TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

STEPHEN S. PORTER, Chairman
JOHN A. DONOVAN, JR.
ROBERT R. CUNNINGHAM

MARY ANN McDOUGALL
Executive Secretary
Telephone
235-1664

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

84-67
Petition of Suzanne F. Holian
81 Glen Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing in the Upper Town Hall Hearing Room on Thursday, December 6, 1984 at 8 p.m. on the petition of SUZANNE F. HOLIAN requesting a variance from the terms of Section XIX which will allow the enclosure of an existing one-story porch approximately 10.1 feet by 22.3 feet at the dwelling at 81 GLEN ROAD to create a permanent room, leaving less than the required left side yard. Said dwelling is a non-conforming dwelling. Said request is pursuant to Section XXIV-D of the Zoning Bylaw.

On November 15, 1984, the petitioner requested a hearing before this Authority and thereafter notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Paul Holian. He presented photos of the property, noted a previous variance granted to allow the porch to be located two feet from the side line, which he claims grandfathered in the structure for the permanent enclosure. He stated that he wishes to construct the room as protection from debris from the lot next door. He did not know that a building permit was necessary for the project, so he failed to obtain one.

Opposed to the petition was Peter Johnson, Needham, son-in-law representing Thomas and Sylvia Connolly, 87 Glen Road, abutters. He objected to the encroachment, intrusion on the privacy of the abutters, impact on the abutters and the neighborhood. Also opposed was Gwenn Welch, 2 River Glen Road.

No one was present in favor of the request, other than Suzanne F. Holian.

Statement of Facts

The property in question is located at 81 Glen Road, containing 11,500 square feet of land, in a Single Residence District. The existing dwelling is located two feet from the westerly lot line abutting 87 Glen Road.

A variance was granted to George H. & Mabel B. Macomber by the Board of Appeals in 1947 (ZBA Case #47-9) to allow a roof and railing over a flagstone terrace to provide an open porch at 81 Glen Road, leaving a side yard of two feet. The abutting property at the time was open land owned by the Boston and Albany Railroad and not

used for residential purposes. The Boston & Albany Railroad subsequently sold the property and a dwelling now exists at 87 Glen Road.

On 9/27/84, Arthur LaConte, the Zoning Enforcement Officer, received a complaint that illegal construction was in progress at 81 Glen Road. Inspection revealed that the open porch had been permanently enclosed without a building permit. A cease and desist order was issued by Mr. LaConte and the petitioner subsequently filed an application for a variance.

A Plot Plan was submitted, drawn by Gleason Engineering Co., dated May 1, 1947. Photos of the structure were also submitted. A property loss worksheet was also submitted indicating storm damage to the property.

The Planning Board, in a letter of November 30, 1984, voted to recommend that the petitioner be denied based on the belief that the conditions pre-requisite to the granting of a variance are not present.

Letters in opposition to the request were recieved from D. Harry Angney, 8 Riverdale Road, Gim P. and Fay E. Fong, 4 Glen Cross Road.

Decision

This Authority has made a careful study of the evidence submitted. The petitioner constructed the permanent enclosure of an open porch without a building permit. This is a violation of the town regulations, which were adopted for the protection of the community and the welfare of its citizens. The construction was not even in conformance with the building codes of the state.
The open porch existed two feet from the property line by a variance granted in 1947. Conditions have changed since 1947 in that the abutting property is no longer open land. If the petitioner had requested a variance for the porch enclosure,this Board would have denied the variance request based on the lack of evidence of substantial hardship to the petitioner. The hardship in this case appears to have been caused by the fact that the individual proceeded without following the restrictions of the Zoning Bylaws and Building Code.

Variances may only be granted where the Permit Granting Authority finds that (from Section XXIV-D 1. of the Zoning Bylaw):

1...

"a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, expecially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created: AND

b. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw."

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This Authority fails to find "substantial hardship" within the meaning of Section XXIV-D.

Therefore, it is the unanimous opinion of this Authority that this request for a variance be denied, and this petition is dismissed.

The petitioner is hereby ordered to remove the illegal structure and restore the open porch at 81 Glen Road within 90 days.

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

cc: Planning Board
mam

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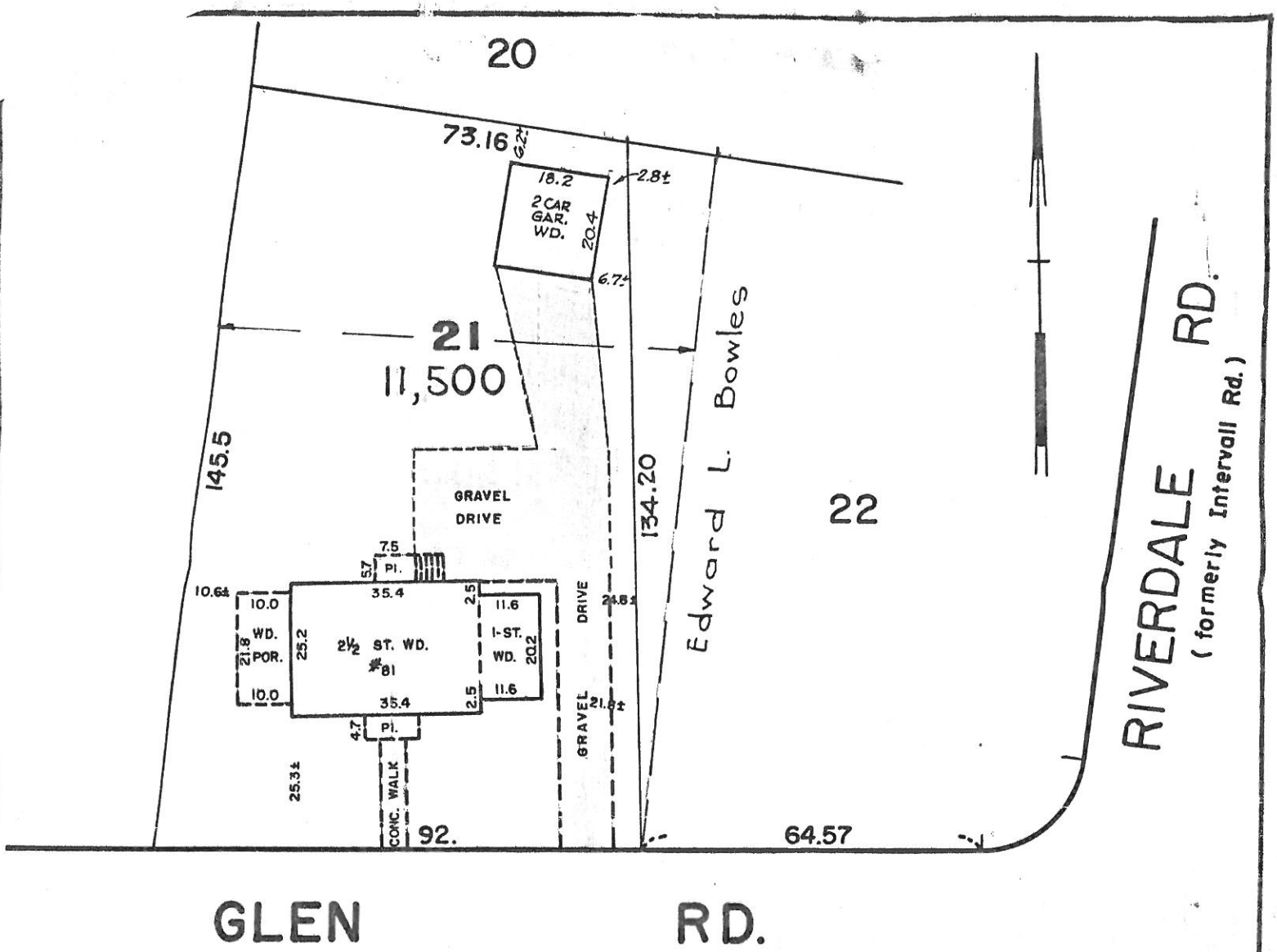

MORTGAGE SURVEY PLAN

Location WELLESLEY

Scale 1 in. = 30 ft. Date Mar. 25, 1970

Plan reference: Being part lot 21 on a plan

by .....

dated January 1902 Recorded

in Norfolk Registry of Deeds.

Book 914, Page 321

JOSEPH SELWYN, Civil Engineer
14 Linden Avenue, Belmont

I hereby certify that the building shown on this plan is located on the ground as shown thereon and that it conforms to the zoning and building laws of the town of Wellesley when constructed and to restrictions on record.

Joseph Selwyn

DOROTHY McLAUGHLIN SHAGOURY
ONE NOTTINGHAM DRIVE
NORWOOD, MASS. 02062
762-4932

This plot plan was not made from an instrument survey and is drawn for the use of the mortgagee, for mortgage purposes only.