



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman
ROBERT R. CUNNINGHAM
KENDALL P. BATES

ELLEN D. GORDON
Executive Secretary
Telephone
431-1019

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

ZBA 89-72
Petition of Charles and Dorothy Amorosino
38 Seaward Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, December 21, 1989 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 CHARLES AND DOROTHY AMOROSINO requesting a variance from the terms of Section XIX and pursuant to Section XXIV-D of the Zoning Bylaw to allow construction of a deck with guard rails and fencing approximately 20.2 feet by 23.6 feet on top of an existing non-conforming unattached garage of the same dimensions with less than the required right side yard at their non-conforming dwelling at 38 SEAWARD ROAD, in a Single Residence District, with less than the required left side yard.

On December 4, 1989, the petitioners requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Charles and Dorothy Amorosino. Mr. Amorosino said that their existing two-car garage abuts a hill at the rear, providing easy access off the hill onto the top of the garage. The garage needs a new roof, and while replacing the roof, they would like to make the top of the structure safer by adding guard rails as it is used as a deck to maximize the usage of a small back yard. Through the years, they have positioned planters along the edges for safety, as it is impossible to prevent people from going onto the roof from the hill.

Louise and Joseph Lopman, 42 Seaward Road, the right side abutters, spoke in opposition to the request. Mrs. Lopman said that they had recently purchased their home for the privacy which they felt would be increased by the intervening garage. The garage roof is very close to their deck and flagstone patio and they are concerned about the invasion of their privacy due to activity that would take place on the decked and railed garage roof. Mrs. Lopman said that she thought the roof planters were for decoration as they had never seen anyone on the roof when they had had been in and out of their new home during the summer, prior to moving. Mrs. Lopman submitted photographs and drawings illustrating the relationship of the garage to their property.

Mr. Amorosino responded that the garage roof has always been used and that regardless of the granting of the variance for the guard rails, the roof would continue to be used. The remodeling will make the roof more private, safer and more attractive. He added that there had never been any complaints from the previous owners.

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The Board stated that safety is not a zoning concern as safety does not constitute a zoning hardship; and that a variance is granted based on a hardship which exists on a particular property.

Statement of Facts

The non-conforming dwelling is located at 38 Seaward Road, in a Single Residence District, on a 11,295 square foot lot, with a minimum left side yard clearance of 11 feet. The unattached garage in question is approximately 20.2 feet by 23.6 feet with a minimum right side yard clearance of 8.2 feet at the front corner and 6.8 feet at the rear corner. The garage was constructed in 1930 at which time an incombustible garage could be constructed within 5 feet of a lot line.

The petitioners are requesting a variance to replace the existing garage roof with decking and guard rails, including a 5 foot fence on the right side edge, approximately 20.2 feet by 23.6 feet, on top of the existing non-conforming garage of the same dimensions. The minimum right side yard clearances of 8.2 feet at the front corner and 6.8 feet at the rear corner would be maintained.

A Plot Plan dated November 9, 1989, drawn by Richard B. Betts, Registered Land Surveyor; an undated, unsigned construction drawing, and photographs were submitted.

The Planning Board, on December 12, 1989, voted to offer no objection to the variance request.

Decision

This Authority has made a careful study of the evidence presented. The subject garage does not conform to the present Zoning Bylaws as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that the issues of safety and/or of use are not pertinent to this variance request. The issue of use is pertinent only to a request for a Special Permit or a Finding. The area in question has been used and can continue to be used regardless of the granting of a variance.

It is the opinion of this Authority that the proposed construction conforms to the present lines of the garage and does not alter the relationship of the garage to the right side lot line.

It is the further opinion of this Authority that because of the shape of the lot and the location of the garage on the lot, 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.

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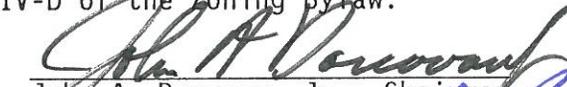
Therefore, the requested variance is granted subject to construction in accordance with the Plot Plan and construction drawing as submitted and noted in the foregoing Statement of Facts.

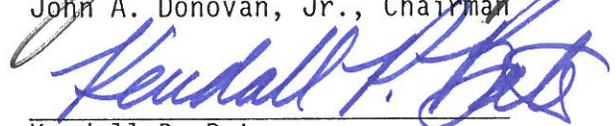
The Inspector of Buildings is hereby authorized to issue a permit for the construction upon his receipt and approval of a building application and construction plans.

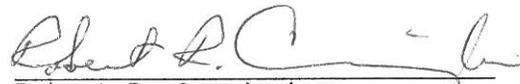
If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, they shall lapse and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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


Kendall P. Bates

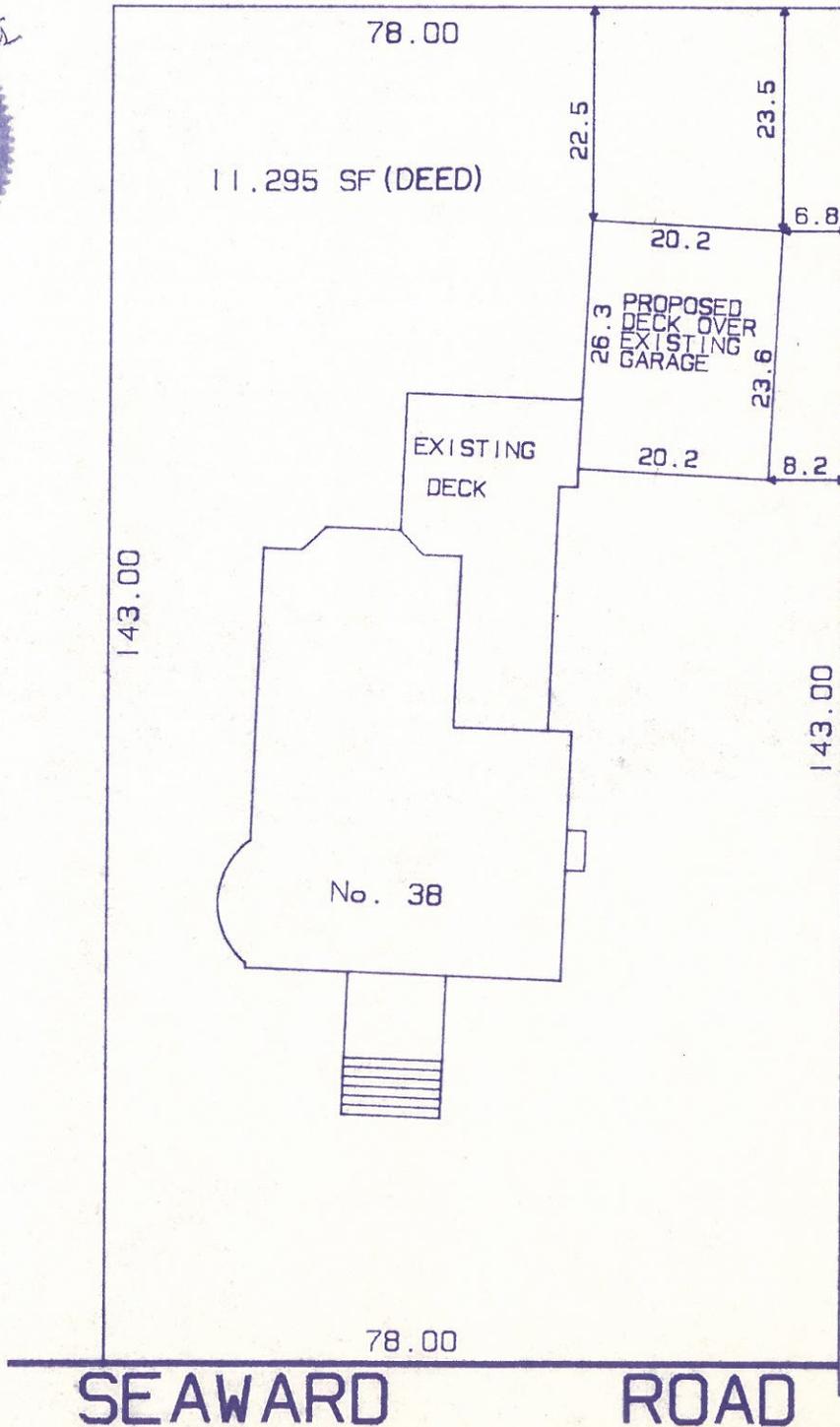

Robert R. Cunningham

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PLAN OF LAND IN WELLESLEY MASS.

SCALE 1 IN = 20 FT. NOVEMBER 9, 1989
EVERETT M. BROOKS CO. C.E.s
NEWTONVILLE, MASS.



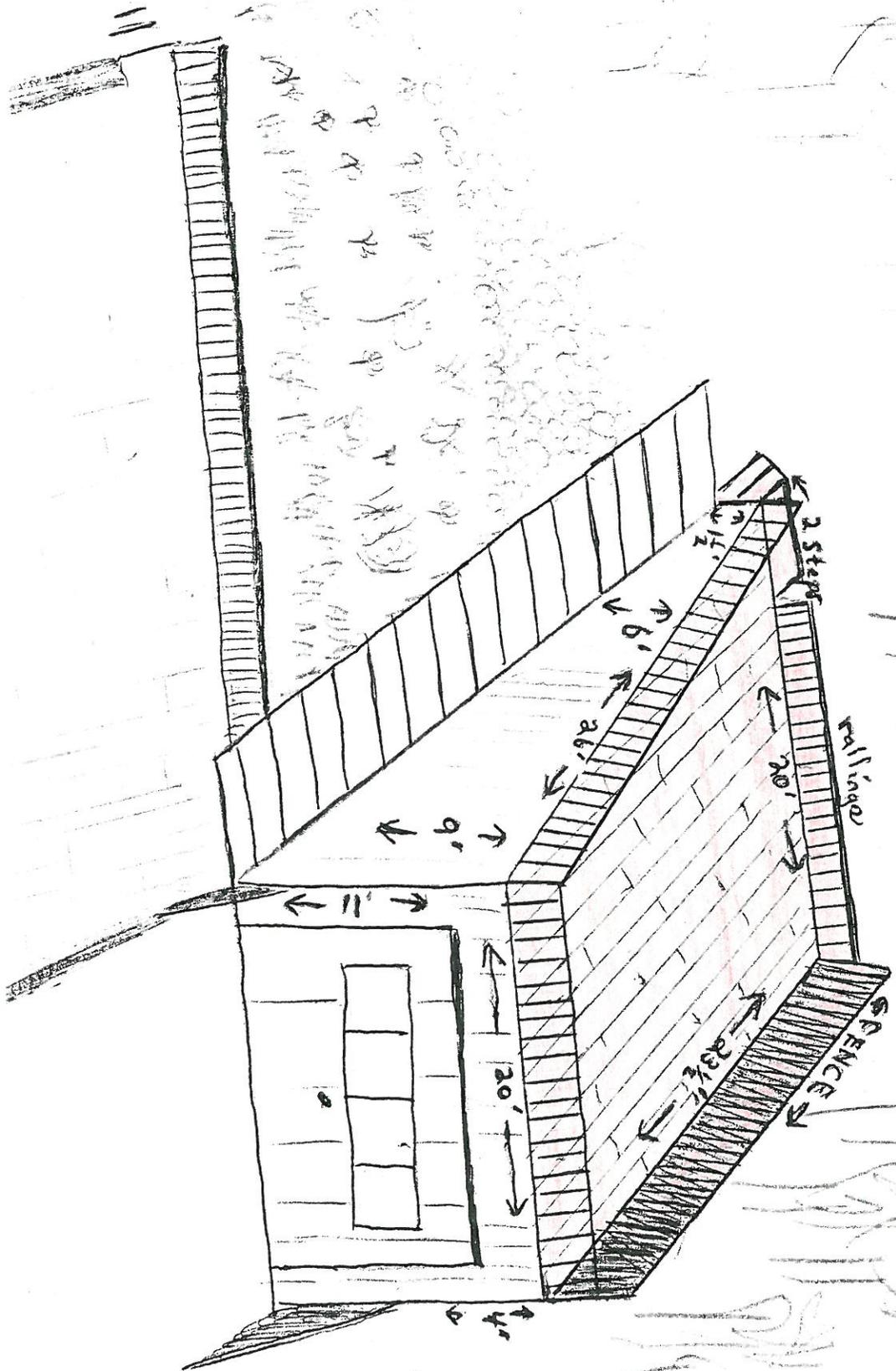
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KEY:
Proposed roof deck