

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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KENDALL P. BATES

ELLEN D. GORDON
Executive Secretary
Telephone
431-1019

WILLIAM E. POLLETTA
FRANKLIN P. PARKER
SUMNER H. BABCOCK

ZBA 87-101
Petition of John T. Hughes, Jr.
5 Bemis Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, December 17, 1987 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley on the petition of JOHN T. HUGHES, JR. of 5 BEMIS ROAD appealing the decision of the Zoning Enforcement Officer not to enforce provisions in Sections XVIA, XVII, and XXI of the Zoning Bylaw in regard to alleged violations of said sections at the property at 11 BEMIS ROAD, said property being a non-conforming structure in a Single Residence District. Said Appeal is pursuant to Section XXIII-E and Section XXIV-C 2 of the Zoning Bylaw.

On November 16, 1987, the petitioner filed the appeal with the Town Clerk and requested a hearing before this Board. Thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case was John T. Hughes, Jr., who addressed each of the sections of the appeal which he submitted. Mr. Hughes explained that prior to last September, the side yards at 11 Bemis Road consisted of lawn, which have since been paved to accomodate the parking of eight cars. A brick wall has been constructed at the front of the property and two dormer windows and an electrical panel have been added to one side of the building. Mr. Hughes felt that none of this construction should have been allowed until the Board of Appeals had made a finding under Section XVII (Non-Conforming Uses and Structures).

Mr. Hughes also felt that construction at 11 Bemis Road required Site Plan Approval under Paragraph B of Section II (Single Residence District). Under the same Section, Mr. Hughes questioned the removal of sod and loam for the paving of the driveway without granting of a Special Permit by the Zoning Board of Appeals.

Additionally, Mr. Hughes felt that a parking plan should have been required for paving in a Single Residence District which does not allow apartments, as one is required under Section XXI (Off-street Parking) for all districts which permit apartments.

Mr. Hughes felt that as he had received a written response from the Zoning Enforcement Officer, he would eliminate his appeal pertaining to Section XXIII (Enforcement and Penalties) from his petition.

Mr. Hughes presented a plot plan of the neighborhood, explaining that the lots were small and the neighborhood under strain. He also presented his own plot plans which differed in measurement from that of the Registered Land Surveyor.

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Mrs. Despina Bartlett, owner of the property at 11 Bemis Road, presented pictures of the new brick wall and railing at the front of the property. She explained that Bemis Road is 20 feet wide, and that she had attempted to make parking provision for the vehicles at 11 Bemis Road so that the cars would not have to be parked on the narrow street. While the driveways were being constructed, Mrs. Bartlett had the paving halted at the request of the Building Inspector while he investigated the validity of Mr. Hughes' complaints, and did not resume construction until permitted to do so.

Mr. Felix Julianni, past Selectman, stated that 11 Bemis Road was a pre-existing non-conforming structure in a Single Residence District. Bemis Road is 20 feet wide, curbless and on-street parking is allowed. He explained that any property owner can pave over green area without coming before the Zoning Board for permission to do so. Mr. Julianni felt that the Zoning Enforcement Officer's refusal to enforce alleged violations of the Zoning Bylaw were valid. He added that the building at 11 Bemis Road was an enhancement to the neighborhood and that Mr. Hughes' appeal has delayed further enhancement to the property, resulting in a financial loss to the owner.

Mr. Eugene Paltrineri, 16 Bemis Road, corrected Mr. Julianni, stating that there are "No Parking" signs on one side of Bemis Road.

No others were present expressing favor or opposition to the appeal.

Statement of Facts

The property in question is a four unit apartment building located at 11 Bemis Road in a Single Residence District on a 5,664 square foot lot. It is a pre-existing non-conforming structure. Prior to September, 1987, the property contained two off-street parking spaces. Early in September, construction was begun to pave driveways on both sides of the structure to accommodate off-street parking for the cars of the residents. Mr. John T. Hughes, Jr., of 5 Bemis Road, in a letter to Mr. Arthur LaConte, Building Inspector, on September 16, 1987, requested enforcement of Sections XVIA, XVII and XXI of the Zoning Bylaw which Mr. Hughes felt were being violated in regard to renovation and replacement of landscaping with paving for parking. Mr. LaConte requested Mrs. Despina Bartlett, owner of the property at 11 Bemis Road to cease paving while he investigated the validity of Mr. Hughes' claims. Mr. LaConte, having decided that the work being done at 11 Bemis Road was not in violation of any Sections of the Zoning Bylaw, allowed paving of the driveways to be completed.

On both September 16, 1987 and November 2, 1987, Mr. LaConte conferred with Mr. Hughes regarding his complaint.

On November 16, 1987, Mr. Hughes filed an appeal with the Town Clerk on the refusal of Mr. LaConte to enforce alleged violations of Sections XVII (Non-Conforming Uses and Structures), Section II (Single Residence District), Section XXI (Off-street Parking) and Section XXIII (Enforcement Penalties), and requested a hearing before the Board of Appeals.

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The basis of Mr. Hughes' appeal is on the following grounds:

1. Section XVII - Non-Conforming Uses and Structures

The Property at 11 Bemis Road is a pre-existing non-conforming structure and use. Construction has occurred without any hearing or "finding" by the Permit Granting Authority.

2. Section II - Single Residence District

- a. Construction has occurred without compliance with Paragraph B and Section XVII A (Site Plan Approval).
- b. Loam and sod have been removed without a Special Permit.

3. Section XXI - Off Street Parking

If a parking plan is required in all districts which permit apartments, a parking plan should be required in a Single Residence District which does not permit apartments.

4. The appeal under Section XXIII - Enforcement and Penalties- was withdrawn at the hearing on December 17, 1987.

Decision

This Authority has made a careful study of the evidence presented. The petitioner is appealing the refusal of the Zoning Enforcement Officer to enforce alleged violations to the Zoning Bylaw at the property at 11 Bemis Road as enumerated in the Statement of Facts.

1. Section XVII states:

"Pre-existing non-conforming structures or uses may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

For the purpose of this Section XVII, a substantial extension, alteration, reconstruction or structural change to a non-conforming use or structure shall be and include any extension, alteration, reconstruction or structural change characterized by one of the following conditions:

- 1. Increase in the floor area or ground coverage of a building or buildings on a lot in excess of 10% of the floor area or ground coverage of a building or buildings existing on March 1, 1980;
- 2. Increase in the dwelling units on a lot in excess of 10% of the number of dwelling units on the lot on March 1, 1980...."

There has not been a "substantial" increase in either floor or ground coverage, or number of dwelling units. Therefore Section XVII does not apply and the construction of two off-street parking driveways is permissible without a finding by the Board of Appeals.

2a. Paragraph B of Section II and Section XVIA. Site Plan Approval has no requirements for construction of private driveways located in a Single Residence District unless the property is located in a Flood Plain, Watershed Protection or Historic District as well.

2b. The intent of the Planning Board when presenting Article 68 to Town Meeting for adoption in 1952 (Section II A 8(f)) was to restrict private contractors from removing large quantities of sand, gravel, rock, clay, loam or sod from Single Residence Districts, without any intention to build on the excavation. The intent was not to prohibit removal small quantities of soil or sod for the construction of driveways.

3. Section XXI (Off-street Parking) states no requirements for off-street parking in Single Residence Districts. Section XXI, Subpart 3 states:

"Each parking area hereafter devoted to the off-street parking of fifteen (15) or more vehicles regardless of whether said parking area is required by this Bylaw, shall comply with the standards as hereinafter set forth:...."

Off-street parking at 11 Bemis Road was provided for eight (8) vehicles. Therefore, Section XXI, Subpart 3 is not applicable in this instance.

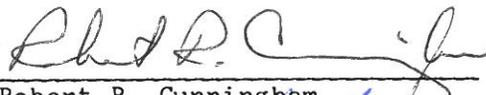
It is the unanimous opinion of this Authority that the Zoning Enforcement Officer acted properly in the discharge of his duties, rulings and decisions.

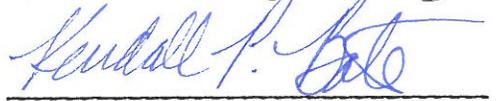
Therefore, the appeal is denied and the request before this Board is dismissed.

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.

cc: Planning Board
Inspector of Buildings

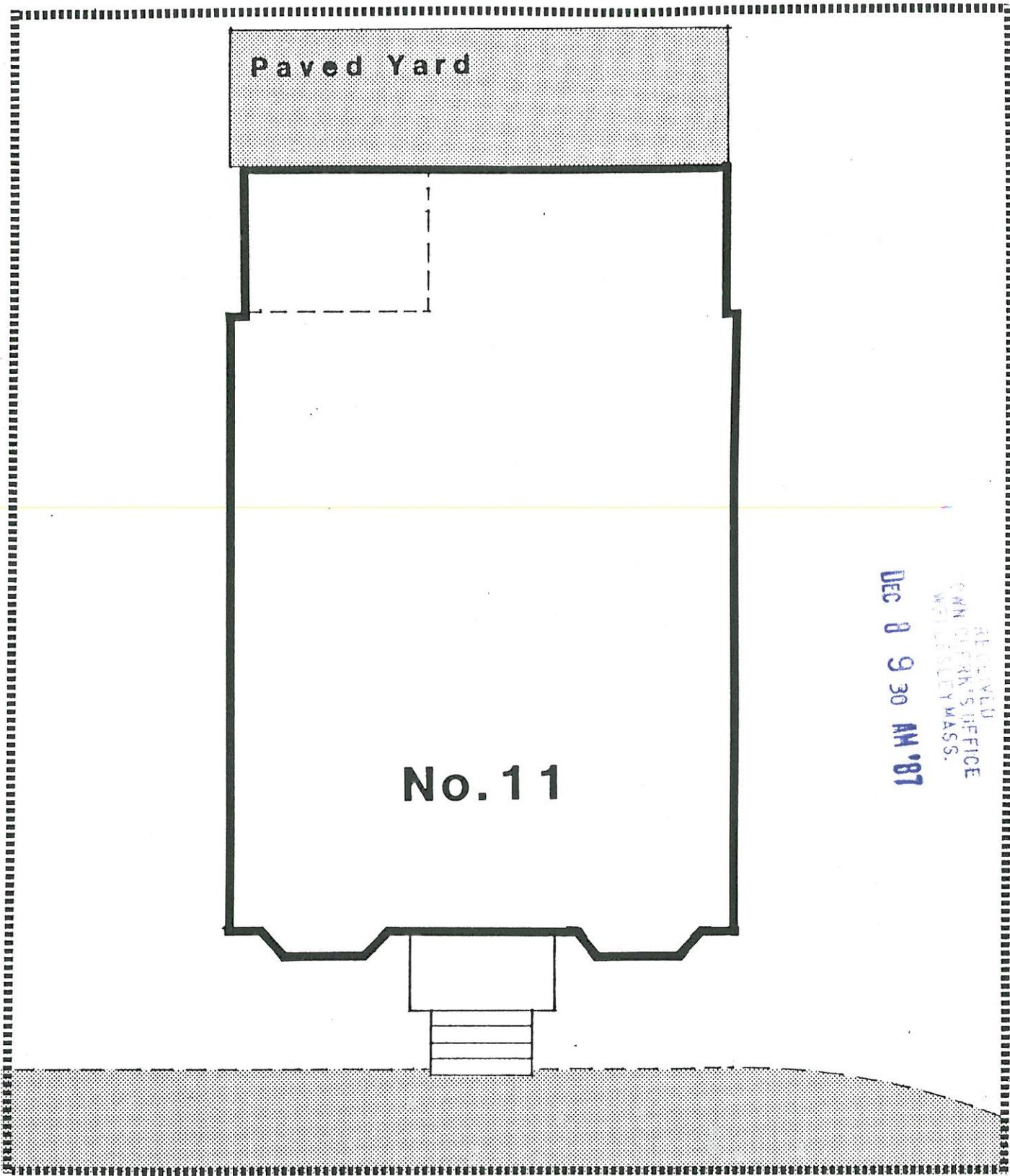
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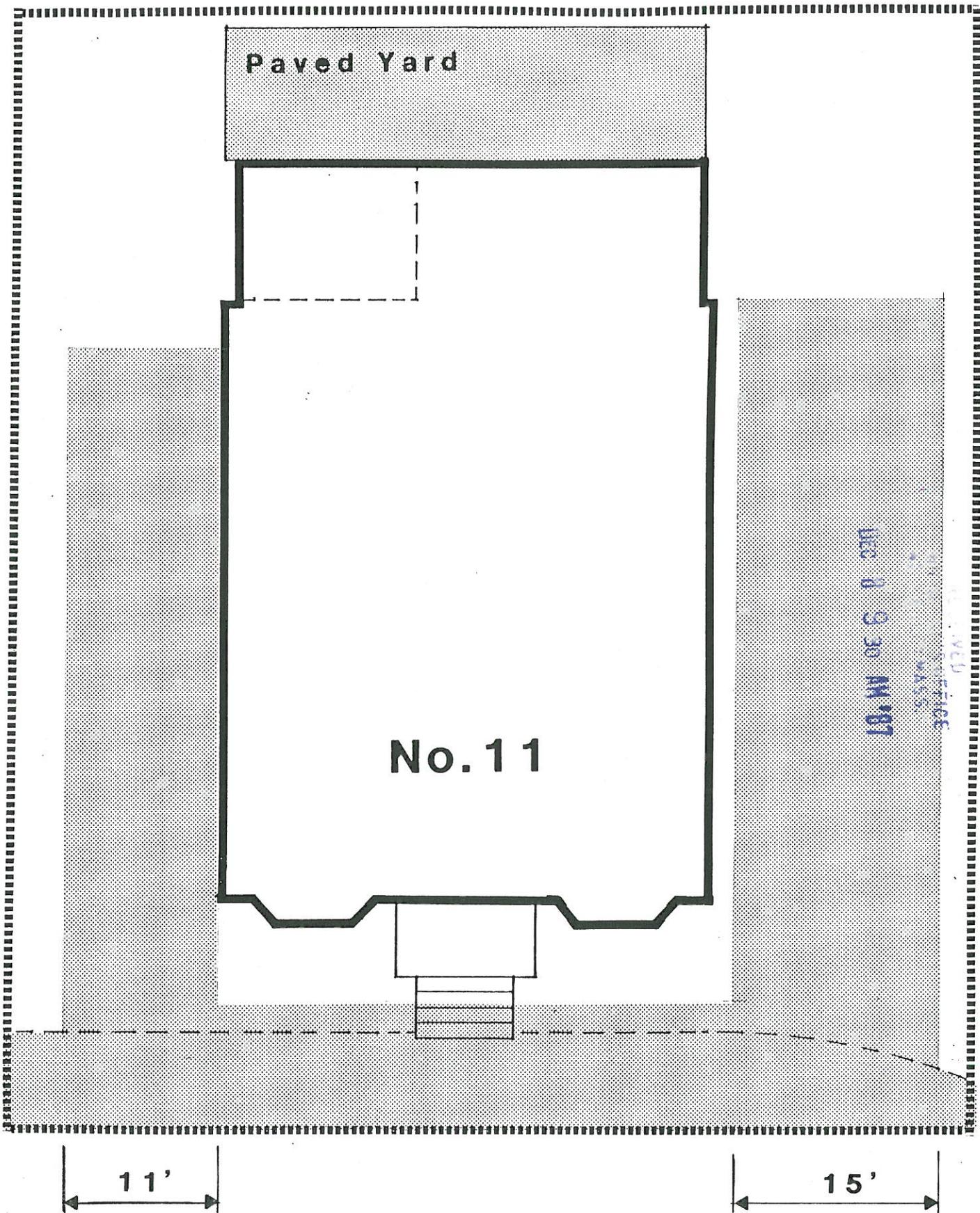


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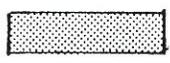
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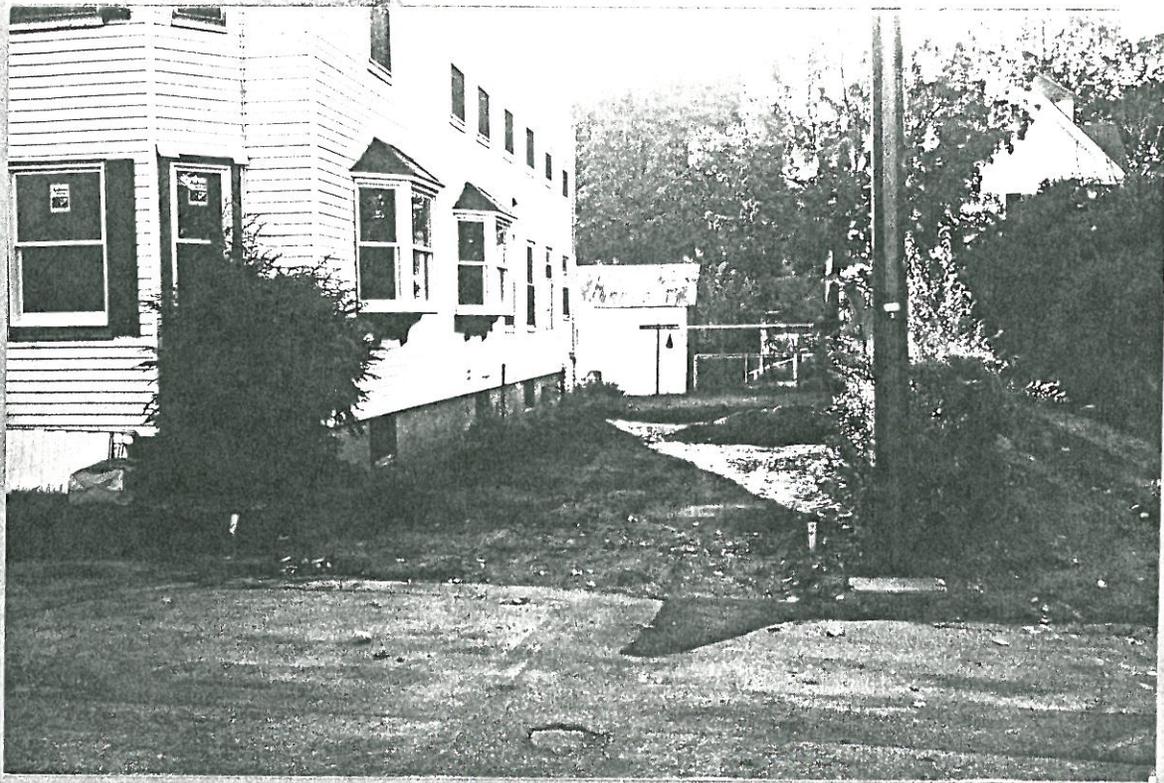




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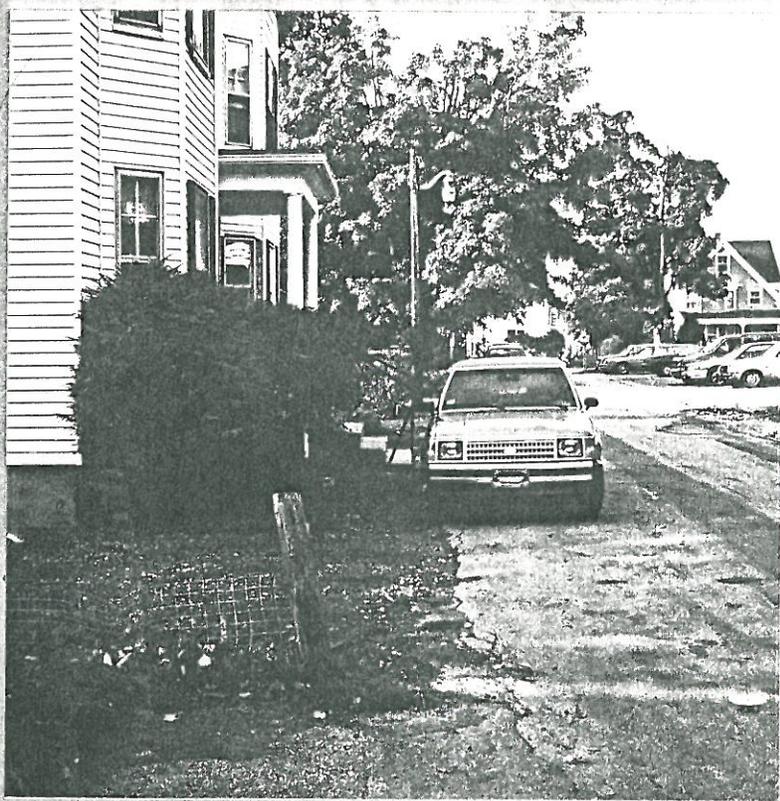
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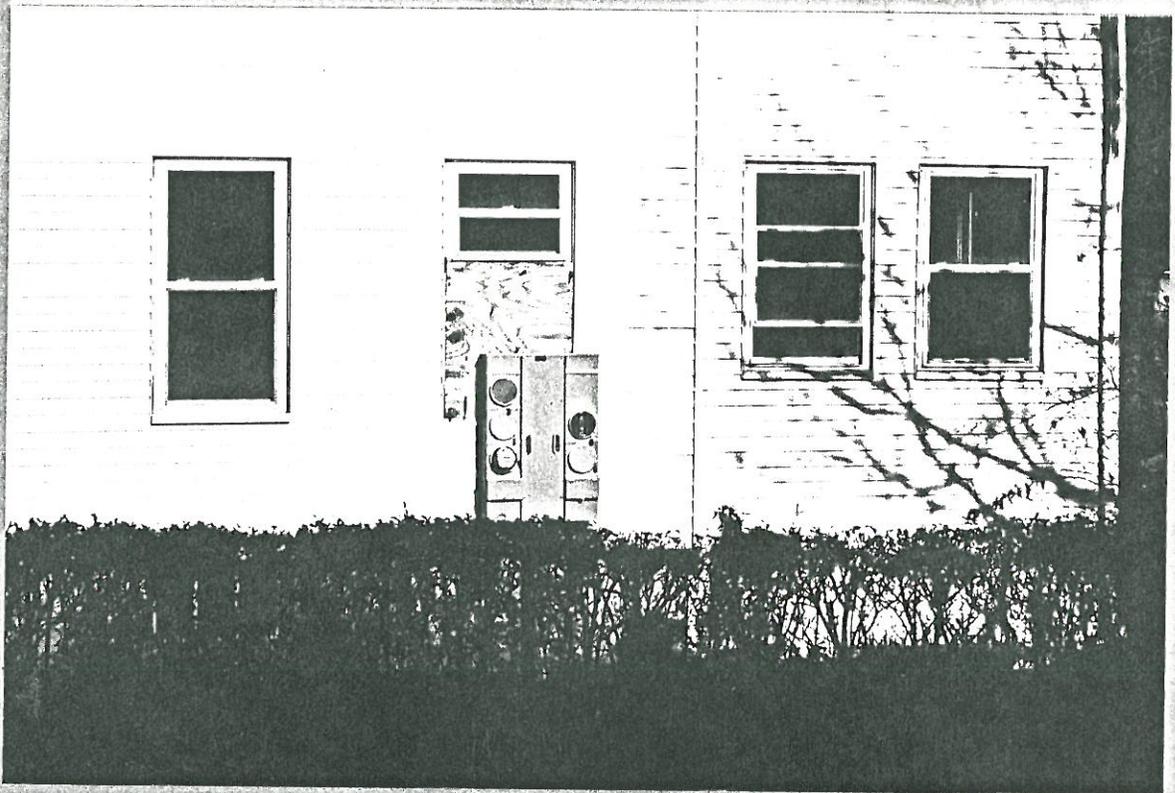
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