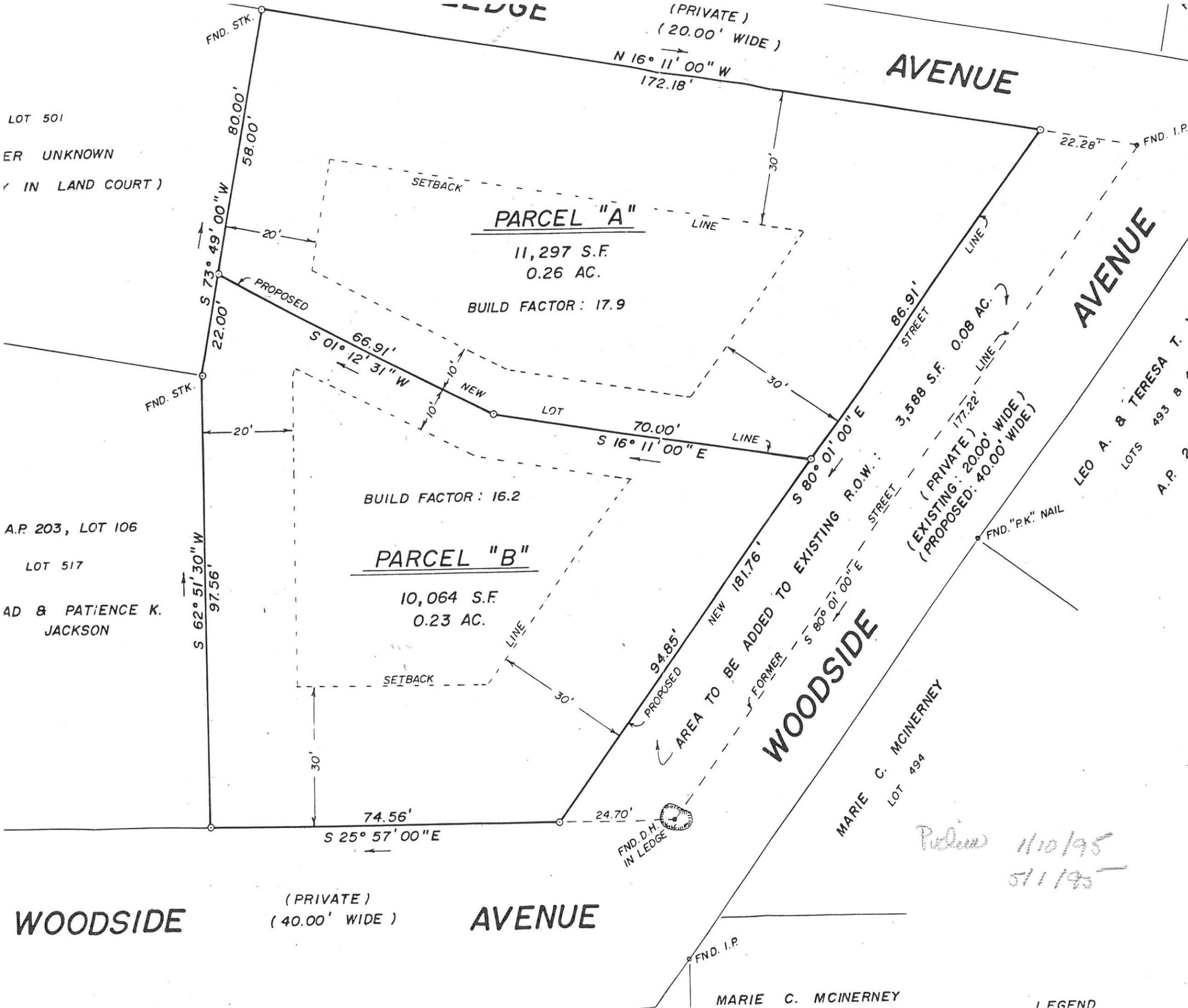


BUILDING DEPARTMENT USE ONLY

Stamped & Signed By Marc N. Nyberg

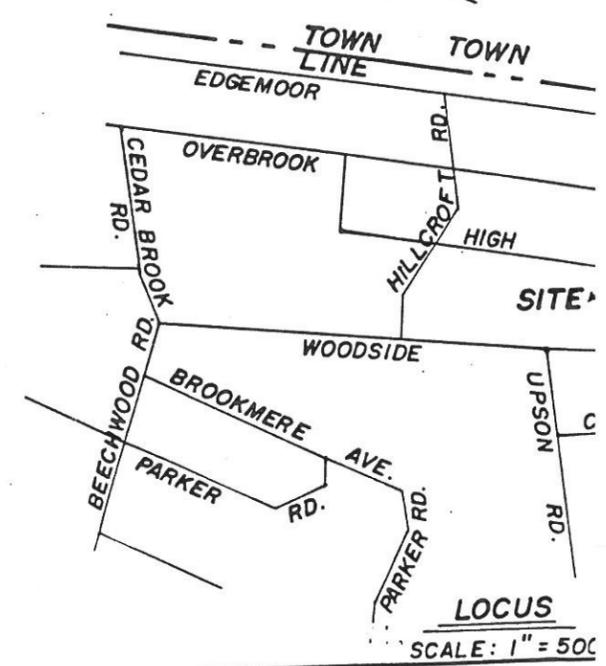
Reg. Land Surveyor or Civil Engineer

Date June 11, 1996 Address 11 Main St Slatersville, RI 02876



1. PARCELS "A" ASSESSOR'S
2. TOTAL FORM
3. TOTAL NEW
4. PARCELS "A" 495 THRU 5 LAND COUR'
5. AREA ZONE

MIN.  
MIN. 1  
MIN. 1



**WOODSIDE TRUST SUB**

Land Owner	WOODSIDE TRUST	Land Su
Address	72 BRANDST. ARLINGTON, MA.	Address
Phone	(617) 643-8822	Phone
Applicant	(SAME AS OWNER)	KEY:
Address	-----	
Phone	-----	Scale: 1

Approved by: WELLESLEY PLANNING BOARD

*Review 11/10/95  
5/1/95*

LEGEND

MARIE C. MCINERNEY