

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482

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ZBA 2021-87  
Petition of Blar Vik LLC  
34 Bay View Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, November 4, 2021 at 7:30 pm, in the Juliani Meeting Room, 525 Washington Street, Wellesley, 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 October 4, 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.

On January 24, 2022, the request was amended to: Petition of Blar Vik LLC, requesting a Variance and/or a Special Permit Finding pursuant to the provisions of Section 14E, Section 17, Section 19, Section 24 and Section 25 of the Zoning Bylaw that demolition of an existing nonconforming structure with less than required left side yard and right side yard setbacks, and construction of a new two story structure with less than required left side yard and 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.

**November 4, 2021**

Present at the public hearing were David Himmelberger, Esq., and Frank Utano, Blar Vik LLC, the Petitioner.

Mr. Himmelberger said that the request is for a special permit to raze and reconstruct a single family home with less than required right side yard setbacks. He said that the home will be conforming in all other aspects. He said that proposed TLAG will be less than 3,600 square feet and compliant with the threshold for the district. He said that because the home is located in a Water Supply Protection District (WSPD), 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 this matter was previously before the Board with a different design that the Board and some of the neighbors felt was out of character with the neighborhood. He said that the Applicant redesigned the house on the same footprint but with a more traditional look that is consistent with the neighborhood on Bay View Road.

Mr. Himmelberger said that, in response to the neighbor on the right side's comments, the Applicant put together a landscape plan that includes 8 to 10 foot Eastern Red Cedar trees along the right side property line to provide some screening. He said that there is a 10 foot setback to the garage on the neighbor's property.

A Board member discussed concerns about squeezing a lot of house onto a very small lot. He said that the neighborhood has undergone significant changes but there are still a number of smaller homes. Mr. Himmelberger said that it is a long, narrow lot with 70 feet of frontage. He said that more than half of the homes in the neighborhood are contemporary in size.

A Board member discussed comments received from a neighbor concerning the scale of the double width door on the two car garage. Mr. Himmelberger said that the design can be changed to carriage style where the width is the same but the scale is broken up by the appearance of two carriage doors.

Linda Mariani, 36 Bay View Road, said that she is eager to see a new house built at 34 Bay View Road because the existing Cape is in such disrepair. She discussed concerns about placement of the home on the lot, privacy issues with windows, height of the proposed structure in close proximity, and noise bouncing off of the structure. She said that she discussed conforming setbacks with Mr. Utano several times. She said that the property was surveyed prior to the sale and was purchased knowing the size of the lot. She said that a conforming house could be designed. She said that she has lived at 36 Bay View Road for 46 years and has faith that the Town will abide by the guidelines that it set to protect residents in the neighborhoods. She said that she submitted a letter to the Board voicing her concerns and did not feel that the Board has addressed them.

A Board member said that there has been no attempt to widen the space on the right side. He said that the garage, even with two doors, jumps out at you. He asked about setting it back a couple of feet so that it did not give the impression of being so large. Mr. Himmelberger said that the garage is forward but the house is recessed.

Erin Reilly, 28 Bay View Road, said that she spoke at the last hearing and spoke briefly with Mr. Utano when he came around the neighborhood. She said that the neighborhood on Stonecleve Road was summer cottages but the homes on Bay View Road were built in 1940 as small family homes. She said that there have been a lot of teardowns, including her house 15 years ago. She said that all of the other homes, excluding hers, have 100 feet of frontage and should not be compared to this one. She said that some relief may be in order but saying that the existing and proposed setback will be ten feet is misleading because the nonconforming structure is a 20 foot long one-story garage and what is proposed is much longer and higher. She said that she is an architect and it seems to her that there has been no attempt to consider this lot in this neighborhood with this topography to try to come up with a solution. She said what is proposed does not seem to pertain to Wellesley's Zoning Bylaw and this special neighborhood with the way the lots and the trees are. She said that the one tree in front of the house that will have to be taken down has a huge canopy. She said that by ignoring the topography in the back yard,

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a lot more trees will have to come down unnecessarily. She said that if an architect worked with the lot, they could save some of the trees without disturbing the existing drainage that has evolved over several decades. She asked that the Petitioner look at the property and try to design a house that is fitting for the lot.

John Luniewicz, 30 Bay View Road, asked where water in the drywells will go when they fill up. Mr. Himmelberger said that drywells will collect roof runoff that will leach into the ground and gravity will continue to take it down toward the pond. Mr. Luniewicz said that he was concerned that it will create a swampy area. He asked about the effect on the trail. He asked about the size of the chambers. Mr. Utano said that the chambers are designed such that, even if they fill, they will drain at a slower pace.

Pat Kidik, 36 Bay View Road, said that many neighbors have small narrow lots. She questioned whether granting a special permit or a variance will set precedence for the current residents to build bigger on their smaller lots. She asked that the Board consider the impact to the neighbors. She said that none of the neighbors have seen the landscaping plan. She said that to have this house only 10 feet away does not work in the neighborhood.

A Board member discussed concerns about the loss of trees and privacy issues for the neighbor to the right. He said that some large trees are proposed but he would still like to see a compromise on the right side with an additional five feet of side yard.

A Board member said that he would rather see the design of the building start with a premise that does not require a special permit from the Zoning Board, taking into account the width of the lot and the topography. Mr. Himmelberger said that they cannot put a side facing garage on a 70 foot wide lot. He discussed terracing behind the house.

The Chairman said that a request for a variance may provide more flexibility to put a house on the lot.

Mr. Himmelberger asked that the petition be continued so that the Petitioner can either come back with further revisions or submit a new request for a variance. The Board voted unanimously to continue the petition to January 6, 2022.

### January 6, 2022

Mr. Himmelberger asked that the request be amended to a variance, which will require proper notice. He asked that the petition be continued to March 3, 2022. The Board voted unanimously to continue the petition to March 3, 2022.

### March 3, 2022

Mr. Himmelberger said that when he re-examined the original site plan, he saw that the existing left side yard setback is 19.3 feet and is nonconforming. He said that, under the Bellalta case, the nonconformity on the left side can be worsened from 19.3 feet to 15.2 feet. He said that the right side yard setback will be improved from 10.2 feet to 15.3 feet. He said that they do not need a variance but do need a special permit/finding allow the house to be centered on the lot. He said that TLAG will be just under 3,600 square feet, which is consistent with homes at 20 Bay View Road at 4,082 square feet and at 28 Bay View Road at 3,478 square feet. He said that it will be larger than the adjacent homes but improving the

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setbacks and centering the house will help to minimize the impacts. He said that the redesigned house is attractive and fits with the neighborhood. A Board member said that the Bellalta case does apply and this is a good solution.

A Board member said that no second floor plan was submitted. He asked about the function of the space behind the blank wall on the left side elevation. Mr. Utano said that there is a bedroom on the back left side. He said that can put two transom windows there that are consistent with the right side elevation.

The Chairman confirmed that Elevation Drawing A2, dated 6/20/2021 is no longer valid. Mr. Himmelberger said that it was modified by pulling back the right side.

Peter Mariani, 36 Bay View Road, said that this is the fourth time that the neighbors on Bay View Road have been before the Board to oppose the plans for rebuilding the house at 34 Bay View Road. He said that while none of the neighbors are opposed to the house being torn down because of its downtrodden, dilapidated and unsafe status, they are opposed to the currently proposed plans due to the total disregard for the rules of the town with respect to 20 foot setbacks on the left and right sides of the property. He said that the Developer did adhere to the 3,600 TLAG Rule by having a house at 3,499 square feet but the neighbors on both sides of the house and directly across the street are concerned about the size of the house. He discussed concerns regarding proximity, fire safety, privacy, views of Morses Pond and the Aqueduct Path. He said that a precedent was set several years ago for 20 foot setbacks in the neighborhood when a Developer was told to change his plans to meet the requirements. He asked that the same be done for this project.

The Chairman said that Section 17 of the Zoning Bylaw applies here because there are existing left and right side nonconformities. He said that if the Developer proposes something that does not make the nonconformity worse, he is entitled to a permit. He said that if he does make it worse, he has to present data to the Board that shows that it will not be substantially more detrimental to the neighborhood than the existing structure.

Sharon Beckman, 30 Bay View Road, said that she welcomes new neighbors and a new house to be built on the lot. She said that the house is decrepit and probably in danger of falling down. She said that the Board members are concerned with architecture but the neighbors about concerned about compliance with zoning laws. She said that the neighbors do not understand the need to build a house that is so large that it cannot comply with the zoning rules. She said that the Attorney mentioned that there is another large house on the street that is approximately the same size. She said that house is on a larger lot with more frontage and is compliant with the Town's Zoning Bylaws. She said that the proposed house would not be typical for that part of the street where there are modest older houses on smaller lots. She said that every lot has the slope behind it and many of the lots have smaller frontage. She said that the houses were built in compliance with the Zoning laws. She said that there are some noncompliant one car garages with no windows but that is different from being next to a large towering house. She said that Bellalta was a different type of case because it involved a small project that neighbors supported. She said that in this neighborhood of smaller homes, the neighbors are saying that they welcome new construction but it should comply with the Zoning law. She said that approval of noncompliance should be the exception. She said that the Applicant has not shown that there is a big need for a large house on that lot. She said that limitations on the property were probably factored into the purchase price. She said that if the Board allows the reduction in the side setbacks, the same rules should apply to every other lot. She said that will

bring the houses even closer together. She said that it will be a dramatic change to neighborhood if the zoning laws are not applied and will be substantially detrimental. She said that if the nonconformity is a few inches, it should be considered to be de minimis and should not allow for extension of an additional five feet. She said that she submitted a letter.

Patricia Kidik, 33 Bay View Road, said that she has lived directly across from the proposed house for 38 years. She said that there is no excuse to overbuild on a small lot if the reason to do it is to just to provide more living space. She said that the Bay View neighborhood is extremely sensitive to the Zoning laws. She said that they have the sports center and they daily deal with zoning laws that were not adhered to. She said that they have noise, rodents, lights and lost forest. She said that she may lose her view to Morses Pond.

Erin Reilly, 28 Bay View Road, said that the neighbors around the house are heartfelt and it is not a nimby thing because all three of the neighbors would probably benefit from the Board granting a variance because their lots would become more valuable. She said that the houses are priced in accordance with the restrictions. She said that the neighbors prefer the character of the neighborhood. She said that the Developer should have hired an architect to design for this location. She said that the Petition is asking for relief to build a big house that impacts the neighbors and will be more detrimental to the neighborhood. She said that the proposed house does not fulfil the requirements to grant a special permit.

Ms. Beckman asked about the survey that was the basis for a finding of the nonconformity at 34 Bay View Road. Mr. Himmelberger said that a stamped plan, dated 5/19/2021, shows the existing setbacks.

The Chairman said that Section 17 of the Zoning Bylaws is substantially the same as Chapter 40A, Section 6, second exception, Massachusetts General Laws. He said that in this case the house was built in 1941 and after 1941 the town changed the setbacks, which meant that the house was no longer in compliance with the bylaw. He said that it does not mean that the owner of the property has lost all value in his property and cannot do anything. He said that Section 17 and Chapter 40A, Section 6 describe what can be done with those properties. He said that the decision that the Board renders comes from the Zoning Bylaw and the case law that underlies it. He said that the Board tries to balance the Town's needs versus the property rights, in accordance with the bylaw.

The Chairman said that the house meets all of the dimensional requirements of the Zoning Bylaw except for the two that were discussed. He said that consideration of substantial detriment to the neighborhood is not just a question of those two things but of a lot of different things such as size and style of the house. He said that the design was changed based on guidance from the Board in consideration of the neighbors' concerns. He said that he looked at the size of the house in comparison to other houses in the neighborhood and compared the 1941 house to the 2022 house. He said that the Planning Board said that it would not be more detrimental. He said that the neighborhood is not simply the houses on Bay View Road but also other houses in Wellesley where the Board sees the same thing happening. He said that this is not done without a lot of thought but is done within the bylaw. He said that none of the problems that the neighbors brought up really spoke to the issues.

Mr. Himmelberger said that the setbacks will remain at the same quantity of setback, which goes to it not being substantially more detrimental. He said that under Bellalta they could have sought to go further into the setback but they did not.

Statement of Facts

The subject property is located at 34 Bay View Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, with a minimum right side yard setback of 10.5 feet where 20 feet is required.

The Petitioner is 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, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Letter to Zoning Board of Appeals, dated 9/26/21, from David J. Himmelberger, Esq., Letter to Zoning Board of Appeals, dated 1/24/22, from David J. Himmelberger, Esq., Existing Conditions, dated 5/19/21 Site Plan, dated, 6/23/21, revised 1/24/22 (Landscape Plan Only, Site Plan, dated 6/23/21, revised 12/30/21 (Revised Footprint Location), stamped by Christopher C. Charlton, Professional Land Surveyor, Building Alignment, dated 7/13/21, stamped by Edmond T. Spruhan, P.E., Floor Plans and Elevation Drawings, dated 6/30/21, revised 10/19/21 & 1/13/22, prepared by RAV & Assoc, Inc., TLAG Affidavit, and photographs were submitted.

On October 21, 2021 and February 24, 2022, the Planning Board reviewed the petition and recommended that a special permit be approved.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

The Board found that the Design and Operation Standards in Part F are adequately satisfied and not otherwise prohibited in Part D.1, of Section 14E of the Zoning Bylaw in a Water Supply Protection District.

It is the opinion of this Authority that demolition and reconstruction of a two story structure with less than required right side yard setbacks will result in the intensification of an existing nonconformity, will not result in additional nonconformities, and will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition and reconstruction of a two story structure with less than required right side yard setbacks, subject to the following condition:

- Two transom windows shall be added on the left side on the second floor.

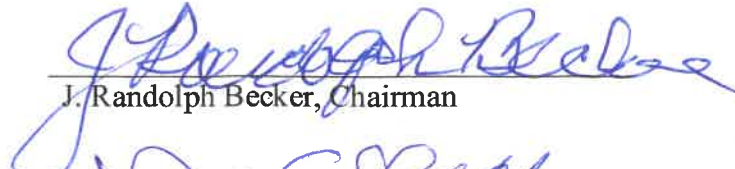
The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed constructions plans.

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

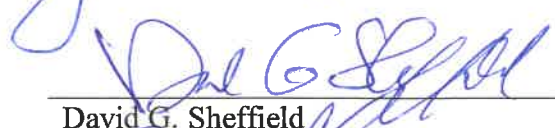
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Petition of Blar Vik LLC  
34 Bay View Road

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, Chairman



David G. Sheffield



Richard L. Seegel

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ZBA 2021-87  
Applicant Blar Vik LLC  
Address 34 Bay View Road

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

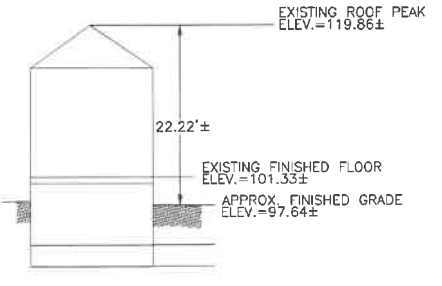
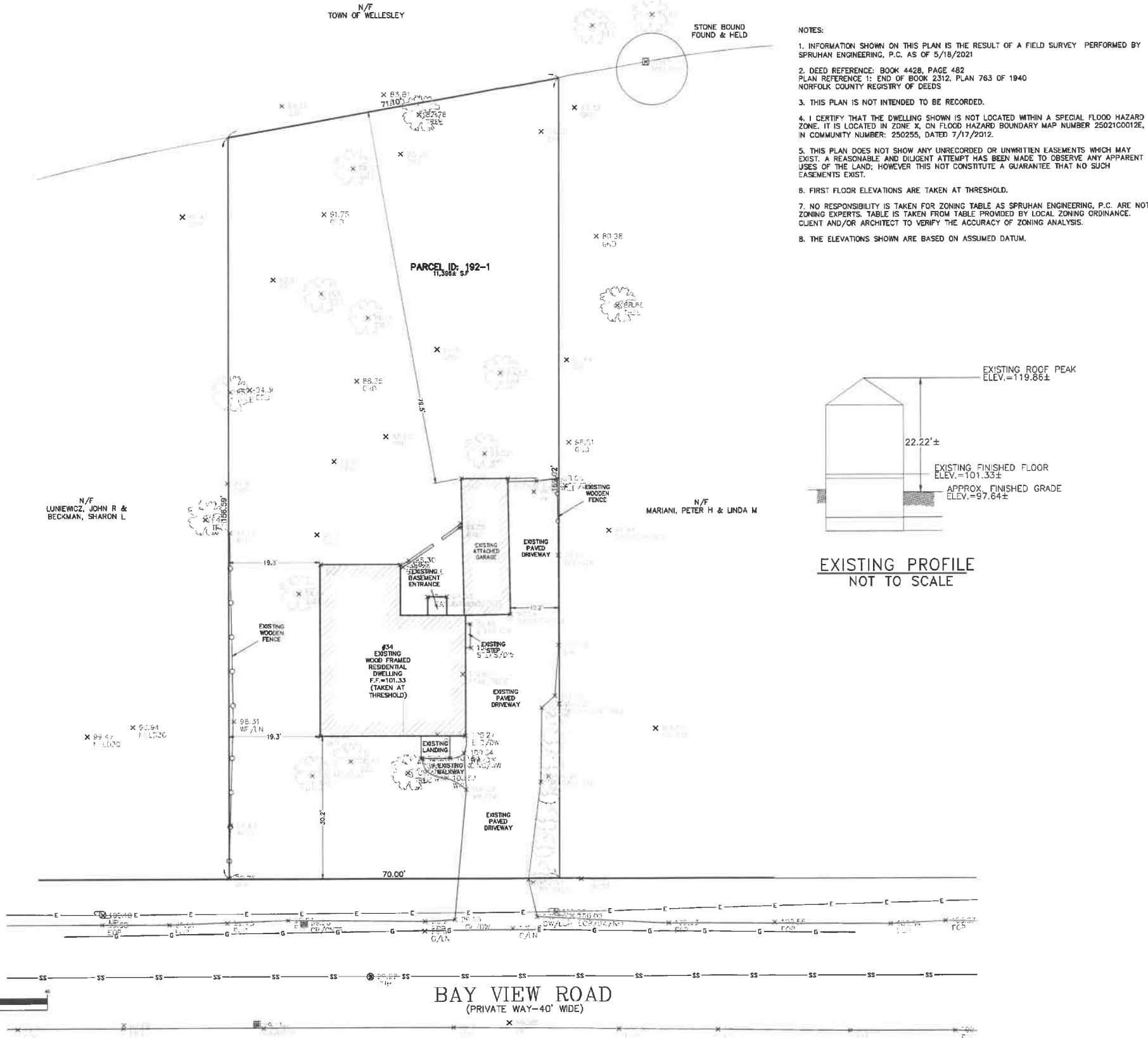
Date:

Attest:

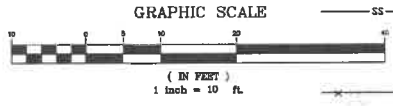
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Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm

LEGEND	
	BOUND
	IRON PIN/PIPE
	STONE POST
	TREE
	TREE STUMP
	SHRUBS/FLOWERS
	SIGN
	BOLLARD
	SEWER MANHOLE
	DRAIN MANHOLE
	CATCH BASIN
	WATER MANHOLE
	WATER VALVE
	HYDRANT
	GAS VALVE
	ELECTRIC MANHOLE
	ELECTRIC HANDHOLE
	UTILITY POLE
	LIGHT POLE
	MANHOLE
	SPOT GRADE
	TOP OF WALL
	BOTTOM OF WALL
	EXISTING BUILDING
	RETAINING WALL
	STONE WALL
	FENCE
	TREE LINE
	SEWER LINE
	DRAIN LINE
	WATER LINE
	GAS LINE
	UNDERGROUND ELECTRIC LINE
	OVERHEAD WIRES
	CONTOUR LINE (MJR)
	CONTOUR LINE (MNR)



- NOTES:**
- INFORMATION SHOWN ON THIS PLAN IS THE RESULT OF A FIELD SURVEY PERFORMED BY SPRUHAN ENGINEERING, P.C. AS OF 5/18/2021
  - DEED REFERENCE: BOOK 4428, PAGE 482  
PLAN REFERENCE 1: END OF BOOK 2312, PLAN 763 OF 1940  
NORFOLK COUNTY REGISTRY OF DEEDS
  - THIS PLAN IS NOT INTENDED TO BE RECORDED.
  - I CERTIFY THAT THE DWELLING SHOWN IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD ZONE. IT IS LOCATED IN ZONE X, ON FLOOD HAZARD BOUNDARY MAP NUMBER 25021C0012E, IN COMMUNITY NUMBER: 250255, DATED 7/17/2012.
  - THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT USES OF THE LAND; HOWEVER THIS NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
  - FIRST FLOOR ELEVATIONS ARE TAKEN AT THRESHOLD.
  - NO RESPONSIBILITY IS TAKEN FOR ZONING TABLE AS SPRUHAN ENGINEERING, P.C. ARE NOT ZONING EXPERTS. TABLE IS TAKEN FROM TABLE PROVIDED BY LOCAL ZONING ORDINANCE. CLIENT AND/OR ARCHITECT TO VERIFY THE ACCURACY OF ZONING ANALYSIS.
  - THE ELEVATIONS SHOWN ARE BASED ON ASSUMED DATUM.



BAY VIEW ROAD  
(PRIVATE WAY-40' WIDE)

**S**  
**Spruhan**  
Engineering, P.C.  
40 JEWETT ST, SUITE 11  
NEWTON, MA 02459  
Tel: 617-416-0722  
Email: sspruhan@gmail.com

34 BAY VIEW ROAD  
WELLESLEY  
MASSACHUSETTS

SURVEY PLAN

REVISION BLOCK

DESCRIPTION	DATE

All legal rights including, but not limited to, copyright and design patent rights, in the designs, arrangements and plans shown on this document are the property of Spruhan Engineering, P.C. They may not be used or reused in whole or in part, except in connection with this project, without the prior written consent of Spruhan Engineering, P.C. Written dimensions on these drawings shall have precedence over scaled dimensions. Contractors shall verify and be responsible for all dimensions and conditions on this project, and Spruhan Engineering, P.C., must be notified of any variation from the dimensions and conditions shown by these drawings.



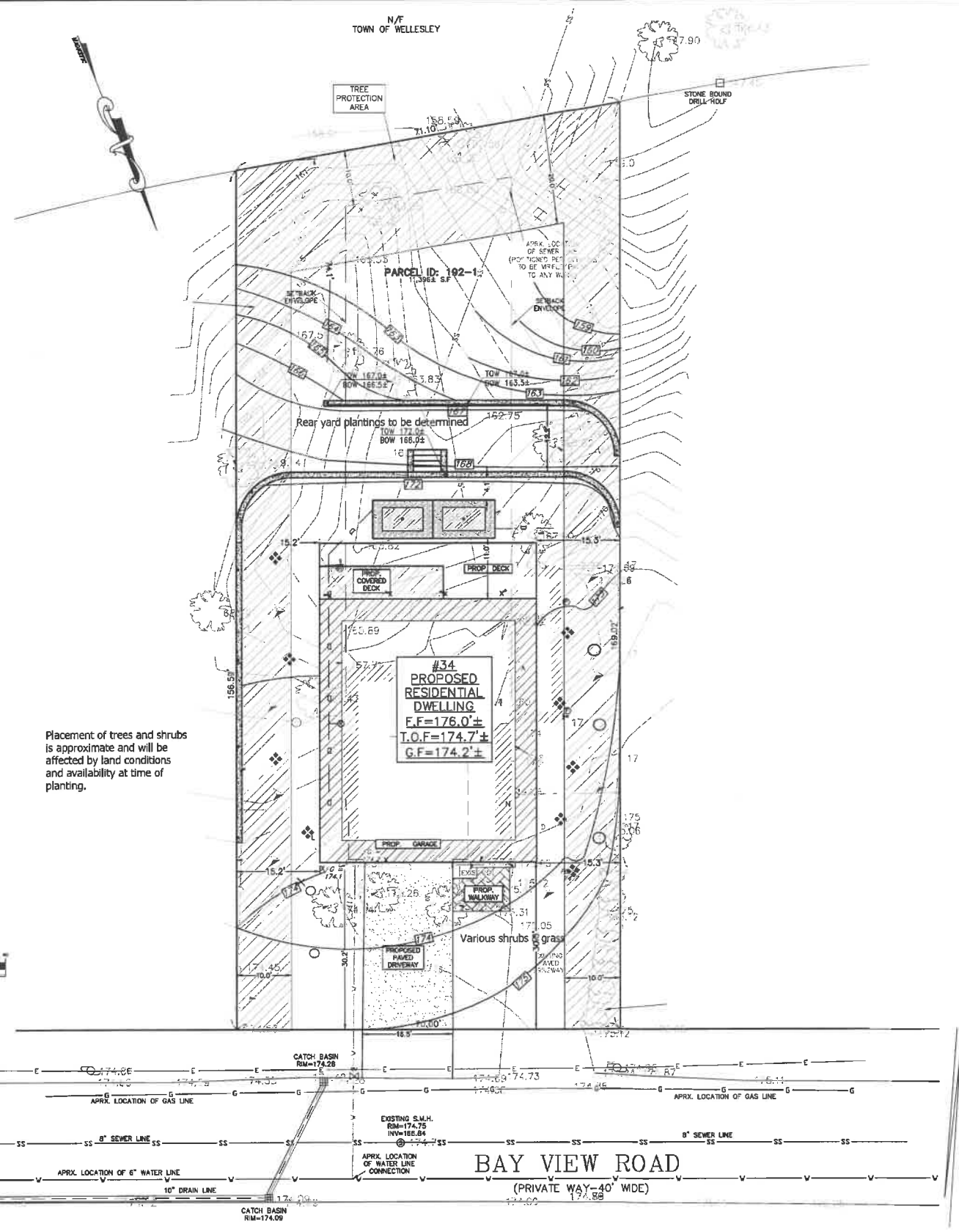
DATE: 5/19/2021  
DRAWN BY: K.K.  
CHECKED BY: E.S.  
APPROVED BY: C.C.

EXISTING  
CONDITIONS

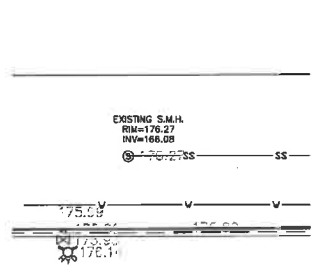
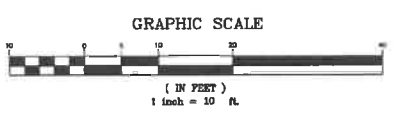


**LEGEND**

	8-10' Eastern Red Cedar or Similar
	Winterberry or similar Holly
	Oak Leaf Hydrangea



Placement of trees and shrubs is approximate and will be affected by land conditions and availability at time of planting.



**34 BAY VIEW ROAD**  
**WELLESLEY**  
**MASSACHUSETTS**

PROPOSED PLAN

REVISION BLOCK

DESCRIPTION	DATE
REVISED FOOTPRINT LOCATION PER ZONING COMMENTS	2/30/2021
LANDSCAPE PLAN ONLY	1-24-2022

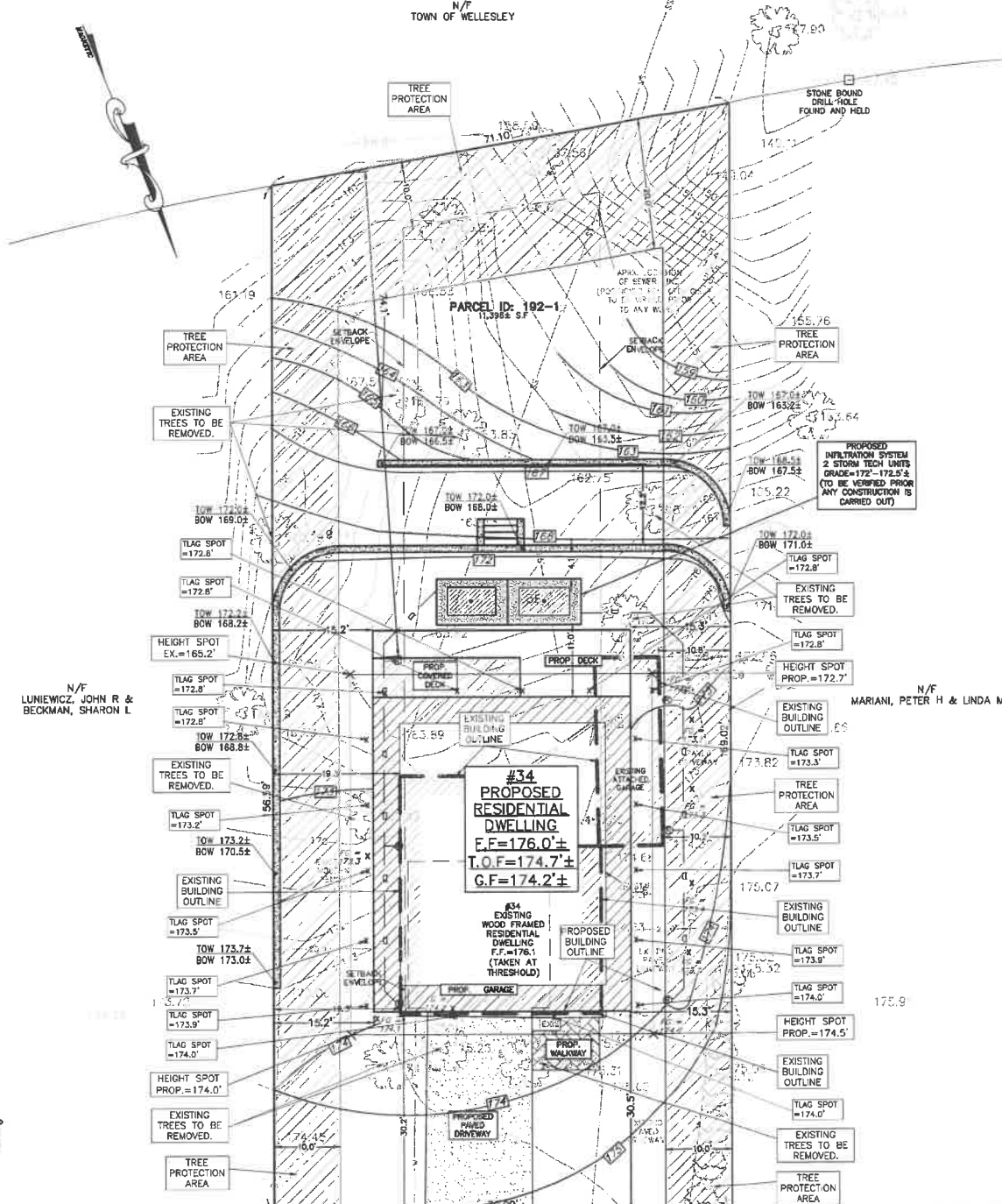
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DATE:	6/23/2021
DRAWN BY:	H.F.
CHECKED BY:	E.S.
APPROVED BY:	C.C.

SITE PLAN

SHEET 1 OF 1

LEGEND	
	BOUND
	IRON PIN/PIPE
	STONE POST
	TREE
	TREE STUMP
	SHRUBS/FLOWERS
	SIGN
	BOLLARD
	SEWER MANHOLE
	DRAIN MANHOLE
	CATCH BASIN
	WATER MANHOLE
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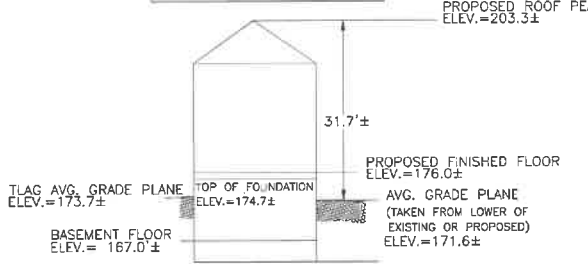


N/F  
LUNIEWICZ, JOHN R &  
BECKMAN, SHARON L

N/F  
MARIANI, PETER H & LINDA M

- NOTES:
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  - THE ELEVATIONS SHOWN ARE BASED ON CITY OF WELLESLEY DATUM
  - ZONING INFORMATION: SINGLE RESIDENCE-10 ZONING

\*IF LESS THAN 25% OF BASEMENT EXPOSED, THEREFORE FLAG CALCULATION OF BASEMENT NOT REQUIRED.  
CALC:  
BASEMENT HEIGHT= 9.0'  
25% BASEMENT= 2.25'  
BASEMENT EXPOSED= FLOOR 174.7'-173.7'  
BASEMENT EXPOSED= 1.0' < 2.25' (25% B.S.B.)  
\*FLAG SPOT TAKEN AS PROP. GRADE  
EXIST. 10' AROUND BUILDING.

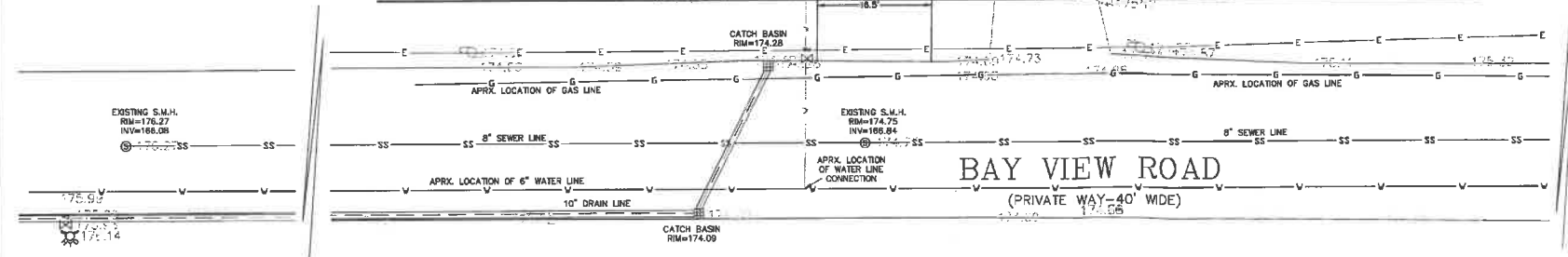
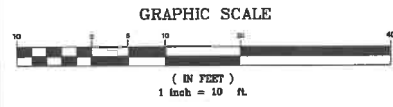
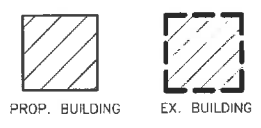


PROPOSED PROFILE  
NOT TO SCALE

ZONING LEGEND			
ZONING DISTRICT: SINGLE RESIDENCE 10			
	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA	10,000 S.F.	11,396 S.F.	11,396 S.F.
MIN. LOT FRONTAGE	60.0'	70.0'	70.0'
MIN. LOT WIDTH	60.0'	70.0'	70.0'
MAXIMUM LOT COV. (%)	20%	11%	17.8%
MAXIMUM LOT COV. (S.F.)	2,279.2 S.F.	1,257 ±S.F.	2,032 ±S.F.
FRONT YARD	**30'	30.2'	30.5'
SIDE YARD	20'	10.2'	**15.2'
REAR YARD	10'	79.5'	74.1'
MAX. BLDG. HEIGHT	36'	22.4'±	31.7'±

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

LEGEND



**Spruhan  
Engineering, P.C.**  
80 JEWETT ST., SUITE 11  
NEWTON, MA 02458  
Tel: 617-816-0722  
Email: spruhan@ymail.com

34 BAY VIEW ROAD  
WELLESLEY  
MASSACHUSETTS

PROPOSED PLAN

REVISION BLOCK

DESCRIPTION	DATE
REVISED FOOTPRINT LOCATION PER ZONING COMMENTS	2/30/2021

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DATE: 6/23/2021  
DRAWN BY: H.F.  
CHECKED BY: E.S.  
APPROVED BY: C.C.

SITE PLAN