



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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83-20

Petition of George M. Levine

Pursuant to due notice, the Permit Granting Authority held a Public Hearing in the second floor hearing room of the Town Hall at 8 p.m. on Thursday, May 19, 1983, on the petition of GEORGE M. LEVINE, requesting a variance from the terms of Section XIX of the Zoning Bylaw which will allow a structure to be erected at WELLESLEY CROSSING RESTAURANT, 11 RIVER STREET, consisting of a canvas awning 10 feet by 24 feet supported by pipe frames and metal posts cemented into brick, and a canvas entrance canopy 4 feet 6 inches by 10 feet, leaving less than the required front yard setback. Said property is located in a Business District, and said request is made pursuant to Section XXIV-D of the Zoning Bylaw. Plans may be examined in the office of the Board of Appeals.

On May 2, 1983, the petitioner filed a request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Stephen Yanoff, operator of Wellesley Crossing Restaurant, who leases the space from George M. Levine, owner of 11 River Street. Mr. Yanoff explained that the awning and fence are necessary to cut down the wind for outdoor dining. He stated that the outdoor use would be seasonal, creating 20 additional seats. He mentioned that the municipal parking lot nearby is underutilized, so that parking is not a problem in the area.

A letter was read from Sharron's Cleaners' owner Clark Poole, 10 Washington Street, expressing concern about the awning and fence cutting off visibility from traffic.

No one else was present at the hearing in favor or in opposition to the petition.

Statement of Facts

The property involved is located at 11 River Street, in a Business District, containing 6,200 square feet of land, and owned by George M. Levine. The building is a legal non-conforming structure, with a setback of approximately 10 feet at one point from the street.

Stephen Yanoff leases the first floor of the two-story building and operates Wellesley Crossing Restaurant. He wishes to have outdoor dining on a brick patio in front of the building and proposes to erect a canvas awning 10 feet by 24 feet supported by pipe frames and metal posts cemented into the brick and a canvas entrance canopy 4 feet 6 inches by 10 feet. There would be a canvas curtain rail around the perimeter

of the patio. These awnings would shelter dining patrons from the wind. The roof awning, attached to posts cemented into the ground, constitutes a "structure" within the meaning of the Mass. State Building Code. The proposed structure would extend to the street line, leaving no front yard setback.

A Plot Plan was submitted, drawn by James A. Reger, Registered Professional Engineer, Millis Engineering Company, dated 10/25/82. A shop drawing by Ready's Window Products, Inc., Tewksbury, Ma. was also submitted showing design details of the awning and canopy.

The Planning Board, in a letter dated May 12, 1983, stated the following: ".....We believe your Board should satisfy itself that sufficient off-street parking is being provided by the applicant prior to any favorable consideration of this request. If this additional parking can be provided, the Planning Board would have no objection to a one year variance on a trial basis. Your Board is now authorized, under Chapter 808, to grant variances limited in time. In this instance a one year renewal requirement would seem appropriate."

The Selectman's Office was contacted regarding the use of the Municipal Parking Lot at River Street and reported that the lot is underutilized at this time.

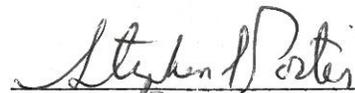
Decision

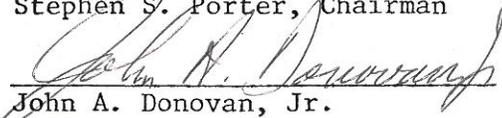
This Authority has made a careful study of the evidence submitted, and recognizes that the building at 11 River Street is a legal non-conforming structure, with a front yard setback of approximately 10 feet.

On October 29, 1982, George M. Levine petitioned this Authority for a variance to construct a permanent wooden deck and enclosed entryway at 11 River Street of approximately the same size as the presently proposed awnings. His request was denied in a decision dated December 14, 1982 (Case 82-49). Mr. Levine and Stephen Yanoff are now requesting a variance for a framed canvas canopy and awning. Although this constitutes a "structure" within the meaning of the State Building Code, the nature of the design is considerably less substantial than the previously requested wooden deck, and the use would be temporary and seasonal.

This Authority is of the opinion that a literal enforcement of the provisions of the bylaw would involve a substantial hardship to the petitioner and that a variance could be granted for such a request.

Therefore, a variance is hereby granted for the requested canvas awning 10 feet by 24 feet supported by pipe frames and metal posts cemented into the ground and a canvas entrance canopy 4 feet 6 inches by 10 feet as shown on the Plot Plan submitted by James A. Reger, dated 10/25/82, with the condition that the variance shall be granted for a period of one year from the date of this decision. The Inspector of Buildings is hereby authorized to issue a permit for the construction upon his receipt and approval of a building application and construction plans.


Stephen S. Porter, Chairman


John A. Donovan, Jr.


William E. Polletta