



## ZONING BOARD OF APPEALS

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2017 SEP 20 P 2:21

ZBA 2021-72  
 Petition of Blar Vik LLC  
 34 Bay View Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, September 2, 2021 at 7:30 pm, on the petition of Blar Vik LLC requesting a Special Permit/Finding pursuant to the provisions of Section 14E, Section 17 and Section 25 of the Zoning Bylaw that demolition and reconstruction of a two story structure with less than required right side yard setbacks, at 34 Bay View Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On July 27, 2021, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

WITHDRAWN WITHOUT PREJUDICE

Present in behalf of the petition were David Himmelberger, Esq., and Frank Lutano, representing Blar Vik LLC. Mr. Himmelberger said that the request is for a special permit to raze and reconstruct a pre-existing nonconforming dwelling that was built in 1941. He said that the house is in significant disrepair. He said that the existing house, like many houses on the street, was built with a right side setback of 10.3 feet. He said that the proposed home will have a right side setback of 10.5 feet and will be conforming in all other aspects. He said that the property drops off to the rear. He said that the house will have a building height of 31.9 feet and TLAG just under the trigger for Large House Review, which is 3,600 square feet. He said that the house is located in a Water Supply Protection District, so two underground infiltration systems are proposed to take all of the roof runoff. He said that existing lot coverage of 1,257 square feet or 11 percent, will increase to 2,032 square feet or 17.8 percent. He said that they believe that the requested relief will not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure. He said that his client spoke with the neighbors and they were supportive of this project. He said that the request is for favorable approval of the project.

Mr. Adams said that the lot size and width is compliant. He said that although the lot does drop off towards the pond, he questioned why no effort was made to provide a compliant solution. Mr. Himmelberger said that it is one of the more narrow lots at 70 feet. He said that plan will allow for a front facing garage because the lot cannot accommodate the setbacks for a side facing garage. He said that all of the homes in the neighborhood surrounding the property are at 34 feet. He said that 28, 30, 36 and 38 Bay View Road have 10 foot side yard setbacks off their garages. He said that, based on that, they felt that it was not an extraordinary request to seek a special permit to raze and rebuild in place. Mr. Adams

said that the Zoning Bylaw was established to try to make it possible for people to comply. He said that there is room at the back of the house to add on, possibly with another story.

Mr. Himmelberger said that a conforming structure would only have a 30 foot exposure across the front, which is quite narrow. He said that this lot drops off significantly. He said that the Applicant made adjustments with retaining walls at the rear. He said that the Applicant is not seeking to make a new nonconformity but to rebuild and not make it worse, which has been approved by the Board with some regularity.

Mr. Levy said that the TLAG threshold for the district is 3,600 square feet and the proposed TLAG is 3,599.1 square feet. He asked about the TLAG of the existing structure. Mr. Becker said that the TLA is 1,554 square feet plus the garage.

Mr. Becker read the Planning Board recommendation.

Mr. Himmelberger said that there is a pre-existing nonconforming structure with an attached garage in the right side yard setback. He said that they are seeking to demolish and rebuild the structure pursuant to a special permit. He said that the Board has granted similar relief in past situations. He said that it is 10.5 to the property line, 10 feet to the neighbor's garage and another 10 feet to the neighbor's house. He said that the setback that they are seeking to retain is mirrored by the setback next door at 36 Bay View Road. He said that most of the homes with 10 foot setbacks are garage to garage.

Mr. Levy said that the owner at 36 Bay View Road submitted a letter of opposition.

Mr. Adams said that his experience has been that is a long standing tradition of the Board to allow complete demolition of a nonconforming structure and allow it to be rebuilt without requiring it to be fully compliant. He said that when it is possible to do so, it is desirable to try to do that. He said that it seems to him that it would be possible to do that, notwithstanding the proposal for a front facing garage.

Mr. Himmelberger said that the issue concerns having a two car garage that presents better. He said that it is more balanced 20/20. He said that they do not want the garage to dominate the house. He said that Case Law allows you to worsen a nonconformity but they are seeking to maintain it.

Mr. Adams asked if the house is unoccupied. Mr. Himmelberger said that it was occupied up until a year ago.

Mr. Becker further read the Planning Board recommendation.

Mr. Levy said that with teardowns, the Board has required that a substantial majority of the new structure comply with setbacks when it can be done. He said that it is a tough lot.

Mr. Himmelberger asked if the Board would consider rebuilding as proposed on the footprint, and allow the petition to be continued to give the Applicant time to revise the plans to bring it into conformity with the Planning Board's suggestion of a more cottagey feel.

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Mr. Becker discussed a previous case where the request was to increase an existing nonconforming side yard setback. Mr. Himmelberger said that they were seeking to expand the two car garage into the left side yard setback. He said that although there was some adjustment, the Board allowed the worsening of the left side yard setback. He said that the Petitioner came back with a setback that was not as bad as had been initially proposed.

Mr. Becker asked if any member of the public wished to speak to the petition.

Erin Reilly, 28 Bay View Road, said that there is a big difference between a one story garage that is 20 feet long going up to the side yard setback and a two story building that comes all the way up to the corner. She submitted sketches of the proposed structure overlaid on photographs of the existing house at 10 and 20 foot setbacks from her house. She said that there are compromises that could be made to the design that would still allow for garages for two cars.

Sharon Beckman, 30 Bay View Road, said that she is an abutter and never spoke with anyone about the plan. She said that the abutters on the other side are not happy with the plan. She asked which neighbors had been spoken to.

Mr. Levy discussed allowing the petition to be withdrawn without prejudice. He discussed waiving the application fee but not the publication fee.

Mr. Himmelberger requested that the petition be allowed to be withdraw without prejudice.

Mr. Levy encouraged the Petitioner to speak with the neighbors.

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to allow the petition to be withdrawn without prejudice.



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34 BAY VIEW ROAD  
WELLESLEY  
MASSACHUSETTS

### *PROPOSED PLAN*

### REVISION BLOCK

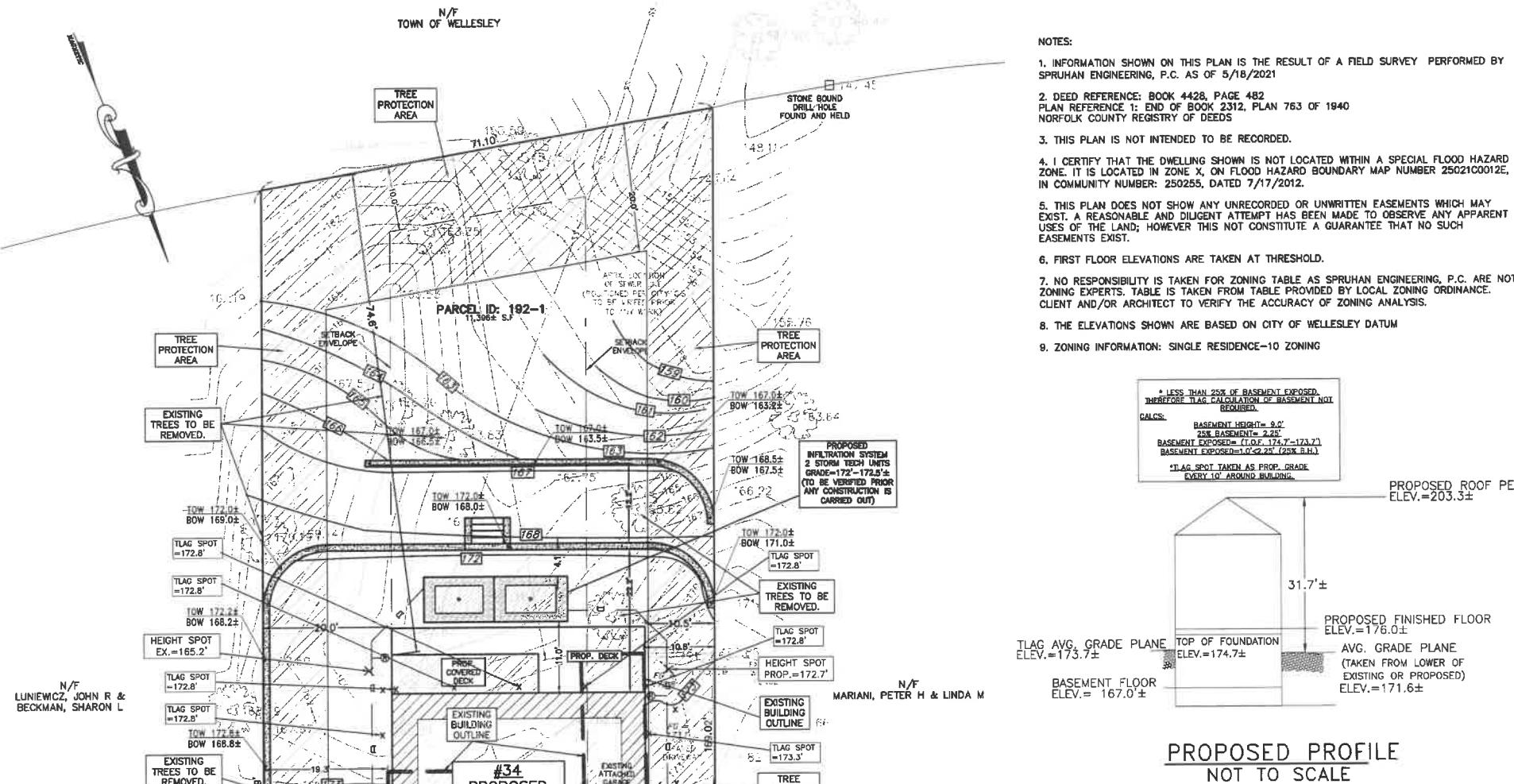
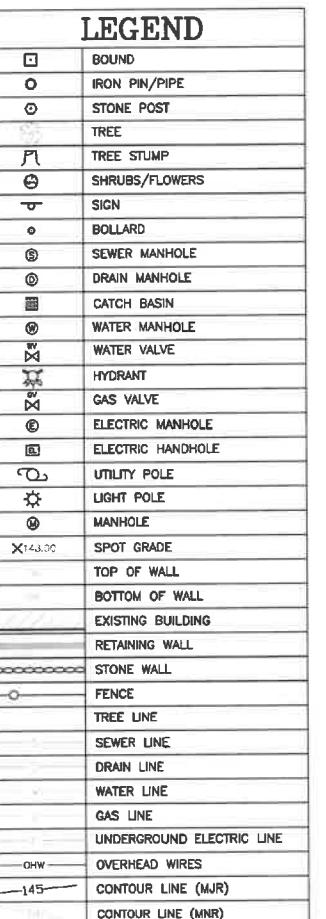
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## SITE PLAN

SHEET 1 OF 1



## LEGEND



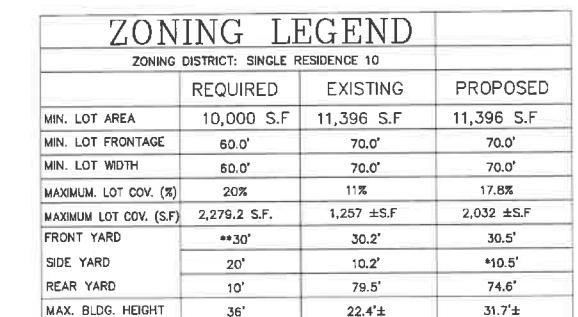
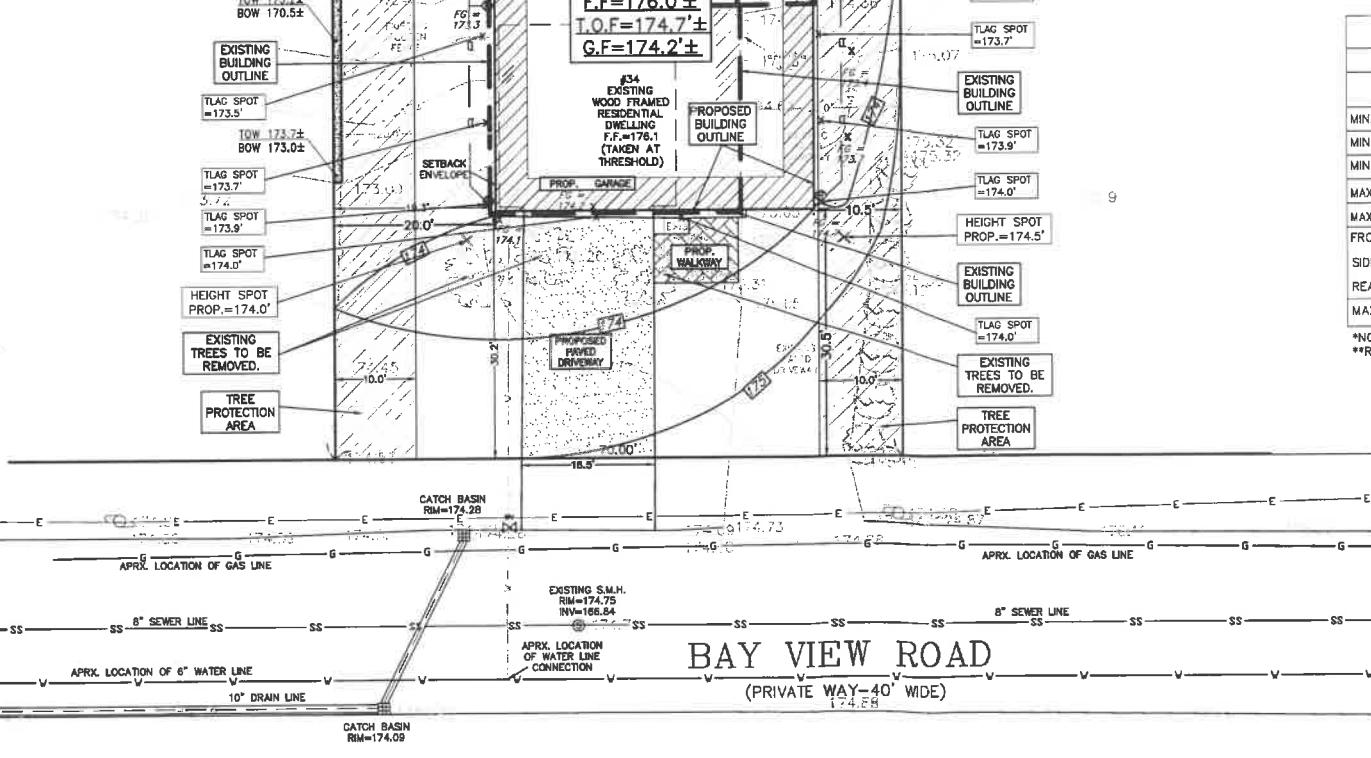
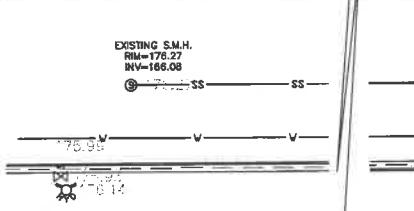
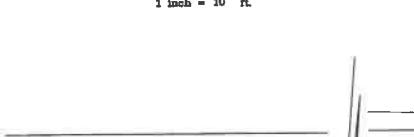
PROP. BUILDING

EX. BUILDING

#### GRAPHIC SCALE



( IN FEET )



\*NONCONFORMING (ZBA APPROVAL REQUIRED)  
\*\*REFER TO 500' RULE LETTER.