



## BOARD OF APPEAL

RICHARD O. ALDRICH  
F. LESTER FRASER  
WILLIAM O. HEWETT

KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Appeal of James R. and Jean K. Collins

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:25 p.m. on March 16, 1972. Said hearing was an appeal of James R. and Jean K. Collins, from the order of the Inspector of Buildings to remove the addition which had been constructed, without a permit, on the side of the dwelling at 75 High Ledge Avenue. The appellants further requested an exception from the terms of Section XIX of the Zoning By-law which would allow said addition to remain in its present location with a side yard less than the required twenty feet, and to construct a roof over same and enclose. Said appeal was made under the provisions of Section XXIV-B of the Zoning By-law and Chapter 40A, Section 13 and 15 of the General Laws. A duly advertised hearing subsequently was held on July 26, 1973, to continue the above hearing.

James R. Collins spoke in support of the request at the hearing.

Jean K. Collins, 75 High Ledge Avenue, stated that she has five small children and needs the deck as a play area for them, in its present location, as she can supervise them while she is in the kitchen. The deck is the only entrance to her kitchen, she stated, so it would not be practical elsewhere on the house.

A letter favoring the request was submitted, signed by seven neighbors.

A letter was received from Anthony Camuti, builder of the house involved, in which he stated that the stair landing on the north side of the dwelling was constructed as a rectangle encompassing about 32 square feet.

A letter was received from Mrs. Benjamin Tatelbaum, 125 Manor Avenue, in which she stated that the structure involved is obviously larger, closer to the lot line than the original deck and unsafe. She urged the Board to enforce the order of the Building Inspector for the removal of the structure.

Richard C. MacLaren, 120 Manor Avenue, abutting property owner, stated that in September 1971, Mr. Collins tore down a stair-landing measuring some thirty-two square feet and replaced it with a partially completed and hazardous platform area of approximately 120 square feet without obtaining a building permit. He further stated that he had attended the meeting held on March 23, 1972, at which he objected; he is still of the opinion that the platform reduces the value and marketability of his property, and strongly opposed the intrusion of his privacy.

Statement of Facts

The house involved, which was built in 1963, on a lot which contains 10,461 square feet is located in a Single-residence District requiring a minimum lot area of 10,000 square feet.

A plot plan was submitted, drawn by MacCarthy Engineering Service, Inc., Natick, which showed the existing dwelling on the lot as well as the deck under

construction. Said plan showed the deck to be 10' x 12', 12.8' from the lot line at the nearest point on the northerly side.

The appellant stated that in 1971, he had a deck on the side of his house which became hazardous due to rot so he decided to tear it down and replace it. He was unaware that a permit was required to repair and replace. During construction he received a letter from the Building Inspector informing him that he had not obtained a building permit for the work being done and to cease immediately. Subsequently, an appeal was made to the Board of Appeal and a hearing held on March 16, 1972. No decision was made at that time due to the non-reappointment of a member of the Board of Appeal, and the appellant withdrew his appeal and requested a new hearing. The appellant stated that it was possible the new deck may be a little larger than the first one as no deck was shown on the original plans filed in the Building Department; therefore, it could not be determined as to its previous size. The appellant stated further that the deck, which is approximately 6' above ground level, is the only approach to his side entrance and he feels that there is a great need for it both as an entrance as well as a play area for his children. To have more protection during winter weather, he further requested that he be allowed to roof over the deck, enclose it with glass and heat it. Undue hardship will result, if relief is not granted, according to the appellant.

Section XIX of the Zoning By-law provides that the Board of Appeal may make special exceptions to the side yard regulations when it shall find that (1) compliance with the requirements is impracticable because of the width, depth and shape of the lot, and (2) that the lot was held of record on April 1, 1940, under a separate and distinct ownership from the adjacent lots. The Board is unable to make the findings prescribed as conditions under which the exception may be granted. On April 1, 1940, the lot was not held of record under a separate and distinct ownership from adjacent lots as it was part of an undeveloped parcel of land.

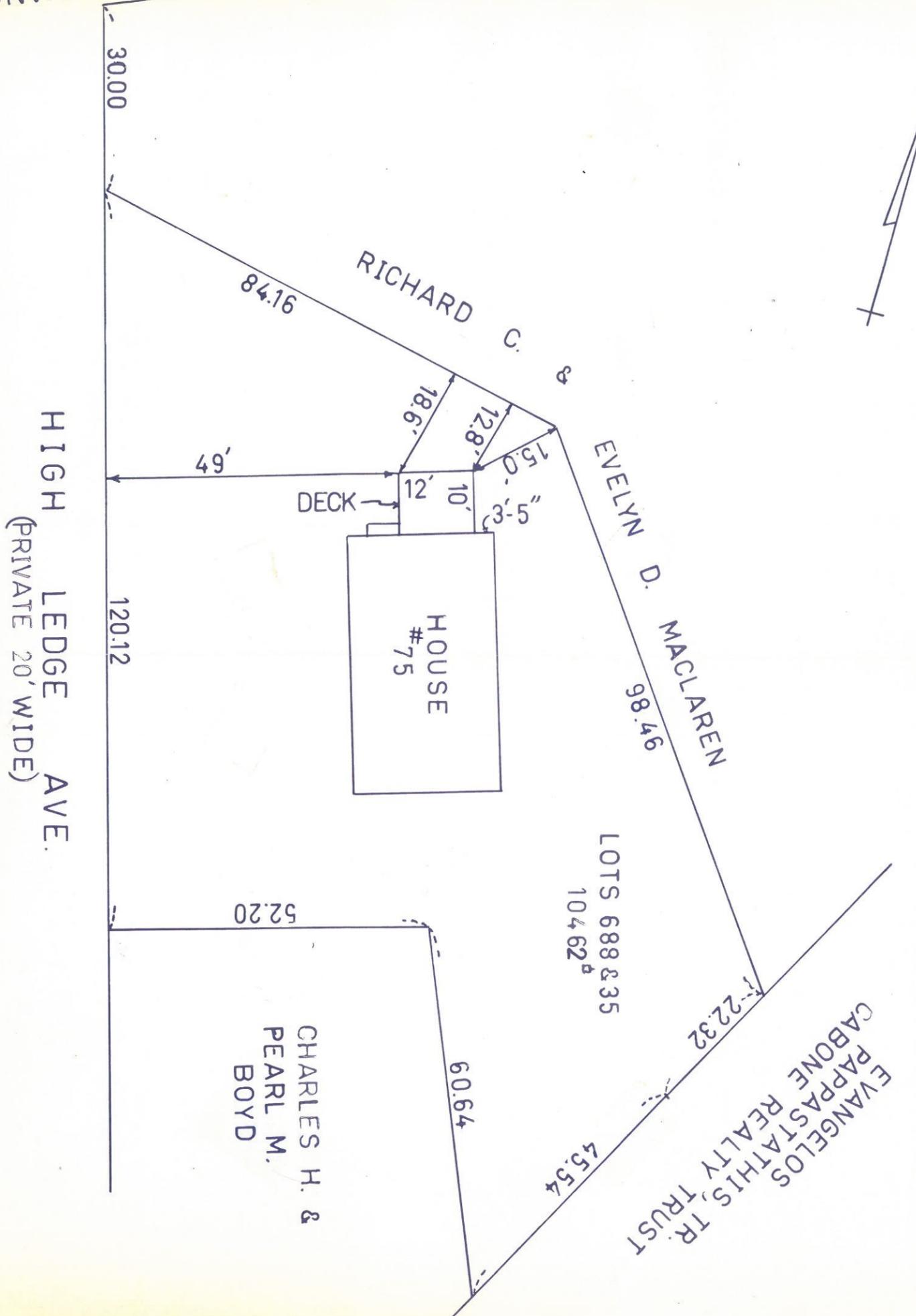
The Board has considered the request under the provisions of Chapter 40A, Section 15, of the General Laws, but is unable to find any condition affecting the land which does not affect the district generally as the Board must find before it may grant a variance under the General Laws. In its opinion, the deck only 12.8' from the side lot line, does create a crowded effect and would substantially derogate from the intent of the By-law. A deck which would serve as an entranceway can be built which will comply with the Zoning By-law, and it appears from the plan that a larger enclosed deck may be built on the rear of the dwelling which could serve as a play area for the children and comply with the setback requirements.

Accordingly, the order of the Inspector of Buildings is affirmed and the appellants are hereby ordered to obtain a permit from the Inspector of Buildings to either remove the deck involved or reduce it in size to comply with the By-law. The appeal is denied under the provisions of Chapter 40A, Section 15, of the General Laws.

*Theodore C. Merlo*  
Theodore C. Merlo

*F. Lester Fraser*  
F. Lester Fraser

*William O. Hewett*  
William O. Hewett



APPROVED BY  
WELLESLEY BOARD OF APPEALS

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 date: \_\_\_\_\_

PLAN OF LAND IN WELLESLEY, MASS.

OWNED BY:  
 JAMES R. & JEAN K. COLLINS

SCALE: 1" = 20'      FEBRUARY 1, 1972

PLAN BY:  
 JOSEPH R. SULLIVAN  
 REGISTERED LAND SURVEYOR  
 MAC CARTHY ENGINEERING SERVICE INC.  
 NATICK & MARLBOROUGH, MASS.