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ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

JAN 30 10 44 AM '84

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83-66

Petition of Theodore E. Spielberg and Jonathan Davis

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing in the second floor hearing room of the Town Hall on Thursday, December 15, 1983 at 7 p.m. on the petition of DR. THEODORE E. SPIELBERG and JONATHAN DAVIS, requesting Site Plan Approval under Section XVIA and Section IIIA of the Zoning Bylaw for the construction of five townhouse units at 619 WASHINGTON STREET, within a Town House District, said lot containing 20,566 square feet of land. Said construction will include renovation of the existing main house into two condominium units and the construction of three new town house units and related parking and landscaping. A Special Permit is requested under Section IIIA (k) (Density Bonus). Variances are requested from the terms of: Section IIIA-A-2(i) (Frontage); IIIA-A-2(f) (Yards); IIIA-A-2(j)(4) (Off Street Parking). Said request is pursuant to Section XXV and Section XXIV-D of the Zoning Bylaw.

On November 11, 1983, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case was Gary Lilienthal, Esquire, of Bernkopf, Goodman, and Baseman, attorney representing Jonathan G. Davis. He introduced Jonathan Davis, Ms. Chesnick, assistant of Mr. Lilienthal, Frederick Putnam, partner of Jonathan Davis, and Dennis Rieske, Architect, of Developmental Resources, Inc. Dennis Rieske then made a slide presentation showing the existing site and surrounding properties. He presented renderings showing a Plan of Land, existing house, proposed townhouse units, elevations, landscaping. He stated that the petitioner proposes to deal with the drainage on the site through dry wells, and that a perc test will be conducted shortly and submitted to the Board. Two parking spaces would be provided for each unit and two guest parking spaces provided at the site. Mr. Lilienthal addressed some of the legal issues concerning the property. He stated that the property was re-zoned by the Town in 1976 to Town House District. He addressed the variances and Special Permits requested and presented a memorandum, dated 12/15/83, detailing the requests. He referred specifically to several cases with respect to the granting of variances for frontage deficiencies. He referred to the uniqueness of the lot and the de minimus deficiency in the frontage. He stated that 619 Washington Street is an island between the town parking lot and townhouse condominiums. Dr. Spielberg, present owner of the property, spoke about the use of the property over the years. He stated that he does not reside on the premises but has an office there, and the second floor is a rental dwelling unit.

Eric Walker, 617 Washington Street, Unit 101, expressed concern about drainage, parking, and is opposed to any structure coming closer than 30 feet from the side line. Nat Kettendorf, 605 Washington Street, expressed concern about parking and the impact of the project on single homes behind. Charles H. & Priscilla D. Reed, 617 Washington Street, Unit 105, and Alexandra Von Peterffy, 617 Washington St., Unit 104, expressed opposition to the petition.

Statement of Facts

The property in question is located at 619 Washington Street, containing 20,566 square feet of land. The property is owned by Dr. Theodore E. Spielberg, containing a house and detached garage. Dr. Spielberg does not reside on the premises, but has an office on the first floor and leases the second floor as a dwelling unit. He wishes to sell the property to Jonathan Davis, who proposes the condominium project. The property is located in a district which was rezoned by the Town in 1976 to Town House District. The frontage of the property is 98.85 feet, the requirement for townhouses being 100 feet.

Jonathan Davis wishes to purchase the property, renovate and expand the existing dwelling to two townhouses and to construct three additional attached townhouses to the rear of the existing structure. A Special Permit is requested for Site Plan Approval (Section XVIA) and for a density bonus for five units (Section IIIA(k)). Variances are requested for the following: frontage (100' required, 98.5 existing); front yard setback (30' required, 22.3' existing porch); side yards, (30' required, existing porch 20.2 existing house 26.3'); side yards (30' required, new decks 20'); rear yard (30' required, new deck 20'); driveway (10' required to sideline, 5' requested).

The following plans were submitted: L-1, Plot Plan, drawn by Otte & Dwyer, Inc., dated 11/7/83; A-1 to A-13, architectural plans drawn by Developmental Resources, Cambridge, dated 9/6/83; L-2, topographic plan, drawn by Otte & Dwyer Inc., Saugus, dated 11/19/83; L-3, landscaping/site plan, drawn by William Pressley & Assoc., Newton Centre, dated 11/21/83, 12/8/83 (submitted at hearing), revised 1/10/84. On January 13, 1984, a report of subsurface investigation and drainage recommendations was received, done by H. W. Moore Associates, Inc., Consulting Engineers, Boston, as was a revised site plan dated 1/10/84, by William Pressley & Associates.

The Design Review Board met with the petitioners on three occasions, as outlined in a letter dated 12/9/83, and approved all plans at the final design review on 12/8/83.

Site plans and other submission materials were sent to the Planning Board, Wetlands Protection Committee, Town Engineer, Board of Health and Fire Chief as required by Section XVIA. Written responses from the Planning Board, Town Engineer, Wetlands Protection Committee, and Fire Department were received and are on file at the Board of Appeals office.

The Planning Board had no objection to the granting of variances for lot frontage, front and side setbacks for the existing building and driveway, but expressed concern for lot drainage, and supported the recommendations of the Town Engineer in this regard. The Town Engineer, in a letter dated 11/23/83, stated that the petition should not be approved until adequate engineering detail had been submitted for approval as to how surface drainage would be provided. A subsequent letter from the Town Engineer on January 18, 1984, following review of the drainage study by H. W. Moore (1/13/84) and site plan dated 1/11/84, stated that the west side of the lot has adequate drainage, but that the east side needed a drainage system. In a letter of 1/20/84, Mr. Rieske stated that a holding area on the east side of the site would be provided per review and approval by the Town Engineer.

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A letter was received from Isabelle E. Fisk, 15 Weston Road, abutter to the rear of the property, expressing concern about trees at the rear. Letters opposed to the petition were received from Paul W. Shackford, 12 Fells Rd., and the following residents of Webb Townhouses at 609-617 Washington Street: Alexandra Von Peterffy, Charles H. and Priscilla D. Reed, Mora Ann Davis, Gail D. Hewitt, Ruth W. Breed, Andrew & Joan Gutekunst, Mary K. Stahl, Thomas A. Walsh, Heather W. Cross, Jean L. Heerde, Katrin E. Schoonmaker, and Nathaniel W. Kettendorf, 605 Washington Street.

Decision

This Authority has made a careful review of the evidence presented. The subject property was rezoned by the Town Meeting in 1976 as a Town House District. It was subsequently purchased in 1980 by Dr. Theodore Spielberg, who does not reside on the premises but does rent part of the first floor to another doctor, uses the other portion of the first floor for his offices, and rents the second floor to tenants. The property including the Victorian house produces income although the legality of the use is not in any way ruled upon by this Board. No evidence that the structure is uneconomical was presented by the petitioner.

This Board finds that the petitioners have not produced evidence sufficient to show substantial hardship owing to soil conditions, shape, or topography of such land or structures, especially affecting such property.

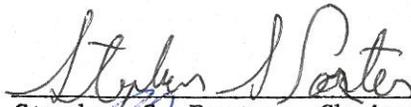
Petitioners have not shown that they are compelled by any unique condition of the property to design and build the five condominiums in the manner they have chosen to present this Board. In fact, the petitioners have chosen to seek a density bonus of five units which may account for the need for at least some of the variances.

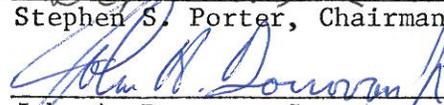
This Board does not believe that a variance should be based upon a need created by a desire to have five instead of four condominiums. Certainly that is not the financial hardship contemplated by the bylaw or Chapter 40A, Section 10, M.G.L.

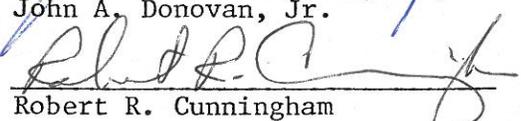
Petitioners argue that their lot is located between a town house complex and public parking lot. This again is not the kind of hardship contemplated as a basis for a variance since location of a lot is not a basis for a variance. The petitioner Spielberg knew or should have known at the time he purchased the lot that it did not have the frontage required for town houses or, for that matter, a variance. By requiring 100' frontages for town house lots, Town Meeting automatically excluded certain lots within the Town House District from having town houses built thereon.

In conclusion, this petition must be denied because there is no evidence upon which a variance can be granted including, without limitation, insufficient frontage.

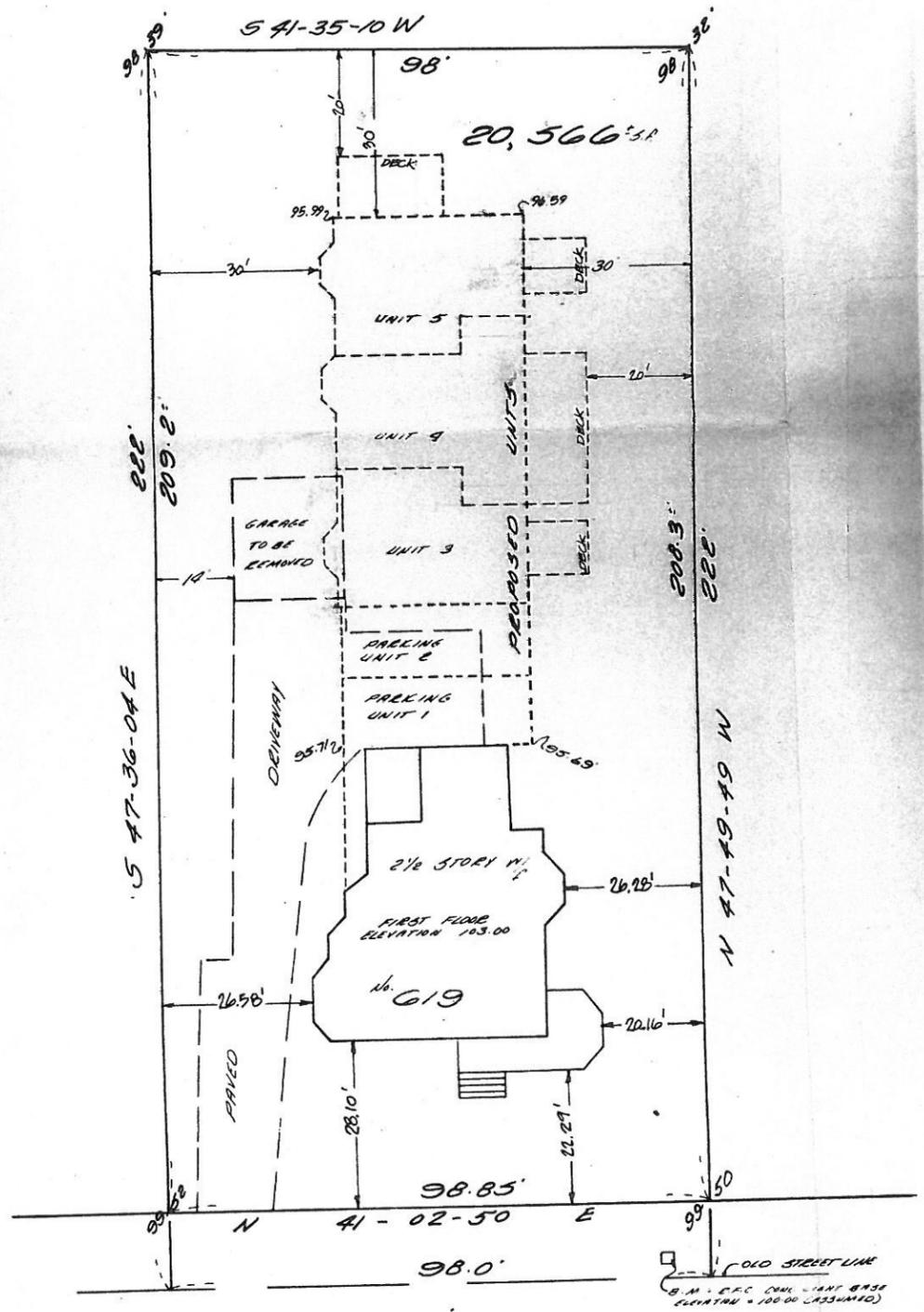
The Special Permit is denied since compliance with the Zoning Bylaw of the Town of Wellesley will not be met.

  
Stephen S. Porter, Chairman

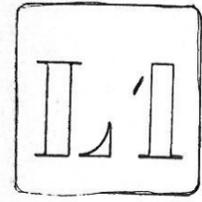
  
John A. Donovan, Jr.

  
Robert R. Cunningham

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PLOT PLAN  
 No. 619 WASHINGTON STREET  
 WELLESLEY, MASS.



WASHINGTON STREET

SCALE 1" = 20'  
 OTE & DWYER, INC.  
 6 WEBB PLACE

NOVEMBER 7, 1983  
 SURVEYORS  
 SAUGUS, MASS.