



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

ELLEN D. GORDON
Executive Secretary
Telephone
431-1019

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ROBERT R. CUNNINGHAM
KENDALL P. BATES

ZBA 88-21
Petition of Ruth G. Halpern
46 McLean Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, March 3, 1988 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley, on the petition of RUTH G. HALPERN requesting a variance from the terms of Section XIX and pursuant to Section XXIV-D of the Zoning Bylaw which will allow the existing illegal non-conforming deck attached to the dwelling at 46 MCLEAN STREET, in a Single Residence District, to be brought into conformance with the current Zoning Bylaw of the Town. Said deck was built without a building permit and has less than the required rear setback.

On February 8, 1988, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case was Cynthia S. Creem, attorney for Ruth G. Halpern. Mrs. Creem said that she was presenting the case as the Halperns have moved to Chicago. She explained that when the Halperns purchased the property in 1978, the deck was in existence. The Halperns did not know the deck was illegal as no mortgage survey plan was required at that time. No changes, except for replacing a few floor boards, have been made since the property was purchased. The problem was discovered when the Halperns were in the process of selling the house, and the Buyers' mortgage company required a survey plan. A Purchase and Sale Agreement was executed on January 12, 1988, with a closing date of February 26, 1988. The Buyers do not wish to proceed with the purchase unless the zoning violation is rectified. The Purchase and Sale Agreement allows the Seller thirty days to remove any defects in the title. Without the variance, conveyance of the property is not possible.

No other person had any comment on the petition.

Statement of Facts

The non-conforming dwelling is located at 46 McLean Street, in a Single Residence District, on a 10,325.65 square foot lot. The dwelling has meets all of the required setbacks with the exception of the rear setback of the illegal deck which is 6 feet from the rear lot line, the requirement being 10 feet. As stated above, the Halperns purchased the property in 1973 with no knowledge that the existing deck was both illegal and non-conforming. When the Halperns went to sell their home, these facts became apparent through the mortgage survey plan requested by the Buyers' mortgage company. The Buyers have made the removal of the zoning violation a condition of the Purchase and Sale Agreement.

A Plot Plan, dated February 9, 1988, a revision of a previous plan, drawn by James W. Bougioukas, Registered Land Surveyor, from Bradford Engineering, Haverhill, MA was submitted.

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The Planning Board, at its regular meeting on February 16, 1988, voted to offer no objection to the request.

Decision

This Authority has made a careful study of the evidence submitted, and is of the opinion that the existing dwelling at 46 McLean Street is not in conformance with the Zoning Bylaw of the Town.

The Board is of the opinion that a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship to the petitioner, and that the allowance of a variance would not be detrimental to the neighborhood, nor be in derogation of the intent or purpose of the Zoning Bylaw.

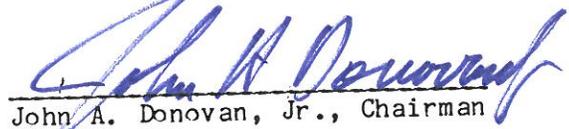
Therefore, the requested variance from the terms of Section XIX and pursuant to Section XXIV-D of the Zoning Bylaw is granted to allow the existing dwelling with the attached illegal deck at 46 McLean Street with the rear setback of the deck 6 feet from the rear lot line, as shown in the Plot Plan described in the Statement of Facts.

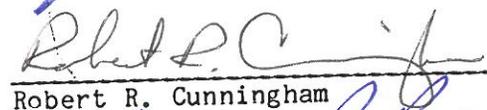
The Inspector of Buildings is hereby authorized to issue a building permit for said deck.

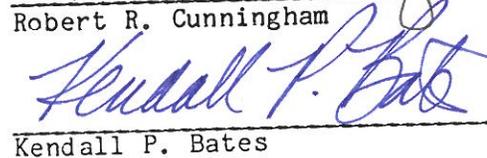
If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, they shall lapse, and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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


John A. Donovan, Jr., Chairman


Robert R. Cunningham

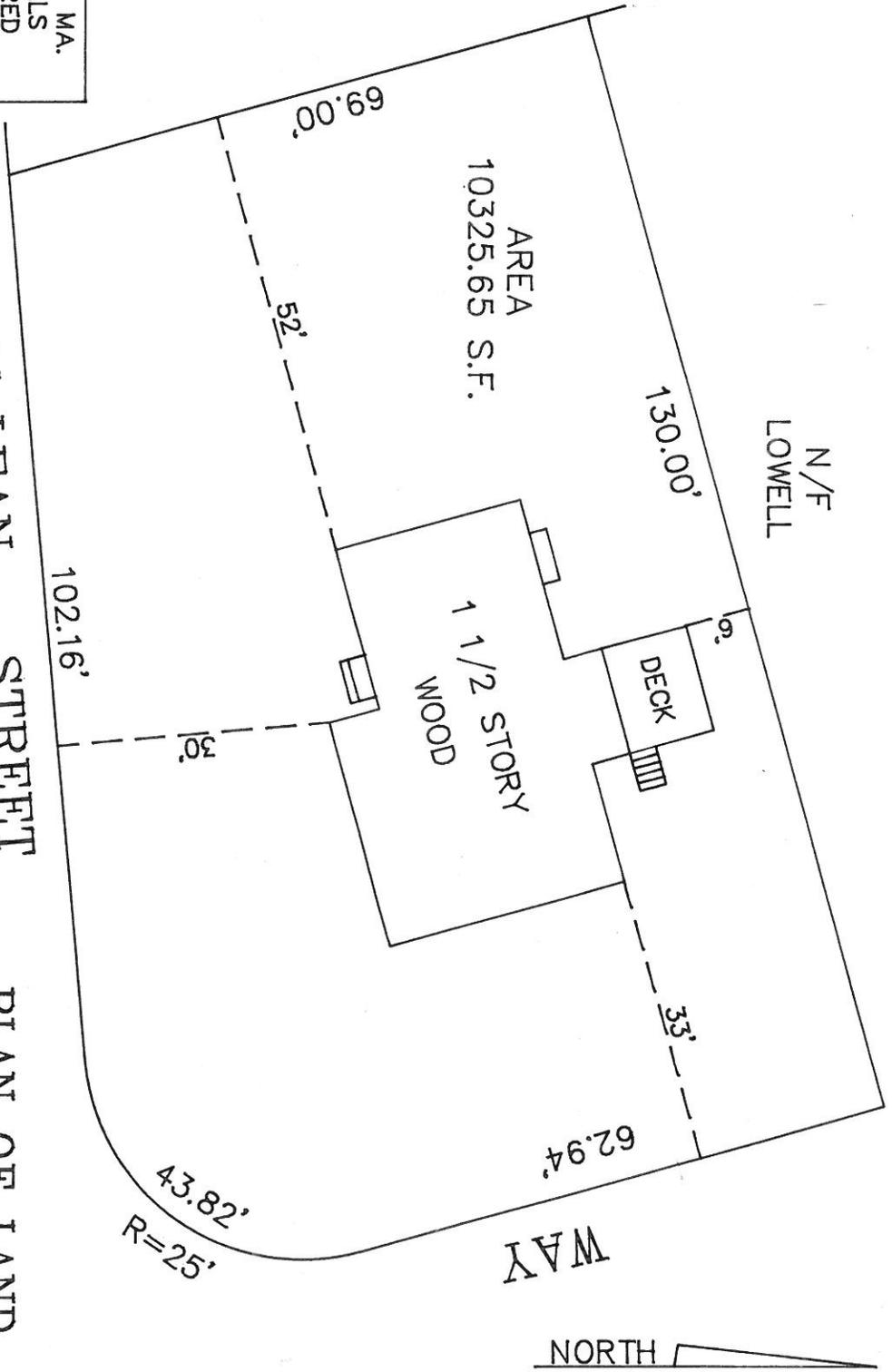

Kendall P. Bates

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Feb 18 2 55 PM '08

LOT 7

CITY OF WELLESLEY MA.
BOARD OF APPEALS
APPROVAL REQUIRED

DATE: _____



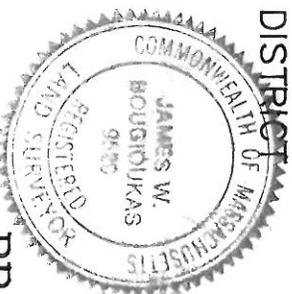
N/F
LOWELL

AREA
10325.65 S.F.

McLEAN STREET

WAY

ZONE: SINGLE RESIDENCE DISTRICT
DEED
BOOK 534
PAGE 198
PLAN 22295 C
CERT. NO. 89136



PLAN OF LAND
LOCATED AT
46 McLEAN STREET
WELLESLEY, MA.

OWNED BY
RUTH G. HALPERIN
FOR VARIANCE
REAR YARD

JAMES W. BOUGIDOUKAS R.L.S. DATE

BRADFORD ENGINEERING
FEBRUARY 9, 1988
P.O. BOX 1244
HAVERHILL MA 01831