

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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1999 DEC - 1 A 8:16

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ROBERT A BASTILLE
CYNTHIA S. HIBBARD
ROBERT W. LEVY

ZBA 99-91

Petition of Peter Kelley and Karen Duggan
12 Upland Road

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, November 18, 1999 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 PETER KELLEY AND KAREN DUGGAN requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow construction of a one-story 20.3 foot by 20.3 foot detached garage with less than the required left and rear yard setbacks at their property at 12 UPLAND ROAD, in a Single Residence District.

A Special Permit/Finding is also requested that the following additions and expansion shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure with less than the required left side yard setback:

1. Enclosure and incorporation into the internal structure of the existing 7.8 foot by 4.4 foot deck with less than the required left side yard setback. There will be no change in the footprint.
2. Construction of a 15 foot by 26 foot deck with less than the required left side yard setback.
3. Expansion of the conforming percentage of lot coverage of 18.8% to a nonconforming percentage of lot coverage of 23.2%, as the maximum percentage of lot coverage allowed on a 10,490 square foot lot is 20%.

On November 1, 1999, the petitioners 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 Peter Kelley, who said that Upland Road has no drainage from the street. Their garage is located behind the house in a valley, which is about 3 feet below the surrounding part of the lot. During a heavy rainfall, a significant amount of water collects in this valley, which is increased by the water coming down the driveway. They have had difficulty in draining the water out of this area. They would like to demolish the garage and relocate it at the rear of the lot so that they can improve the drainage in the valley area.

The Board stated that it did not have a problem with the relocation of the garage to the left rear of the property, as the abutting garage is also located at the rear right corner of its lot, or with the enclosure and incorporation of the nonconforming deck into the internal structure of the house. The Board does have a

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problem with the increase in the lot coverage from conforming to nonconforming status, which the Board has not allowed and does not want to allow. This would not affect the relocation of the garage, or incorporation of the deck, as the dimensions would not change, but would impact the construction of the deck. Historically, the Board does not want to allow a conforming property to become substantially nonconforming. There are many cases of this nature coming before the Board, so it has been rigid in this respect.

Mr. Kelley said that the primary problem was the relocation of the garage. The deck is to allow access from the rear of the house to the yard. The deck is a reasonable size, but does increase the lot coverage to a nonconforming percentage.

The Board was of the opinion that other solutions could be found that would not create a nonconforming situation, and recommended that Mr. Kelley request to withdraw the requests for a Special Permit/Finding that involved the construction of the deck and the expansion of the percentage of lot coverage from conforming to nonconforming. Mr. Kelley made the request, which was unanimously granted by the Board.

Statement of Facts

The subject property is located at 12 Upland Road, in a Single Residence District, on a 10,490 square foot lot containing a two and one-half story nonconforming dwelling with a minimum left side yard clearance of 18.9 feet and a detached conforming 20.3 foot by 20.3 foot garage.

The petitioners are requesting a variance to demolish the existing garage and construct a new 20.3 foot by 20.3 foot garage with a minimum rear yard clearance of 3 feet and a minimum left side yard clearance of 3 feet.

The petitioners are also requesting a Special Permit/Finding that the enclosure and incorporation of a 4.4 foot by 7.8 foot deck with a minimum left side yard clearance of 18.9 feet; the construction of a 26 foot by 15 foot deck with a minimum left side yard clearance of 14.9 feet; and the expansion of the conforming percentage of lot coverage from 18.8% to 23.2% shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure and conforming lot coverage.

A Plot Plan dated October 25, 1999 and a Topographical Plan dated October 13, 1999, both drawn by Paul J. Sawtelle, Registered Land Surveyor; Existing and Proposed Floor Plans and Elevations dated 10/22/99, drawn by Pam Woodworth, Architect; and photographs were submitted.

Letters in support of the petition were received from Timothy Peltason and Janette Harris, 7 Upland Road; Amy Donovan, 14 Upland Road; Timothy Brainerd, 10 & 8 Upland Road; and Barbara and David Thomas, 9 Upland Road.

On November 3, 1999, the Planning Board reviewed the petition and opposed the granting of the petition. The garage is a completely unreasonable incursion into the side and rear yards. The Board strongly recommends compliance with the maximum 20 percent lot coverage.

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Decision

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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 because of the topography of the lot on which stormwater collects at the site of the existing garage due to the lower elevation in that area, a literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioners, and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance to demolish the existing garage and construct a new 20.3 foot by 20.3 foot detached garage with a minimum left and rear yard setback of 3 feet is granted, as voted unanimously by this Authority at the Public Hearing, subject to construction in accordance with the submitted plot plan and construction drawings.

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.

It is the finding of this Authority that the enclosure and incorporation into the internal structure of the existing nonconforming 7.8 foot by 4.4 foot deck, with less than the required left side yard setback, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as the intensity of the nonconformance will not be increased, nor will new nonconformity be created.

Therefore, a Special Permit for said enclosure is granted, as voted unanimously by this Authority at the Public Hearing.

As this Authority voted unanimously at the Public Hearing to allow the petitioners to withdraw without prejudice both their request for a Special Permit/Finding for the construction of the 15 foot by 26 foot deck with less than the required left side yard setback, and their request for a Special Permit/Finding for the expansion of the conforming percentage of lot coverage to a nonconforming percentage, no further action is required in regard to these requests.

The Inspector of Buildings is hereby authorized to issue a demolition permit for the existing garage and building permits for the new garage and the incorporation of the existing nonconforming deck into the internal structure of the dwelling upon receipt and approval of demolition and building applications and detailed construction plans. No building permit shall be issued for the construction of the 15 foot by 26 foot deck.

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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

Kendall P. Bates

Kendall P. Bates, Chairman

William E. Polletta

William E. Polletta

Richard L. Seegel

Richard L. Seegel

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MEMORANDUM

Jan. 3 20
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Norfolk Registry District of The Land Court
DEDHAM, MASS.

To

PAID

JAN - 8 2000

BARRY T. HANNON
REGISTER

CK# 1724

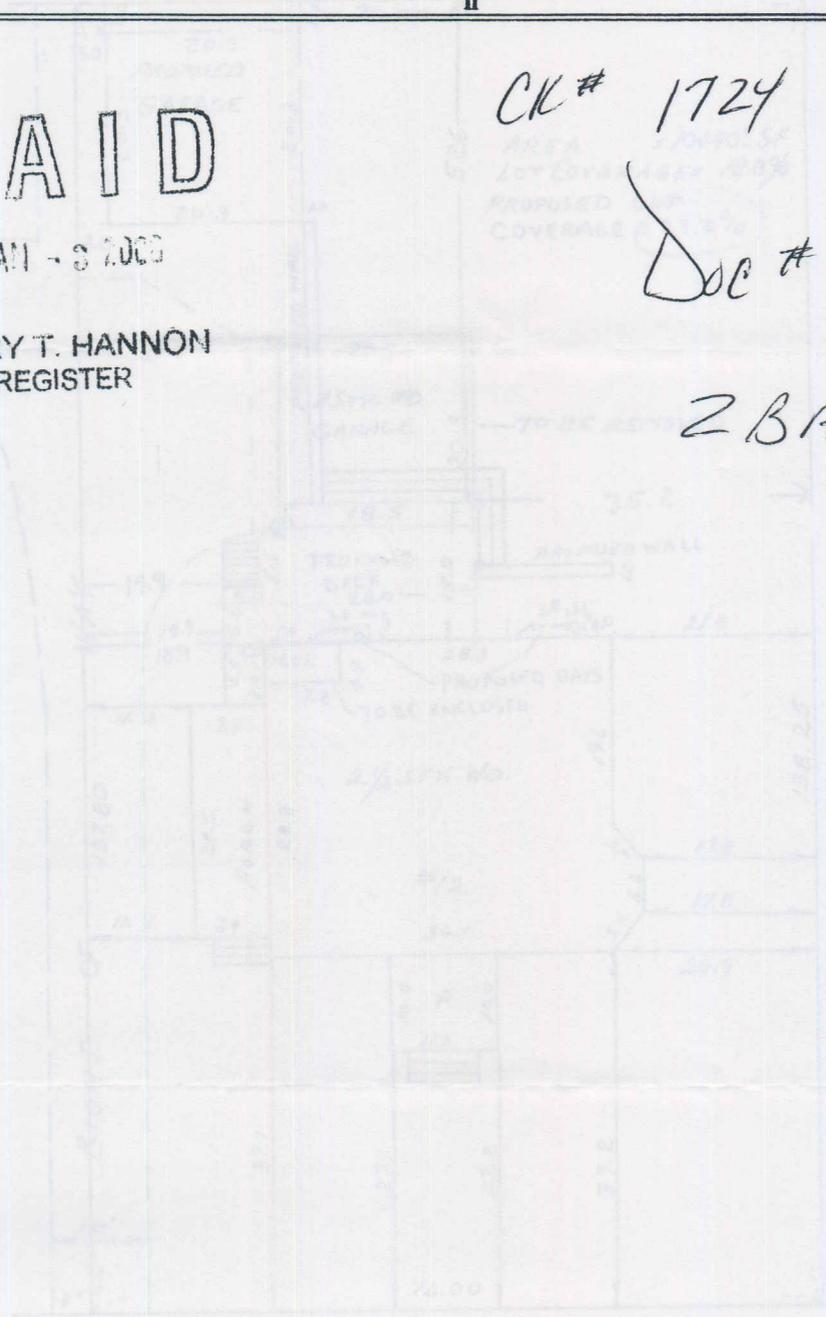
\$ 30.00

Doc # 847746

ZBA

Decision

FORM 147



PLAN OF LAND
IN
WELLESLEY, MASS.

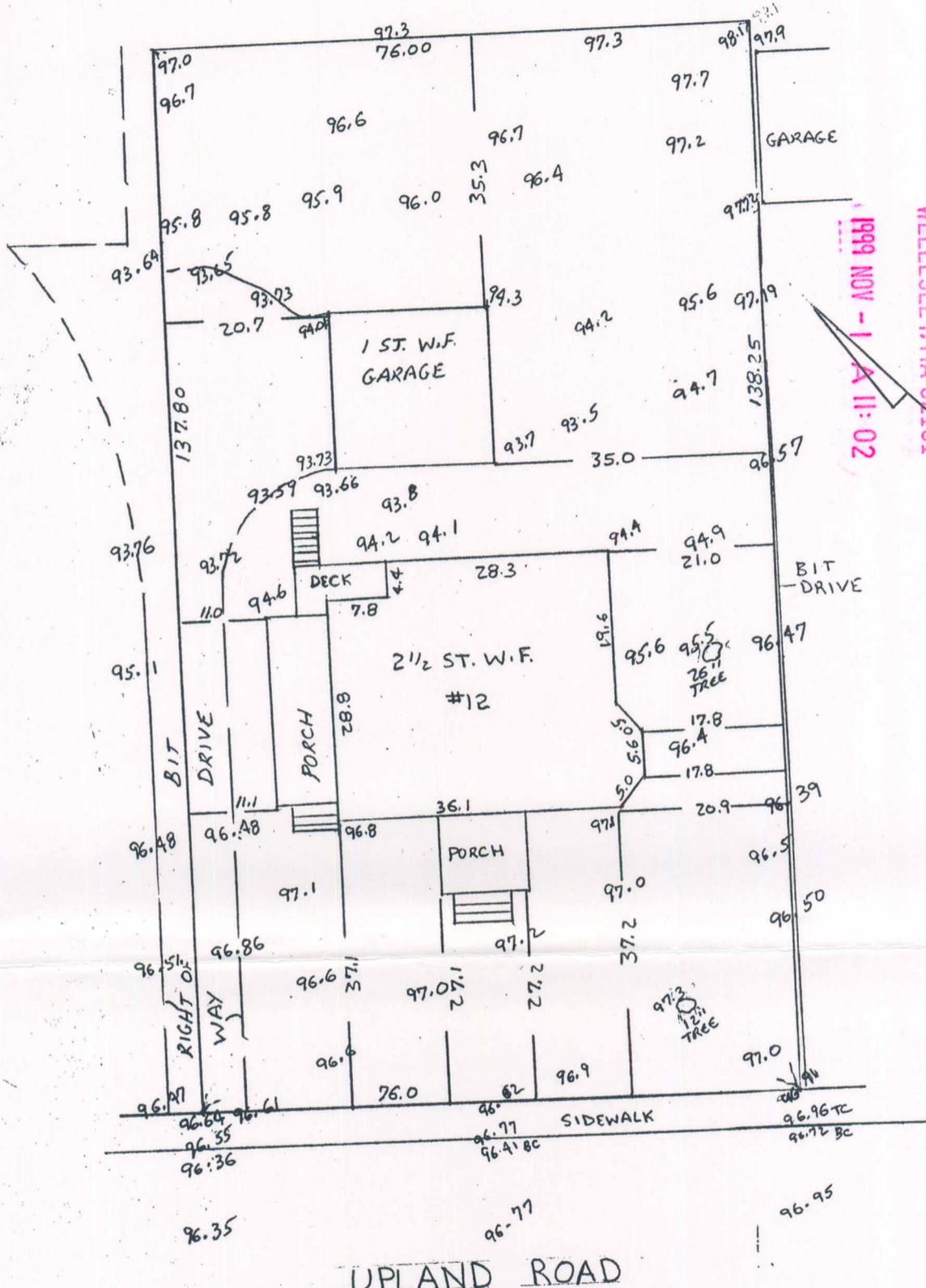


Paul Sawtelle

SCALE 1"=20'
MASS BAY SURVEY INC.

OCT. 25, 1999
NEWTON, MASS.

AREA = 10,490 ± SQ. FT.
 LOT COVERAGE = 18.8%



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UPLAND ROAD

PLAN OF LAND
 IN
 WELLESLEY, MASS.

SCALE: 1" = 20' OCT. 13, 1999
 MASS BAY SURVEY INC.
 NEWTON, MASS.