



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

OCT 11 8 44 AM '90

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

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Executive Secretary
Telephone 431-1019

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WILLIAM E. POLLETTA
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ZBA 90-78
Petition of John K. and Lorraine Cross
28 Appleby Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, September 27, 1990 at 8 p.m. in the Great Hall of the Town Hall, 525 Washington Street, Wellesley, on the petition of JOHN K. AND LORRAINE CROSS, requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow relocation of an existing conforming garage approximately 18.5 feet by 19.3 feet to a location which would leave less than the required right side yard on their property at 28 APPLEBY ROAD, in a Single Residence District.

On September 10, 1990, 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 John and Lorraine Cross. Mr. Cross said they were attempting to relocate the garage to make better use of the back yard. They would like to fence the yard to provide a play area in sight of the kitchen for their two children, who presently play in the driveway. They would also like to add a screen porch to the back of the house, which would be difficult without relocating the garage, as there would be little space between the porch and the garage.

Mr. Cross said that every house on the street has a non-conforming garage and that none of the neighbors are opposed to the request. The Crosses submitted photographs of all of the neighboring properties and a letter of support from Aileen Haigis, 32 Appleby Road.

The Board stated that it has never allowed a conforming property to become so non-conforming.

Mrs. Cross stated that she felt they were being penalized for having the only conforming garage on the street, as it was difficult to become non-conforming; whereas if the garage were non-conforming, it would be no problem. The Board agreed, stating that the variance would not be a legal possibility.

No other person present had any comment on the petition.

Statement of Facts

The subject conforming garage is located at 28 Appleby Road, in a Single Residence District, on a 10,310 square foot lot.

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The petitioners are requesting a variance to relocate the garage, approximately 18.5 feet by 19.3 feet, from a conforming location in the center of their back yard to a location at the right rear portion of the property, leaving a minimum right side yard clearance of 10 feet.

A Plot Plan dated August 23, 1990, drawn by Stephen P. DesRoche, Registered Land Surveyor; and photographs were submitted.

The Planning Board, on September 18, 1990, voted to recommend that the petition be denied as approval would bring a presently conforming building into a non-conforming situation.

A letter dated September 24, 1990, in support of the petition, was received from Mr. and Mrs. John E. Hellriegel, 24 Appleby Road.

Decision

This Authority has made a careful study of the evidence presented.

Variances may only be granted by the Permit Granting Authority once they have found any or all of the following (Section XXIV-D 1. as quoted from 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, especially 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."

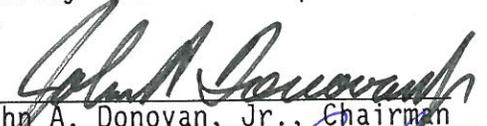
This Authority fails to find "substantial hardship" within the meaning of Section XXIV-D of the Zoning Bylaw. This Authority is of the further opinion that to allow a conforming structure to be relocated to a grossly non-conforming location would be substantially derogating from the intent and purpose of this Zoning Bylaw.

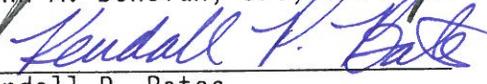
Therefore, it is the unanimous opinion of this Authority that this request for a variance be denied, and this petition is dismissed.

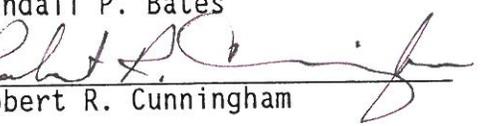
APPEALS FROM THIS DECISION, IF ANY,
SHALL BE MADE PURSUANT TO GENERAL
LAWS, CHAPTER 40A, SECTION 17, AND
SHALL BE FILED WITHIN 20 DAYS AFTER
THE DATE OF FILING OF THIS DECISION
IN THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
Inspector of Buildings

edg


John A. Donovan, Jr., Chairman


Kendall P. Bates

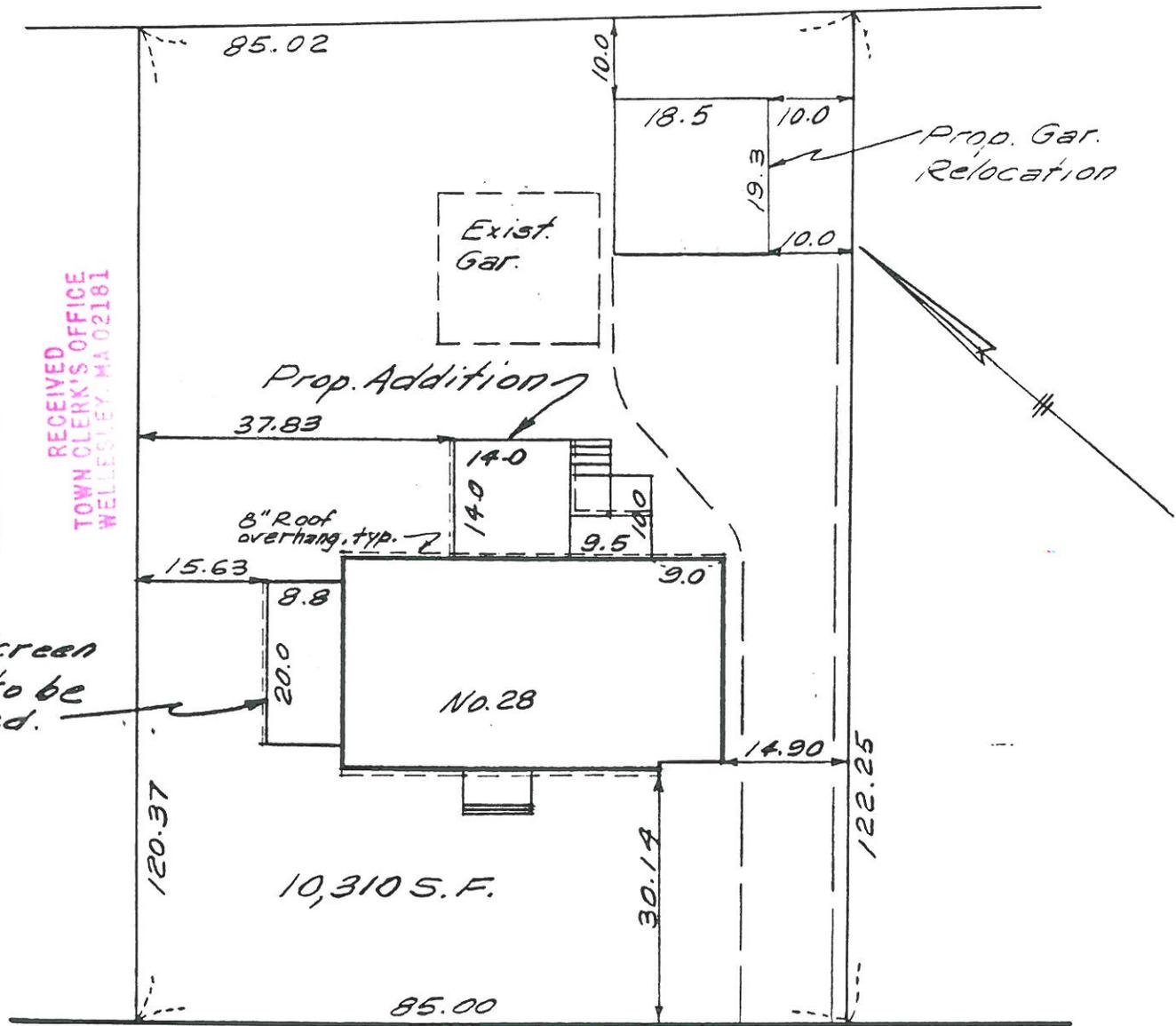

Robert R. Cunningham

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SEP 10 2 20 PM '90

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Exist. Screen
Porch to be
enclosed.



APPLEBY

ROAD

PLAN OF LAND IN
WELLESLEY, MASS.

SHOWING PROPOSED ADDITION AND RELOCATION
OF EXISTING GARAGE AT NO. 28 APPLEBY ROAD.
AUGUST 23, 1990
SCALE: 1" = 20'

STEPHEN P. DesROCHE
REG. LAND SURVEYOR



Stephen P. DesRoché
8/27/90