TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

STEPHEN S. PORTER, Chairman
JOHN A. DONOVAN, JR.
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Executive Secretary
Telephone
235-1664

WILLIAM E. POLLETTA
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SUMNER H. BABCOCK

84-54: Petition of Richard A. White, 61-63 Washington Street

Procedural History and Background

Pursuant to due notice, the Permit Granting Authority held a Public Hearing in the Upper Town Hall Main Hearing Room on Thursday, October 4, 1984, at 8 p.m. on the petition of RICHARD A. WHITE requesting a variance from the terms of Section XVII to expand the non-conforming use of his property at 61-63 WASHINGTON STREET by the enclosure of a front porch approximately 27.11 feet by 8 feet, construction of a 12 foot by 4.1 foot porch at the front of the dwelling, and construction of a deck approximately 12 feet by 8.6 feet at the rear of the dwelling, leaving less than the required setbacks from the street and from the right side yard. Said dwelling is a non-conforming two-family dwelling, located in a Single Residence District. Said request is pursuant to Section XIX and Section XXIV-D of the Zoning By-Law.

On August 16, 1984, the petitioner filed a request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

The property in question is located at 61-63 Washington Street, in a Single Residence District, containing 8,400 square feet of land. A structure exists on the property which enjoys pre-existing non-conforming status as a two-family dwelling and pre-existing non-conforming status in its location on the lot, having less than the required front yard setback (21 feet) and right side yard (11.85 feet).

On June 1, 1983, Mr. White applied for a building permit to alter the attic of his dwelling for his personal occupancy. The Inspector of Buildings refused the permit and referred Mr. White to the Board of Appeals for authorization to expand the non-conforming use of the dwelling. On July 22, 1983, White filed a request for a hearing, requesting a variance from the terms of Section XVII. A Public Hearing was held on August 11, 1983.

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Mr. White proposed extensive renovations to the third floor as described in plans filed with this Board. He stated that the roof line would be changed but the height of the roof would remain unchanged. He stated that he planned to move into the second floor and use the third floor as an artist studio. A variance was granted on September 15, 1983 (ZBA Case 83-38) to allow alterations to the third floor. A building permit was issued on November 4, 1983 to alter the third floor. A rough building inspection was conducted on August 1, 1984 and final building inspection on October 2, 1984 with regard to the third floor alterations only.

Upon Building Inspector LaConte's review of the construction in early June, 1984, Mr. White was instructed by Mr. LaConte to cease work at the premises. On August 16, 1984, Mr. White filed the subject application for variances with the Board of Appeals.

A plot plan was submitted, drawn by John J. Regan, Registered Land Surveyor of Apex Associates, Newton Highlands, dated June 18, 1984. Construction sketches were also submitted.

Variances are required for the enclosure of the front porch, 27.11 by 8 feet, leaving a setback from the street of 21 feet, construction of a 12 by 8.6 foot deck on the rear of the building, leaving a right side yard of 16.9 feet, construction of a new porch on the front of the house, 4.1 feet by 12 feet, leaving a setback from the street of 21.5 feet. All construction was undertaken and completed without a building permit and variance.

Mr. White stated that three single people occupy the first floor, White occupies the second and third floors. There are seven bedrooms in the house: three on the first floor, three on the second floor, one on the third floor. Mr. White stated that there are three mailboxes at the house, one for each floor. Mr. White admitted that he was planning to use the house as a three-family structure. He intends to occupy the third floor.

Opposed to the petition were: William Duncklee, 24 Orchard Street; Douglas Ide, 10 Orchard Street; Jean W. Kelly, 9 Bay State Road; Roger Talmadge, 9 Orchard Street; Carolyn Cox, 70 Washington Street; Robert Cox, 70 Washington Street; Naomi Talmadge, 9 Orchard Street; Ruth T. Sheahan, 1 Orchard Street. Those opposed pointed out the difference between the

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plans submitted to the Zoning Board of Appeals with the application for the August 11, 1983 Public Hearing (for expansion of a non-conforming use to renovate the third floor) and deplored the actual changes to the appearance of the building which includes raising the roof line. Letters in opposition were received from Evelyn Yates, 3 Orchard Street and Frederic B. Viaux, 15 Orchard Street.

The Planning Board, in a letter of September 27, 1984, voted the following: "...to recommend that the front setback variance request be denied. The Board offers no objection to the variance request for the rear deck provided it is stipulated that at no time in the future should the deck be covered or enclosed. We understand that much work has been done on the front of this house without permits. The enclosure of the front porches creates new living space (floor area) in excess of that allowed under the non-conforming use section of the Zoning By-Law."

Decision

The petitioner, Richard A. White was granted a variance by this Authority on September 15, 1983 to allow expansion of the non-conforming use at 61-63 Washington Street, specifically, alterations to the third floor of his home, as shown on construction sketches submitted with the application. Mr. White stated that he planned to occupy the second floor and use the third floor as an occasional artist studio for himself. He did not mention or apply for any alterations to the first or second floors or refer to any construction to porches or decks. The plot plan submitted at the time indicated no changes or encroachments to any lot lines. At the hearing the petitioner indicated that his daughter was planning to occupy the first floor. This never occurred.

Since the issuance of a building permit on November 4, 1983 for the third floor alterations, Mr. White has embarked on a construction project stretching far beyond that described in plans or applications submitted to this Authority or to the Building Inspector. Specifically, he:

1. replaced and enclosed the front porch with sliding glass doors in violation of the front setback requirements;

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2. added a new porch section to the front porch in violation of the front setback requirements;

3. added a rear deck in violation of the side yard regulations.

Mr. White made no attempt to obtain a building permit for the above construction which did not conform to the Zoning By-Laws. He said he knew that the additional work was not specifically mentioned in the permit he received.

This Board finds that there is no substantial hardship which would support a variance from the literal enforcement of the Zoning By-Law. Any further variance granted would be detrimental to the neighborhood involved.

Furthermore, this Board has a serious question about certain representations made by the petitioner at the August 11, 1983 hearing on the original request for a variance with reference to the scope of the work then intended to be done and the expressed intent to use the house as a two-family structure.

The property does not appear to have space for parking of the motor vehicles in a manner that will not be unsightly to the neighborhood.

The petitioner admits that he intends to use the house for three families, one of each floor, which this Board believes violates the protected non-conforming status of a two-family house in an essentially single residence neighboorhood. The continued use of the structure as a three-family structure could jeopardize the petitioner's continued right to use the structure even as a two-family building.

All requests for variances are denied and the petitioner is directed to remove all work beyond that described in the application of July 22, 1983 filed with this Board. The building must be restored to its prior appearance within thirty (30) days of the date of this decision. Failure by the petitioner to do as directed will result in court action.

The Building Inspector is hereby requested to enforce the terms of this decision and to institute appropriate fines of $100.00 per day if the restoration work is not completed within thirty (30) days of this decision.

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If the petitioner continues to use the premises at 61-63 Washington Street as a three-family structure, this Board may consider taking further action.

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.

Stephen S. Porter, Chairman

John A. Donovan, Jr.

William E. Polletta

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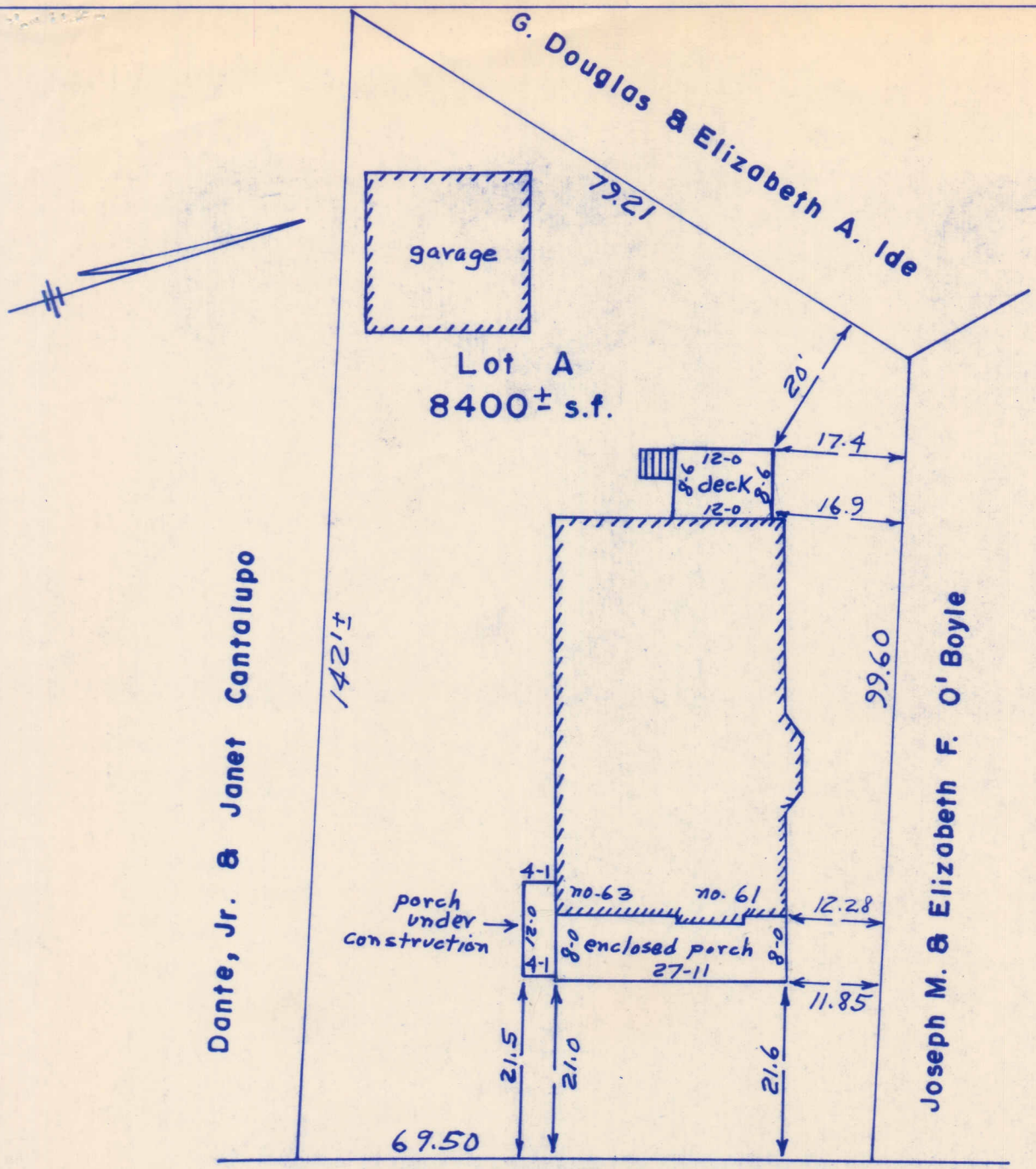

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WASHINGTON STREET
PLAN OF LAND
IN
WELLESLEY MASS.

TO ACCOMPANY THE PETITION OF
RICHARD A. WHITE
63 WASHINGTON STREET
WELLESLEY

COMMONWEALTH OF MASSACHUSETTS
JOHN J. REGAN
No. 7931
REGISTERED LAND SURVEYOR

John J. Regan

SCALE 1 IN = 20 FT
APEX ASSOCIATES
NEWTON HIGHLANDS

JUNE 18, 1984
LAND SURVEYORS
MASS.

2667

TOWN OF WELLESLEY MASSACHUSETTS

BUILDING DEPARTMENT

COPY

ARTHUR LaCONTE
Inspector of Buildings
Zoning Enforcement Officer
Public Safety Officer

525 Washington Street
Wellesley, 02181
235-1664

November 16, 1984

Richard A. White
61/63 Washington Street
Wellesley, MA 02181

Dear Mr. White:

In their decision of October 29, 1984, the Town of Wellesley Zoning Board of Appeals denied your petition to further expand the non-conforming use of your two-family dwelling located at 61/63 Washington Street.

The Board also directed you to restore your building to its prior appearance within thirty (30) days of October 29, 1984. The Board specifically cited the following violations, in which you:

1. replaced and enclosed the front porch with sliding glass doors in violation of the front setback requirements;

2. added a new porch section to the front porch in violation of the front yard setback requirements;

3. added a rear deck in violation of the side yard requirements.

Pursuant to the decision of the Zoning Board of Appeals of October 29, 1984, in which they requested that I enforce the terms of their decision, you are hereby ordered to restore the following to its original appearance:

1. Front porches - First and second floors - Remove all sliding doors, windows, and exterior wall enclosures, illegally erected,

2. Side entrance, porch and roof - remove wooden deck and roof;

3. Remove wooden deck

The above work and restoration is to be accomplished by November 30, 1984. In the event that all of the illegal construction, as described, is not removed within the authorized time limit, I will be compelled to turn this matter over to Town Counsel to start legal proceedings to resolve all outstanding issues.

Very truly yours,

Arthur LaConte
Inspector of Buildings

AL:jed
cc: Board of Appeals