

TOWN OF WELLESLEY



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ZONING BOARD OF APPEALS

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ZBA 2015-69
Petition of 11 Sagamore Partners LLC
11 Sagamore Road

7/15 Aug 20 P
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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 6, 2015, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of 11 SAGAMORE PARTNERS LLC requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing structure and construction of a two-story structure with basement that will meet all setback and height requirements, on an 18,082 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet, at 11 SAGAMORE ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On July 21, 2015, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Prior to the presentation of the case, for the benefit if the general public in attendance at the Public Hearing, and to clarify some of the recommendations of the Planning Board, the Chairman read portions of the provisions of Section XVID (C) of the Zoning Bylaw, which states in part that changes to non-conforming single-family dwellings which are subject to a finding in accordance with Section 6 of Chapter 40A M.G.L and SECTION XVII. PRE-EXISTING NON-CONFORMING USES, STRUCTURES AND LOTS., of the Zoning Bylaw are exempt from the requirements of Large House Review.

Presenting the case at the hearing was David Himmelberger, Esq., and Dan Goldstone, 11 Sagamore Partners LLC, the Petitioner. Mr. Himmelberger said that the request is for a special permit for demolition and reconstruction. He said that this is the third time that the matter has come before the Board. He said that the first time there was an issue with a side facing garage that did not meet the 30 foot side yard setback. He said that they returned on May 7, 2015 and at that time there was concern expressed with regard to the site plan not squaring up with other site plan evaluations from Verne Porter. He said that there were other issues and concerns and the Board granted approval to withdraw the petition without prejudice. He said that there were numerous neighbors in attendance at that hearing. He said that the Chairman suggested that the Petitioner go back to the drawing board and work with the neighbors, have a surveyor conduct research as to the disputed property line location with 3 Sagamore Road, identify the trees and supply a plan indicating which trees will be retained and which trees will be taken down, and have such a plan prepared by a certified arborist, to provide an elevation plan showing the relationship and height of the proposed home to the abutting homes at 3 and 15 Sagamore Road, to provide a better set of plans to look at with more elevations, and to provide more detail as to what was proposed to be built, and either design something that is more acceptable to the neighbors or convince the Board that the

proposed new home would be in keeping with the neighborhood and that it would not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Mr. Himmelberger said that the Petitioner believes that he has done that.

Mr. Himmelberger said that since May 7, 2015, the Petitioner went back to the drawing board and had the surveyor meet with Verne Porter, who had been retained by neighbors. He said that they had a meeting and spoke about the survey plan and the Petitioner's surveyor adopted Mr. Porter's survey bounds and a new plan was prepared. He said that the primary difference with the plan was not with regard to square footage or property line distances but rather involved the pivoting counterclockwise of the lot a few degrees from the front right corner in common with 3 Sagamore Road. He said that the site plan was prepared and was submitted to the Board.

Mr. Himmelberger said that the Petitioner reached out to the neighbors. He said that Attorney Stanley Brooks rented a room at the Library on July 8th and the meeting lasted about 90 minutes. He said that they reviewed the proposed project changes and sought input from the neighbors. He said that two days later the Petitioner received a 36 point email from Attorney Brooks on behalf of the neighbors expressing and cataloging their concerns and inquiries. He said that the Petitioner responded to that and a copy of that response as well as a supplemental response was submitted to the Board.

Mr. Himmelberger said that at that meeting the Applicant and the full design team were present. He said that the Tree plan that was prepared by Kray Small depicts the existing trees and noted those that will be retained and those to be removed. He said that he found two trees that were not subject to protection because they were diseased. He said that one tree in the front lawn had been previously cabled and the second tree is an ash tree in the back. He said that the neighbors requested that the Petitioner provide additional fencing beyond the fencing for the protected trees for other trees that had been represented as being retained. He said that a revised Tree Plan was prepared and submitted to the Board. He said that the plan shows additional fencing for additional non-protected trees.

Mr. Himmelberger said that an Elevation Plan was prepared. He said that the only difference to the Elevation Plan is that there was an estimate of the height of 3 Sagamore as being 32 feet tall when, in fact, according to Building Department records, is it 35 feet tall. He said that instead of being even with the proposed structure, it would be three feet taller. He said that 15 Sagamore is sited uphill and is also higher in elevation. He said that this is a somewhat unusual location in that 11 Sagamore with its proposed new building will still be below all of the surrounding neighbors. He said that there is a significant elevation across the street and there is an elevation change heading north up Sagamore Road. He said that Mr. Iacocca prepared the elevations and said that they should be considered to be close approximations. He said that they made a good faith effort. He said that the adjoining homes and other homes in the area are higher.

Mr. Himmelberger said that there was a request for more renderings of how the house will look from the street and from the 15 Sagamore driveway. He said that they did not receive any photographs from the owner of 3 Sagamore or any other abutter. He said that the photographs were taken from the Petitioner's property looking out. He said that there is significant screening on the Petitioner's and all of the abutting properties.

Mr. Himmelberger said that the Petitioner complied with the request for additional Elevations details. He said that there was shingling on the gables and gable ends, a gable return was placed on the right side, the front columns were widened to give a more stately entrance, and the driveway was set back from the street from the common property line with 15 Sagamore a distance of 23 feet in order to preserve greenspace and screening. He said that the straight driveway that is shown on the plot plan is what is controlling. He said that a slightly curved driveway was shown on the rendering.

Mr. Himmelberger said that there was a request that renderings include super imposition of the existing on the proposed house.

Mr. Himmelberger said that a photograph was provided from 15 Sagamore that was taken in the wintertime from the driveway that was used to provide a rendering. He said that in the supplemental response to Attorney Brooks they included 2 two dimensional side elevations that show the side elevation with the new proposed house and the old house superimposed on it.

Mr. Himmelberger said that the Petitioner provided Attorney Brooks with a copy of the submittal July 15th and followed it up with a response to the 36 point inquiry.

Mr. Himmelberger said that, subsequently, he learned of the Planning Board's recommendation to ZBA. He said that the Board already discussed a similar recommendation for 26 Park Avenue that talked about holding a nonconforming lot to a pro rata trigger for Large House Review (LHR). He said that the proposed Total Living Area plus Garage (TLAG) for 11 Sagamore is 92.85 percent of the applicable trigger of 5,900 square feet. He said that the lot is 18,082 square feet, or 90.41 percent of the size of a 20,000 square foot lot. He said that in a further effort to satisfy the neighbors, the Petitioner will voluntarily agree to a condition of approval for TLAG no greater than 5,300 square feet.

Mr. Himmelberger said that the Planning Board recommended that in addition to review by ZBA, the petition be review by the Town Engineer with regard to stormwater drainage. He said that Cultec chambers have been shown on the plans for the site. He said that the Petitioner would accept a condition that any increase in runoff up to the 10-year storm level will be contained on site to the satisfaction of the Town's Engineering Department.

Mr. Himmelberger said that the Petitioner believes that he has responded to the Board's prior concerns in terms of giving greater specificity and better clarity to some of the questions that existed. He said that ZBA has in the past been comfortable in holding applicants to what they say they will do in conjunction with the special permit. He said that the Petitioner is fully prepared to abide by that.

Mr. Himmelberger discussed the history of special permits for nonconforming lots due to lot size. He said that over the last one and a half years in ZBA decisions for which a special permit/finding was made for a tear down on a nonconforming lot, there were a total of six, three of which were in a 20,000 square foot district. He said that, in each case, TLAG that was allowed by the ZBA was greater than the pro rata amount suggested by the Planning Board. He said that he just received a letter from Attorney Brooks asking that the Petitioner not only be held to the pro rata TLAG but that it be an arbitrary 75 percent requirement of 4,500 square feet.

Mr. Himmelberger said that in the three cases that were allowed in the 20,000 square foot district, the TLAG allowed at 28 Westwood Road was 5,500 square feet where the appropriate pro rata amount was 5,302 square feet, allowed at 61 Lincoln Road was 5,849 square feet where pro rata was 5,502 square feet, and allowed at 82 Arnold Road was 5,855 square feet where pro rata would be 5,565 square feet.

Mr. Himmelberger discussed the concern that it would be inappropriate to build out to the dimensional setbacks. He said that there is a 30 foot setback on the left side and 26.9 at the front right side going back to 20.3 at the rear right corner. He said that in the three cases that he cited, all of those were within a foot of dimensional setbacks on the sides of the buildings. He said that it has not been the Board's practice in the past to require artificial adherence to greater requirements not set forth in the ZBL. He said that the Applicant has complied with addressing the concerns of Board in response to the neighbors' concerns. He said that they respectfully request that the evidence compels the conclusion that this house is not substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Himmelberger said that the next door neighbor at 15 Sagamore is on a 17,874 square foot lot. He said that this is not the smallest lot on the street. He said that they have designed a house that is appropriate for the street and will fit in with the streetscape. He said that it will be larger but will be well within the TLAG trigger. He said that the TLAG triggers were imposed because there was a concern at that point that houses were perhaps too big for the lots. He said that the converse follows as well. He said that if it is below the trigger, it should be considered to be an appropriately sized house or it is not an inappropriately sized house.

The Board said that it treats every application on its own. The Board said that it appreciated the Petitioner taking some of the recommendations from the previous hearing but this is a de novo hearing and the Board is starting from scratch in analyzing this particular application.

Stanley Brooks, Esq., said that there are four sections of his presentations that deal with the detrimental impact to the neighborhood, landscaping matters, drainage, and proposed conditions in the event that the Board is inclined to approve the special permit.

Mr. Brooks said that it was suggested that the house be limited to 4,500 square feet and that the reduction come in the side yards. He said that number is not related to TLAG but is related to how a house constructed on the second smallest lot in the neighborhood would harmonize with the neighborhood with respect to scale and how it will feel in the neighborhood in relation to other properties in the neighborhood. He said that the proposed house would be the fourth largest house out of 25 lots on Sagamore Road. He said that the abutting house at 3 Sagamore is the largest but that house is on an oversized corner lot and fits nicely onto the lot. He said that there is another house at 88 Sagamore that is 5,300 square feet and another one at 16 Sagamore that is 4,650 square feet. He said that this house will be significantly larger than most of the houses in the neighborhood. He said that the number is related to the bulk and mass and how it fits in with the neighborhood. He said that the neighbors recognize that something is going to be built there but they want something that works with the character of the neighborhood.

Mr. Brooks said that the proposed house will be maxed out to the side lot lines and there is no room for error. He said that there have already been problems with this lot and if stakes are set wrong, it could lead to a bigger problem. He said that the desire here is to put a large house on a small lot. He said that there

are large houses in the neighborhood but they are on large lots. He said that by approving the project as it is proposed, there would be an extensive increase in the use of the lot, a change in the overall look and feel in the area, it will appear crowded on the lot, out of scale, and is an inappropriate size of house for that lot. He said that the bulk and mass are significant. He displayed superimposed renderings of the existing house over the proposed from the views from 15 Sagamore and 3 Sagamore. He said that a much larger bulk and mass of house is proposed to go in there.

Mr. Brooks said that the Applicant has agreed to a condition to reduce the TLAG to 5,300 square feet but unless that reduction comes on the sides, it is not significant enough to make it fit in with the neighborhood in a way that other houses fit on their lots. He said that nothing has materially changed with respect to the size of the house that was proposed in February and again in April, both of which came before the Board. He said that the elevation rendering shows the house at 3 Sagamore appearing to be equal. He said that 3 Sagamore is anywhere between one to four feet lower than 11 Sagamore, depending on where you are standing on the lot. He said that the ridgeline at 3 Sagamore may be higher by calculated height but it is in effect equal or lower than the proposed dwelling.

Mr. Brooks said that the increased lot coverage at 3,194 square feet is an increase of 78 percent from the existing lot coverage of 1800 square feet, which is dramatic. He said that the increase in impervious surface totaling almost 4,900 square feet represents an 88 percent increase over the existing impervious surface of driveway and house at 2,600 square feet.

Mr. Brooks said that Mr. Himmelberger indicated in his letter of August 5, 2015 that there may be a further reduction of the height of the house. He said that the elevations that were submitted show a ridgeline 30 feet 4.5 inches. He said that when he tried to back that out with the first floor subfloor at zero, and the top of the foundation wall at negative 1' 3 5/8", and a foundation wall of 8 feet, that tells him that it cannot be more than two feet above ground. He said that if he backs those numbers out and add them all up, it does not work. The Board said that the plan shows that the height above average grade will be 34.3 feet, which complies with the bylaw. The Board said that it is shown on Sheet 1 under the Proposed Profile. The Board said that Mr. Brooks was looking at the architectural drawings that measure to the top of the foundation. The Board said that it cares about average natural grade, as shown on Sheet 1. The Board said that is what is consistent with the definition of height in the bylaw.

Mr. Brooks said that the proposal is inconsistent with the character of the neighborhood with respect to mass, bulk and scale. He said that the scale of the structure is inconsistent with other houses in the neighborhood and the relation to their lots. He said that the structure will come to the edges of the setbacks on both sides. He said that the appearance of open space on the lot will be materially diminished. He said that the visual appeal will be decreased. He said that the increased intensity of use of the property will be detrimental to the neighborhood.

Mr. Brooks said that the Applicant submitted a Tree Protection Plan. He said that the stakes on the ground appear to show that there are additional trees within the tree yard that are not shown on the Tree Protection Plan. The Board asked if those trees are jurisdictional. The Board said that the trees have to be a certain caliper. Mr. Brooks said that he did not have professional measurements. He displayed photographs of three trees. He said that one is an approximately 27 inch diameter, 40 foot oak, which is partially on lot 11 and partially on lot 15. He said that the lot appears to run through the middle of the tree. He said that another tree was unprofessionally measured as 21 inches in diameter and 40 feet high.

He said that tree is on the lot 11 side. He said that the third tree appears to be 15 inches in diameter and 40 feet tall. The Board said that the Building Inspector enforces the Tree Protection Plan. Mr. Brooks said that the Board has information that was presented to it that the neighbors believe to be inaccurate. The Board said that it has a report from a certified arborist who claims that the plan is accurate. The Board asked how this relates to the special permit. Mr. Brooks said that the Tree Protection Plan is not required to be submitted as part of the special permit process, however it has been submitted by the Applicant. He said that in his mind it should be considered part of the application package. He said that it impacts the abutting properties if there are trees that are not going to be protected. He said that may be something that they will have to address with the Building Inspector, should the ZBA grant the special permit.

Mr. Brooks said that the Applicant has stated on any number of occasions, both verbally and in writing, that the intention is to preserve the green space to the left of the driveway, which represents the buffer between 15 and 11 Sagamore and provides screening between the two properties. He said that area is important if the house ends up with the mass and bulk presented. He said that the Applicant has indicated that he will put up a chain link construction fence to protect that area. He said that the neighbors are looking for some additional protection going forward, whether it is in the form of an easement or an agreement that the area shall be preserved.

Mr. Brooks said that the Applicant did relocate the driveway away from the lot line. He said that there is some concern about the viability of access and turning ability for the first bay closest to the street.

Mr. Brooks said that the Drainage System shown on the plans has no cross sections or elevations. He said that it appears to be a gravity system. He said that no calculations were submitted, so there is no way of knowing whether the system will work. He said that Mr. Himmelberger suggested that the Applicant is willing to accept a condition that it will handle up to a 10-year storm. He said that Wellesley has 10-year storms with some regularity, as well as 100-year storms. He said that it is important, since 3 Sagamore Road is down gradient, that some drainage calculations be provided so that there can be some understanding that the system will work. He said that if the Engineering Department were to sign off on it, that would be satisfactory. He said that it perhaps should be able to handle more than a 10-year storm.

Mr. Brooks said that the driveway will be pitched to get water into the catch basin. He said that it is about 10 feet away from the front lot line. He said that there was no further information submitted on that. He said that the neighbors would appreciate more information on that so that they can make an informed decision.

Mr. Brooks said that there is a lack of information on some matters and there are what the neighbors believe to be detrimental impacts to the neighborhood that would render this proposal to be substantially more detrimental to the neighborhood than the existing structure.

The Board asked which neighbors Mr. Brooks represents. Mr. Brooks said that he represents the neighbors at 3 and 15 Sagamore Road. A Board member said that his understanding of Mr. Brook's position is that the term in the ZBL for being detrimental to the neighborhood equals Sagamore Road. He said that Sagamore Road has at least two cross streets. He asked if other streets were considered. He said that Old Colony Road is directly behind it and Plymouth Road is almost adjacent to it. He said that he would consider that more of the neighborhood rather than looking at the cul de sac at the end of Sagamore

Road, which he would consider to be part of a different neighborhood. Mr. Brooks said that he did not have information on those other streets with him but it is fair to say that most of the lots are larger. He said that there are large houses but they tend to be on large lots. He said that this is a large house on a small lot.

The Board asked where the figure for average grade that was shown on Sheet 1 came from. The Board asked where the data to support that come from. Mr. Himmelberger said that Mr. Nolan prepared that figure. He said that beneath the legend there is a further drawing that shows additional data. The Board said that says what the average grade is but does not say how it was calculated. Mr. Himmelberger said that it is a flat site. The Board said that typically you would see data points on the site plan that identify how the surveyor came up with the figure. The Board said that it is important to know whether the surveyor looked at two points or at 200 points. Mr. Himmelberger said that they can supplement the data to confirm that. He said that this is something that the Building Inspector will enforce.

The Chairman said that he saw the Storm Tech units at the rear of the property and some of the connections to it. He said that he did not see any of the criteria as to how it got to be or drainage calculations so that some of the assertions about how drainage is treated can be supported. Mr. Himmelberger said that the Petitioner's approach was to say that he was willing to have the Town Engineer pass and sign off that stormwater runoff in excess of the existing has been addressed to a 10-year storm. He said that it is not typical that stormwater calculations are supplied at this point in the process but the Petitioner is willing to commit to addressing it to the satisfaction of the Town Engineer. The Chairman said that he understands that complete and detailed plans are required further along in the process but he cannot tell from the submittal that the assertions are correct. He said that he sees leaders coming in and the slope of things, so it looks like the plans have the right stuff. He said that for most residential projects, the Board does not get the drainage calculations. He said that this is one project where it might be worthwhile to do that. He said that if the assertion is that it should go to the Building Inspector and DPW under the bylaw, he can accept that but the package that was submitted to the Board should show how the system works with respect to where the water is captured and delivered to and the size of the system components. He said that there should be something more than a rectangular box on a site plan. Mr. Himmelberger said that they have committed to capturing stormwater runoff in excess of the existing condition up to the 10-year storm, to the satisfaction of the Town Engineer. He said that the argument is about what will it look like versus the end result that the Board and the neighbors want. He said that the Board can condition approval subject to approval of the Town Engineer.

The Board asked if the 10-year storm is adequate. Mr. Himmelberger said that the Town does not use higher levels in LHR. The Chairman said that it needs to be the 10-year 24 hour storm versus the 10-year 15 hour storm. He said that defines the volume of water. Mr. Himmelberger said that the Planning Board conditions some Adequacy of the Way decisions subject to the final approval of the stormwater system by the Town Engineer. He said that the term that they use is the 10-year storm level. He said that he was recently involved in an Adequacy of the Way hearing for 42 Evergreen Avenue where the Planning Board did impose that exact condition. The Board said that this drainage has the potential to impact others.

The Board asked about access to the attic. Mr. Himmelberger said that the attic has trusses and there is a pull down to the attic. Mr. Himmelberger said that on Plan A-00-2 there are first and second floor areas and a box describing the attic uninhabitable area.

The Board asked if Mr. Himmelberger is familiar with the title. The Board said that it looks like this was originally Lot 120 and then was subdivided to Lot 120 A and Lot 120 B. The Board said that a portion of the back parcel was conveyed to the abutter to the right. The Board asked if this was a conforming lot when the house was built. Mr. Himmelberger said that he would have to look at the title to see when that conveyance was made.

Phil Jameson, 15 Sagamore Road, said that he appreciated everyone's efforts to make this work. He said that it is a larger house on a smaller lot. He said that it still feels ambiguous as to the width of the driveway and the ability of a 3-car garage and for three or more cars going into the driveway and making the turn. He said that he was not given the measurements of the distance from the driveway to the greenspace. He said that there have been comments about preserving the greenspace. He said that he wanted to emphasize his desire to preserve the greenspace going forward. He said that the turning space for the 3-car garage does not look big enough. He said that the measurements are not on the drawings. He said that it is not clear where the greenspace is on the drawing relative to the dimensions of the driveway. He said that the property line is identified but the greenspace is not. He said that it would be helpful to be more clear on what those dimensions are so that the neighbors can feel comfortable that the greenspace will not be at risk sometime in the future if someone buys the house and feels that there is not enough room on the driveway and wants to push out to the property line. The Chairman said that he understands Mr. Jameson's concern. He said that at this level of the project, he would not expect those dimensions to be on the drawings that were submitted to the Board. He said that they would come at the next stage after they knew they had their permit and would go in and spend more money on engineering and design. He said that is when those things would be developed. He said that the way that the Board could control that is through conditions to the special permit, which would take care of things as the design developed. Mr. Jameson said that would be a request.

Daniel Curran, 19 Sagamore Road, said that Sagamore Road feels like a neighborhood. He said that many of the homes that have gone up for sale have been purchased by individuals who have been interested in preserving the character of that particular street. He said that, to date, they have avoided knocking down homes and putting up much larger homes in place of older colonials. He said that his wife grew up in the house that they live in. He said that they have done their own renovations but kept the character of the house, thinking about their neighbors and the character of the street. He said that the neighborhood has avoided what is happening around Wellesley with larger homes being put up on smaller lots. He said that he understands that a new home will be put up but requested that what will be put up will respect the character of the street.

The Board said that on the plot plan prepared by Peter Nolan, four of the five corner points were established by Verne Porter. The Board asked if this was done subsequent to the first submittal. The Board asked how much it changed as a result of the relocation of the corner points. Mr. Himmelberger said that the lot corner rebar sets were done by Mr. Porter prior to May 7th. He said that the lot angles, bounds, and square footage have not changed. He said that the property line on the right side is pulled to 3 Sagamore Road. He said that Mr. Nolan had done his initial work in the winter and did not see the set points which Mr. Porter found in May, 2015. He said that Mr. Nolan and Mr. Porter agreed that the lot should be rotated a couple of degrees counterclockwise using the front right corner as the pivot point. He said that Mr. Porter commented in May that the fire hydrant which is shown at the far left was not inside the right of way on the prior plan. He said that was because things were rotated slightly back. He said that the fence shown for 3 Sagamore is still slightly on 11 Sagamore. He said that the square footage and

the angles did not change but it was more where they were found to exist on the ground. The Board said that it is reasonable to assume that after the efforts of two reputable land surveyors, the Board has an accurate as possible idea of where the lot boundaries are at this point.

A Board member said that he was having trouble understanding how this house is so much more detrimental than other nice looking houses on the same street. He said that he is an architect and is used to looking at plans and elevations. He said that the Board and the neighbors cannot dictate the style of a house. He said that this house is a gabled form that is not dissimilar to other houses along the street. He said that with all of the tree cover that exists around this house and separating it from the house behind, and given the topographic changes, it is effectively set lower than other houses in the area. He said that he understands the often represented concern of citizens that throughout Wellesley houses are being proposed that are too big and out of character with the neighborhood. He said that the Board hears those concerns raised all of the time. He said that the dilemma that he faces is that the Board has typically allowed tear downs that meet all the setback requirements, save the lot size, to allow them to be constructed because they met every dimensional limitation that they can. He said that if the lot was barely over five percent more, the Petitioner would not have to come before the Board. He said that it sounds like there has been a hard work effort on the Applicant's and the neighbors' part to see if they could come to an agreement as to what would be acceptable. He said that the way that the ZBL and the regulations are written, they do not give an assemblage of neighbors the right to approve or deny a neighbor's plan to modify a property. He said that is what the ZBL is for. He said that the Board adjudicates situations that do not strictly comply with the bylaw. He said that he heard what people were saying but he did not believe that once this house is built, it will look out of place in that neighborhood. He said that there is a fair amount of space between the houses. He said that someone driving up and down the street will not really know where the property line is. He said that there are a series of large homes that are typically run widthwise along the street. He said that this does not look different from what is there.

The Board asked how many people attended the meeting with the abutters at the Library. Mr. Himmelberger said that there were approximately 10 to 12 people. He said that they were from Sagamore, Old Colony and Plymouth Roads. The Board confirmed that they were noticed as abutters or abutters to abutters. Mr. Himmelberger said that Mr. and Mrs. Gearhardt, Plymouth Road, are the abutters at the rear and had not been notified. He said that he had sent out an email to Mr. Brooks and to the people that he had email addresses for. He said that he thought that he had reached everyone. He said that he spoke with Mr. and Mrs. Gearhardt for half an hour the other day. He said that, with that exception, the people who attended the meeting had been present at the May 7, 2015 Public Hearing.

The Board said that it heard from a large number of people via emails to the Planning Board and then copies to the ZBA. The Board said that it is aware of the opinions of the group of people who are concerned.

Mr. Brooks said that the meeting was held on July 8th, which was one week before the submittal date to ZBA. He said that as a result of the meeting a lot of information was exchanged. He said that they were presented with plans that did not have the storm drainage information on them. He said that the plans did not have elevations on them.

Mr. Brooks said that he understands that citizens are concerned about large houses being out of character with the neighborhoods. He said that he appreciates that this Board oftentimes grants a special permit

when it meets the setback requirements. He said that his opinion is that it is more than whether it meets the setbacks because that is not what makes the character of the neighborhood. He said that the character of the neighborhood is how the other houses are situated, the scale of the houses in relation to their lot, are all of the houses in harmony with each other, is there space between the houses, and is the mass and bulk consistent. He said that this house on this lot does not meet those standards. He said that being substantially more detrimental to the neighborhood is more than complying with the setbacks.

The Board said that in looking at the houses that have been approved, part of the reason is how can the Board create a finding that says that something that complies to the bylaw is in and of itself more detrimental to the neighborhood. The Board said that it does consider other things. The Board said that it looks at the rest of the neighborhood, the size of the lots and the living area, as compared to both the existing and the proposed structures. The Board said that it looks at the elevations from the street, whether that is submitted or not. The Board said that it does not grant the special permits simply because the proposed structure will meet all of the setbacks. The Board said that it is sensitive to the idea that the standard is more detrimental to the neighborhood. The Board said that the hard part is that it is not defined in the ZBL.

The Board discussed conditions for stormwater and greenspace. The Board said that there could be issues with the driveway, as designed and approved, if they decide to put a turnaround or expand their driveway in the future. The Board said that if that came to be, a citizen could file a complaint with the Building Official that they had violated the approved design that was the basis for granting a special permit and if the Building Official did not take action, they could come to the Board to adjudicate it. The Board said that is the process that is in place now for someone who feels aggrieved to have it looked at and conceivably addressed.

The Board said that the Applicant has agreed to reduce the TLAG to 5,300 square feet. The Board asked about lot coverage if the house is reduced to a 5,300 square foot TLAG. Mr. Himmelberger said that lot coverage is 17.7 percent, so that would reduce it. Mr. Brooks said that the neighbors would prefer to see the house shrink from side to side. The Board said that there is no basis in the bylaw for doing that. The Board said that the house is exempt from LHR, so there is no way that the Board can regulate TLAG. The Board said that the Applicant has voluntarily put the TLAG on the table.

The Board said that the Building Inspector has a long and reliable history of sending things back to the Board that are not consistent with the approved plans. The Board discussed conditions for setting the condition that the TLAG shall not exceed 5,300 square feet and a condition for drainage that it will meet the 10 year 24 hour storm level and be done in a method that is reviewed and approved by the Town Engineer.

Statement of Facts

The subject property is located at 11 Sagamore Road, on an 18,082 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing structure and construction of a two-story structure with basement that will meet all setback and height requirements, on an 18,082 square foot lot in

a Single Residence District in which the minimum lot size is 20,000 square feet shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 1/7/15, revised Feb 15, March 15, & 6/11/15, and Tree Protection Plan, dated 7/8/15, stamped by Peter J. Nolan, Professional Land Surveyor, Proposed Floor Plans and Elevation Drawings, dated 7/13/15, prepared by Mark Iacocca, perspectives and photographs were submitted.

On August 5, 2015, the Planning Board reviewed the petition and recommended that the Zoning Board of Appeals defer action on the special permit.

Decision

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

It is the opinion of this Authority that demolition of an existing structure and construction of a two-story structure with basement that will meet all setback and height requirements, on an 18,082 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing structure and construction of a two-story structure with basement that will meet all setback and height requirements, on an 18,082 square foot lot in a Single Residence District in which the minimum lot size is 20,000 square feet, subject to the following conditions:

1. TLAG shall not exceed 5,300 square feet.
2. Drainage shall meet the 10 year 24 hour storm level and shall be done in a method that is reviewed and approved by the Town Engineer.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

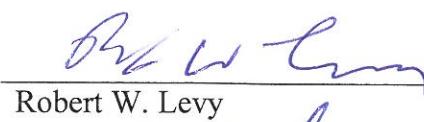
RECEIVED
TOWN OF FORTRESS
MILLIS, MASS.
2015 AUG 20 P 3:45 PM

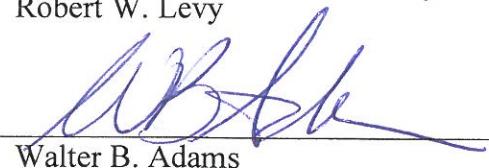
ZBA 2015-69
Petition of 11 Sagamore Partners LLC
11 Sagamore Road

11 Sagamore Road
Wellesley, MA 02481
2015 AUG 20 P 3:04

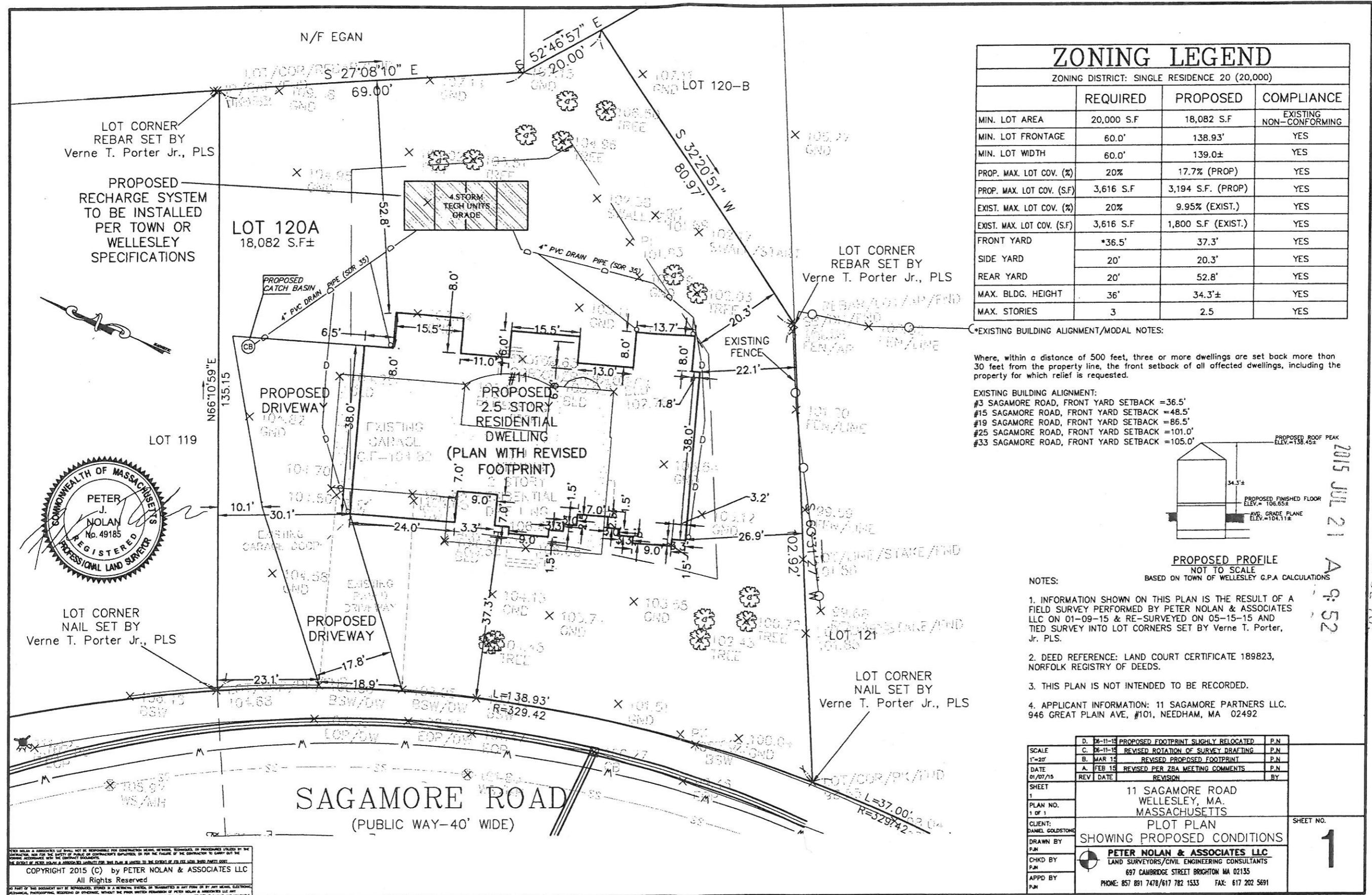
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

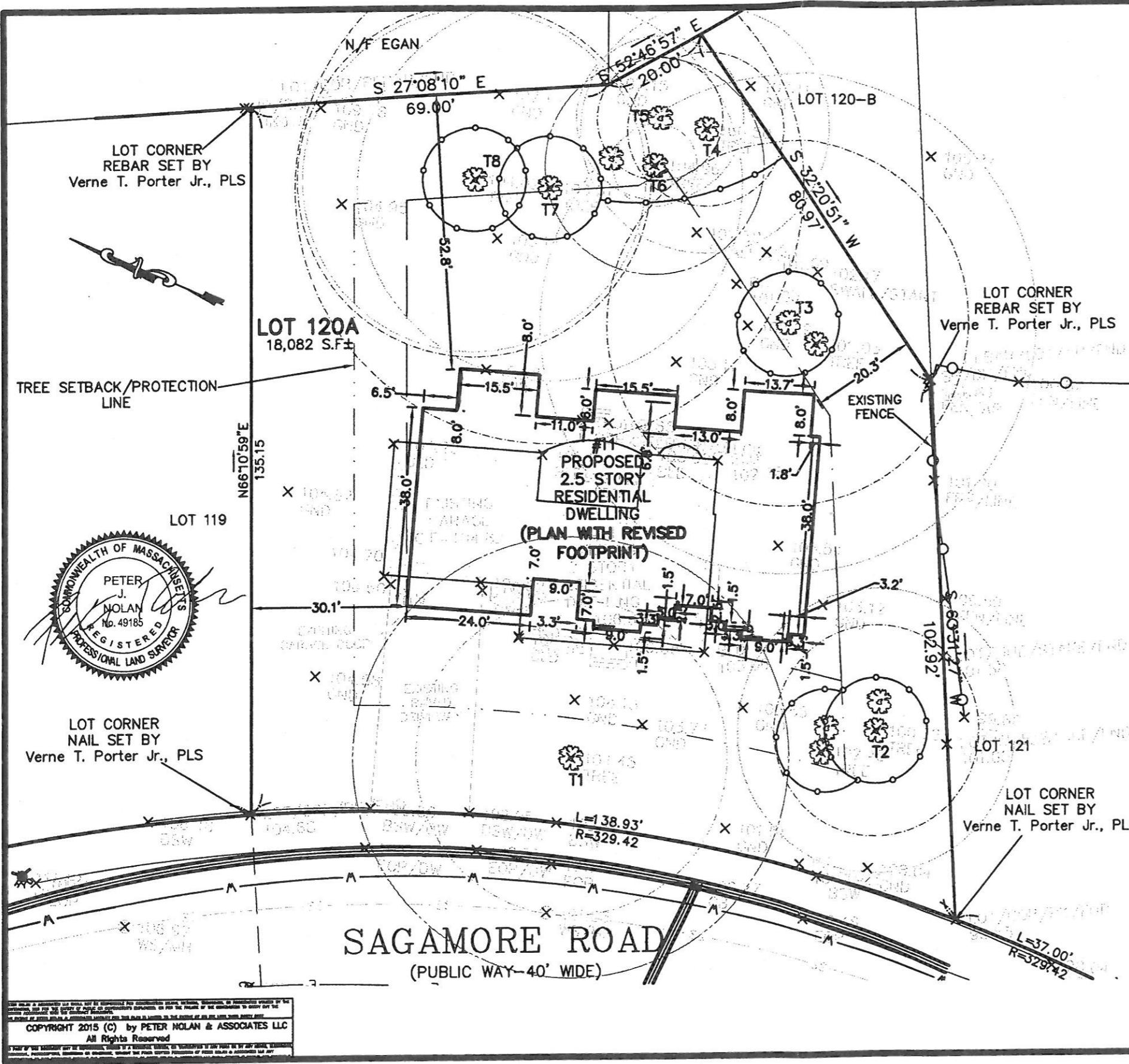

J. Randolph Becker, Acting Chairman


Robert W. Levy


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm





TREE LIST

T1: L1-28", L2-23" *Acer rubrum* (Red Maple) 65' Height

T2: 18" *Acer rubrum* (Red Maple) 60' Height

T3: 32" *Quercus rubra* (Red Oak) 70' Height

T4: 16" *Fraxinus americana* (American White Ash) 60' Height

T5: 11" *Acer platanoides* (Norway Maple) 40' Height

T6: 14" *Fraxinus americana* (American White Ash) 55' Height

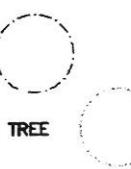
T7: 25" *Quercus rubra* (Red Oak) 60' Height

T8: 22" *Quercus rubra* (Red Oak) 65' Height

PLEASE SEE ACCOMPANYING TREE REPORT BY KRAY SMALL
MASSACHUSETTS CERTIFIED ARBORIST, FOR SPECIFIC INFORMATION
ON EACH TREE. (HEIGHT, HEALTH, ETC.)

KEYS

DRIP LINE OF PROTECTED TREE



Critical Root Zone of Protected Tree



TREE PROTECTION FENCE



Critical Root Zone of Tree to be Removed

NOTES.

1. INFORMATION SHOWN ON THIS PLAN IS THE RESULT OF A FIELD SURVEY PERFORMED BY PETER NOLAN & ASSOCIATES LLC ON 01-09-15 & RE-SURVEYED ON 05-15-15 AND TIED SURVEY INTO LOT CORNERS SET BY Verne T. Porter, Jr. PLS.
2. DEED REFERENCE: LAND COURT CERTIFICATE 189823, NORFOLK REGISTRY OF DEEDS.
3. THIS PLAN IS NOT INTENDED TO BE RECORDED.
4. APPLICANT INFORMATION: 11 SAGAMORE PARTNERS LLC, 946 GREAT PLAIN AVE #101, NEEDHAM, MA 02492

SCALE 1"=50'			
DATE 07/02/16	REV	DATE	REVISION
SHEET 1			
PLAN NO. 1 of 1	11 SAGAMORE ROAD WELLESLEY, MA. MASSACHUSETTS		
CLIENT: DANIEL GOLDSTEIN	TREE PROTECTION PLAN		
DRAWN BY P.M.	PETER MOLAN & ASSOCIATES LLC LAND SURVEYORS/CIVIL ENGINEERING CONSULTANTS 607 CHAMBRIDGE STREET BRIGHTON MA 02135 PHONE: 617 891 7470/617 762 1533 FAX: 617 222 5004		
CHCKD BY P.M.			
APFD BY P.M.			
SHEET NO. 1			