

**ZONING BOARD OF APPEALS**

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1998 DEC -2 A 8: 10  
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ZBA 98-95  
Petition of Mark J. Silvestri  
6 Wareland Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, November 19, 1998 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of MARK J. SILVESTRI, requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow both the expansion of a pre-existing conforming porch to the dimensions of 27.9 feet by 9.6 feet, and enclosure of said porch, which now has less than the required front setback, to remain at his otherwise conforming dwelling at 6 WARELAND ROAD, in a Single Residence District. Said expansion and enclosure were constructed without a building permit and in violation of the Zoning Bylaw.

On November 2, 1998, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Mark Silvestri, who said he was asking for a variance after the fact for a remodelled and expanded sunroom that does not meet the front setback requirements.

Mr. Silvestri said that in May, 1995, he contracted a builder to increase and remodel the sunroom. The builder was to obtain any necessary permits for the construction. The builder stated that as there was a 20 foot side and a 15 foot rear setback, and because it was a pre-existing structure, no permits were required. This is indicated on the contract signed by the building, a copy of which has been submitted to the Board. On that basis, the sunroom was expanded and enclosed.

Mr. Silvestri explained that he did not discover that the sunroom was noncompliant until the prospective buyer had a plot plan done, which showed the nonconformance. The survey also showed that the existing shed had been sited partially on the abutting property. The situation has been rectified, as shown on the new plot plan. Mr. Silvestri submitted copies of the revised plot plan to the Board.

Jim McCurdy, 12 Wareland Road, expressed full support for the petition.

The Board stated it had no problem with granting the variance, but agreed with the Planning Board recommendation that the petitioner be required to file for a building application, as it

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would be a matter of fairness to those who go through the proper channels to obtain building permits.

Mr. Silvestri agreed with the condition, stating that if he had known that a permit was required, he would have filed a building application, and paid the required fee.

#### Statement of Facts

The subject property is located at 6 Wareland Road, in a Single Residence District, on a 15,735 square foot lot, and has a minimum front yard clearance of 27.6 feet from the front corner of the sunroom expansion. The dwelling would conform to the Zoning Bylaw but for the expansion of the previously conforming porch.

In May, 1995, the petitioner hired Nicholas Nulty Home Renovations to construct a 27.9 foot by 9.6 foot expansion of an existing porch and to enclose the porch. Mr. Nulty's proposal states that the proposed expansion meets the 15 foot rear yard setback, as well as the 20 foot side yard setback, and that no permit is needed. Based on this information, the petitioner had the porch expanded and enclosed.

The zoning violation and the lack of a building permit were not discovered until a prospective buyer had a plot plan done, which showed that not only was the porch expansion in violation of the front setback, but a tool shed extended onto the abutting rear property. Further investigation determined that a building permit had never been issued for the porch expansion and enclosure.

The petitioner is requesting a variance to allow the 27.9 foot by 9.6 foot porch expansion with a minimum front setback of 27.6 feet, and the enclosure of the porch to remain.

A Plot Plan dated October 22, 1998, revised 10/26/98, drawn by David G. Greenhalgh, Professional Land Surveyor; a Mortgage Survey Plan dated 11/27/89, drawn by Paul J. DeSimone; Proposal, Specifications and Invoices prepared by Nicholas Nulty; sketches of the proposed sunroom dated 5/5/95, prepared by Nicholas Nulty; and photographs were submitted. At the Public Hearing, a revised Plot Plan dated 10/22/98, revised 10/26/98, revised 11/17/98, drawn by David G. Greenhalgh, Professional Land Surveyor, was submitted, which showed the relocation of the shed 1.9 feet from the rear yard lot line.

On November 10, 1998, the Planning Board reviewed the petition and had no objection to the granting of the variance, but recommended that the applicant be required to pay the required building permit fee.

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Decision

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

It is the opinion of this Authority that the petitioner's hardship was not self-created, as he relied on the expertise of his builder, who determined that the porch addition was in compliance and did not need a permit.

It is the opinion of this Authority that a literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioner, and that the grant of a variance would not be detrimental to the neighborhood, nor be in derogation of the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance is granted, as voted unanimously by this Authority at the Public Hearing, to allow the porch expansion and enclosure to remain, as shown in the November 17, 1998 revision of the submitted plot plan, subject to the following condition:

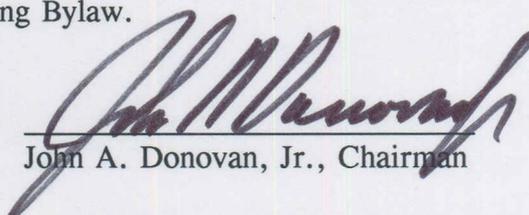
1. Within 30 days of the date of grant of this decision, the petitioner shall submit a copy of the building permit issued by the Inspector of Buildings for the porch expansion and enclosure to the office of the Board of Appeals.

The Inspector of Buildings is hereby authorized to issue a permit legitimizing construction of the subject porch expansion and enclosure upon receipt and approval of a building application and any construction plans he may require.

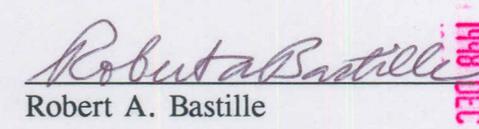
If the rights authorized by this variance are not exercised within one year of the date of grant of said variance, they shall lapse, and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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  
edg

  
John A. Donovan, Jr., Chairman

  
William E. Polletta

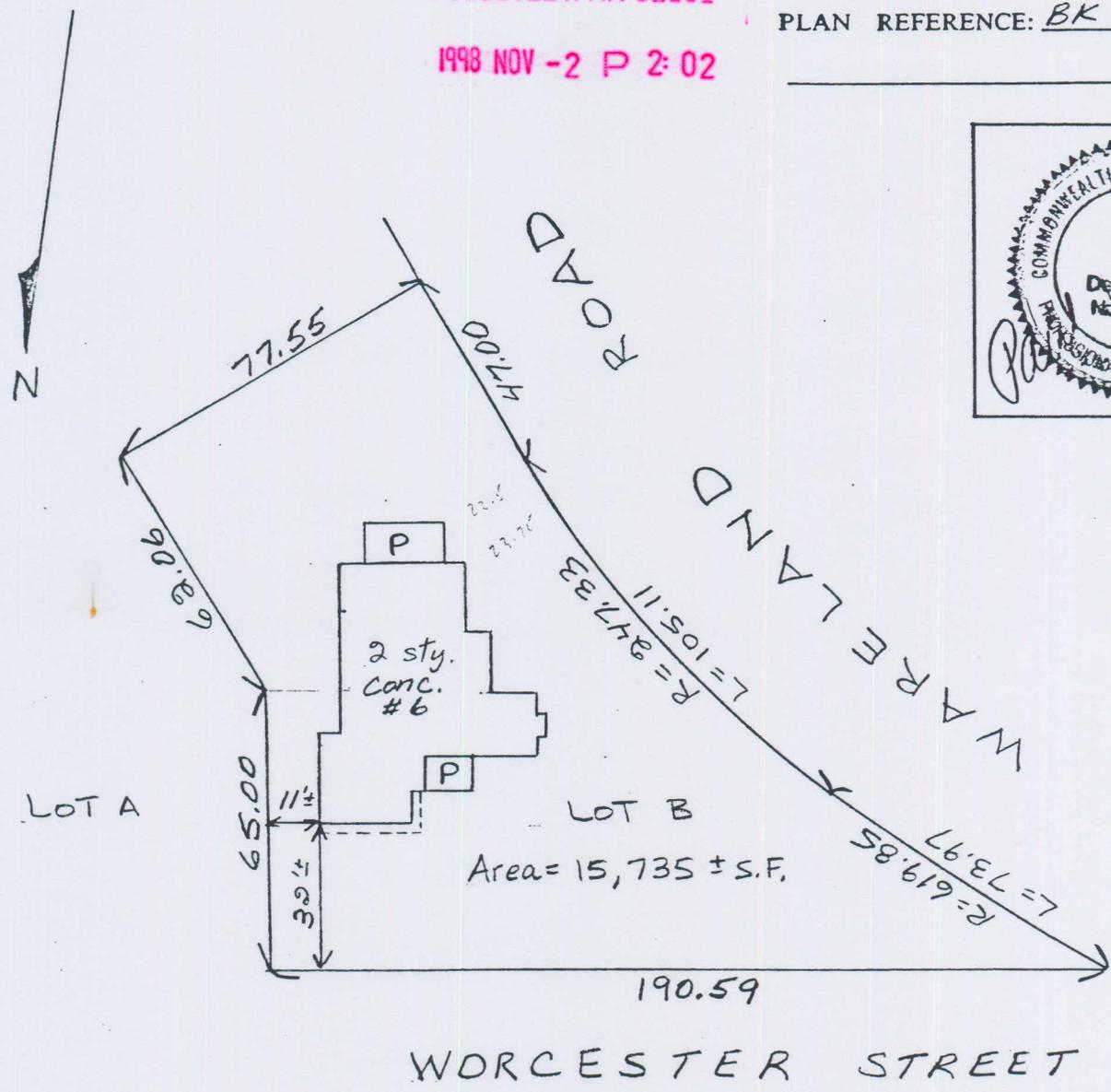
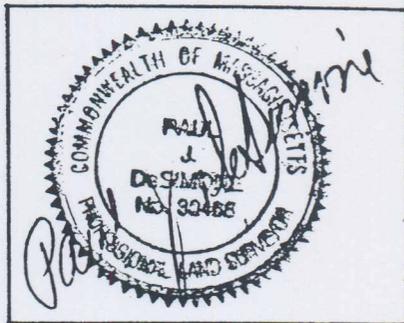
  
Robert A. Bastille

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1998 NOV -2 P 2:02

REGISTRY: Norfolk  
TITLE REFERENCE: BK 6604 Pg 241  
PLAN REFERENCE: BK 2744 Pg 126



This plan was not prepared from an instrument survey. Offsets and distances shown should not be used to establish property lines.

This plan is intended for mortgage purposes only.

I certify that the structure \_\_\_\_\_ shown on this Plan WAS in conformance with zoning setbacks in effect at the time of construction.

I certify that the parcel shown is NOT located within a flood hazard area as depicted on HUD Flood Insurance Rate Maps for Community No: 250255

**CERTIFIED PLOT PLAN**

LOCATION 6 Wareland Road  
Wellesley, Mass.

SCALE: 1"=40' DATE: 11-27-89

CERTIFIED TO:

- Parent and Godoff  
- Sears Mortgage Corp.

CAMERON BROS., INC.  
MALDEN, MASSACHUSETTS

Job No.