



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 X208

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

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02181
JUN 7 11 09 AM '93

ZBA 93-43
Petition of Robert L. and Marcia D. Garcea
25A Seaver Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, May 20, 1993 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of ROBERT L. AND MARCIA D. GARCEA requesting a variance from the terms of Section XIX A and B and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow the deeded right-of-way, in the form of an existing 20 foot paved driveway to satisfy the definition of frontage in Section XIX A; and to vary from the minimum frontage requirements as established in Section XIX B of the Zoning Bylaw, which would result in the allowance of the property at 25A SEAVER STREET, in a Single Residence District, to be brought into conformance with the current Zoning Bylaw.

On May 3, 1993, the petitioners requested a hearing before this Authority, and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Peter Larkowich, counsel for the Garceas, who was accompanied by Marcia Garcea. Mr. Larkowich read into the record his Presentation describing the history of the property, arguments for granting the variance supported by cases pertinent to the issue, and a conclusion that the Statute of Limitations would preclude enforcement of zoning violations.

He explained that the owners are seeking a variance to have the deeded right-of way, which runs over the abutting front property, and connects the petitioners' property to Seaver Street, deemed to satisfy the zoning requirements of frontage; and to vary from the minimum frontage requirement of 75 feet, by allowing the 20 foot right-of-way to meet the frontage requirement.

The Board noted that the existing driveway, which was not shown on the plot plan, appears to run by the house, while the right-of-way, which has not been improved, is located along the left lot line of 25 Seaver Street. The utilities for the rear lot lie under the driveway. Mr. Larkowich said that the beginning of the driveway was probably on the right-of-way, but that the two diverged after a few feet.

Cynthia Westerman, prospective buyer of 25 Seaver Street, said that the difference between the driveway and right-of-way was about 4 inches on the Seaver Street property line.

ZBA 93-43
Petition of Robert L. and Marcia D. Garcea
25A Seaver Street

The Board stated that it is faced with the problem of agreeing that the right to property pertaining to the deeded right-of-way is equal to ownership, when it is actually only right of use; the problem of whether to consider the right of way as frontage; and finally, whether the variance is de minimus when the frontage required would be an additional 55 feet.

Mr. Larkowich said that the situation is unique. The requested definition of frontage is not a normal definition, which is the reason for the variance request. At this point, the lot has become a marketing nightmare, which, if the variance is not granted, could only be rented in perpetuity, creating an enormous hardship to the petitioners.

Mr. Larkowich explained that when the property was subdivided, the lots could not conform to zoning. A "pork-chop" lot could not have been created, and the adjoining properties do not have sufficient land to allow the owner to purchase frontage. A land swap with 25 Seaver Street would create new zoning violations which would not be allowed. Other abutting land is owned by the School Department and the Conservation Commission. The result is that 25A Seaver Street is totally blocked. The incongruity of the situation is that the State statute allows the land division, while local zoning, in effect, says that this should not be done.

No other person present had any comment on the petition.

Statement of Facts

The subject property is located at 25A Seaver Street, in a Single Residence District on a 22,156 square foot lot. The property is bounded on the north by Town owned land; on the west by Wellesley High School; on the east by 21 Seaver Street; and on the south by 25 Seaver Street. A 20 foot deeded right-of-way across 25 Seaver Street provides the only legal access to Seaver Street as the property has no frontage on a public way.

Originally, the properties at 25A and 25 Seaver Street comprised a single lot of 32,430 square feet. The dwelling at 25A Seaver Street has existed in the same location for over 100 years. The dwelling at 25 Seaver Street was constructed subsequently, but is at least 75 years old.

In 1979, the then owner, Mr. Conroy filed an Approval Not Required plan with the Wellesley Planning Board to divide the property into two lots, each to contain a single family dwelling. The plan was filed pursuant to MGL Chapter 41, Sections 81L and 81P, was signed by the Planning Board, and recorded at the Norfolk Registry of Deeds.

RECEIVED
TOWN OF WELLESLEY
JUN 7 11 09 AM '93

ZBA 93-43
Petition of Robert L. and Marcia D. Garcea
25A Seaver Street

Subsequent to the division of the property, the present owners, the Garceas, purchased the property and have owned it for the past 14 years. During that time, three building permits have been issued for property improvements. Until recently, when a prospective purchaser questioned the zoning conformity, the question has never arisen.

The petitioners are requesting sequential variances from Sections XIX A and B of the Zoning Bylaw to allow the 20 foot deeded right of way to satisfy the definition of frontage, and then to vary from the frontage requirement of 75 feet by allowing the 20 foot width of the deeded right-of-way, at its connection with Seaver Street, to meet the frontage requirement.

A brief entitled "Presentation of Dr. and Mrs. Robert Garcea to the Zoning Board of Appeals" drafted by Peter Larkowich, Esq.; a plot plan drawn by Carmelo Frazetti, Registered Land Surveyor; and photographs were submitted.

Letters of support were received from Lawrence Murphy, 25 Seaver Street; Nancy and Stewart Stokes, 21 Seaver Street; Mary and Alice Fitzpatrick, 30 Seaver Street; and Janeen Hansen, 26 Seaver Street.

On May 11, 1993, the Planning Board voted to comment that it questioned the need for a variance in that it appears that the provisions of MGL chapter 41, sections 81L and 81P seem to authorize conveyances of property properly divided and recorded under the above stated provisions.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject property does not conform to the current Zoning Bylaw as noted in the foregoing Statement of Facts.

This Authority is of the opinion that the situation created by the subdivision of the property in 1979 is unique to this property, but not generally affecting the zoning district in which it is located, due to the nonexistence of frontage and the impossibility of acquiring frontage. The abutting property to the west fronting Seaver Street is owned by the Town. Sale of frontage by the owners of 25 Seaver Street would create a zoning violation if that lot was diminished, as the property contains only 10,274 square feet with frontage of 110.05 feet.

This Authority is of the opinion that the hardship was not self-created, as the petitioners were buyers in good faith subsequent to the subdivision of the land by the prior owners, the Conroys. If the variance were not to be granted, the petitioners would endure considerable financial hardship, as the property could never be conveyed.

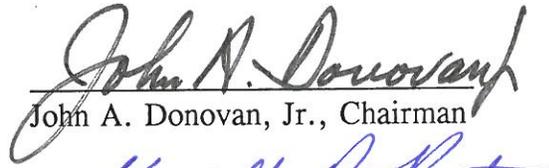
ZBA 93-43
Petition of Robert L. and Marcia D. Garcea
25A Seaver Street

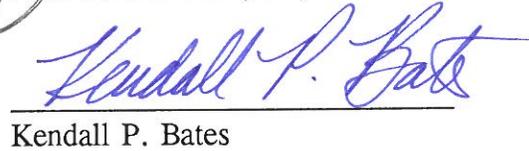
This Authority is of the opinion that a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship to the petitioners and that the allowance of the variance would not be detrimental to the neighborhood nor be in derogation of the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance from the terms of Section XIX A and B of the Zoning Bylaw is granted to allow the 20 foot deeded right-of-way to satisfy the requirements of the aforesaid Section of the Zoning Bylaw in regard to definition and width to enable the property at 25A Seaver Street to be brought into conformance with the current 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

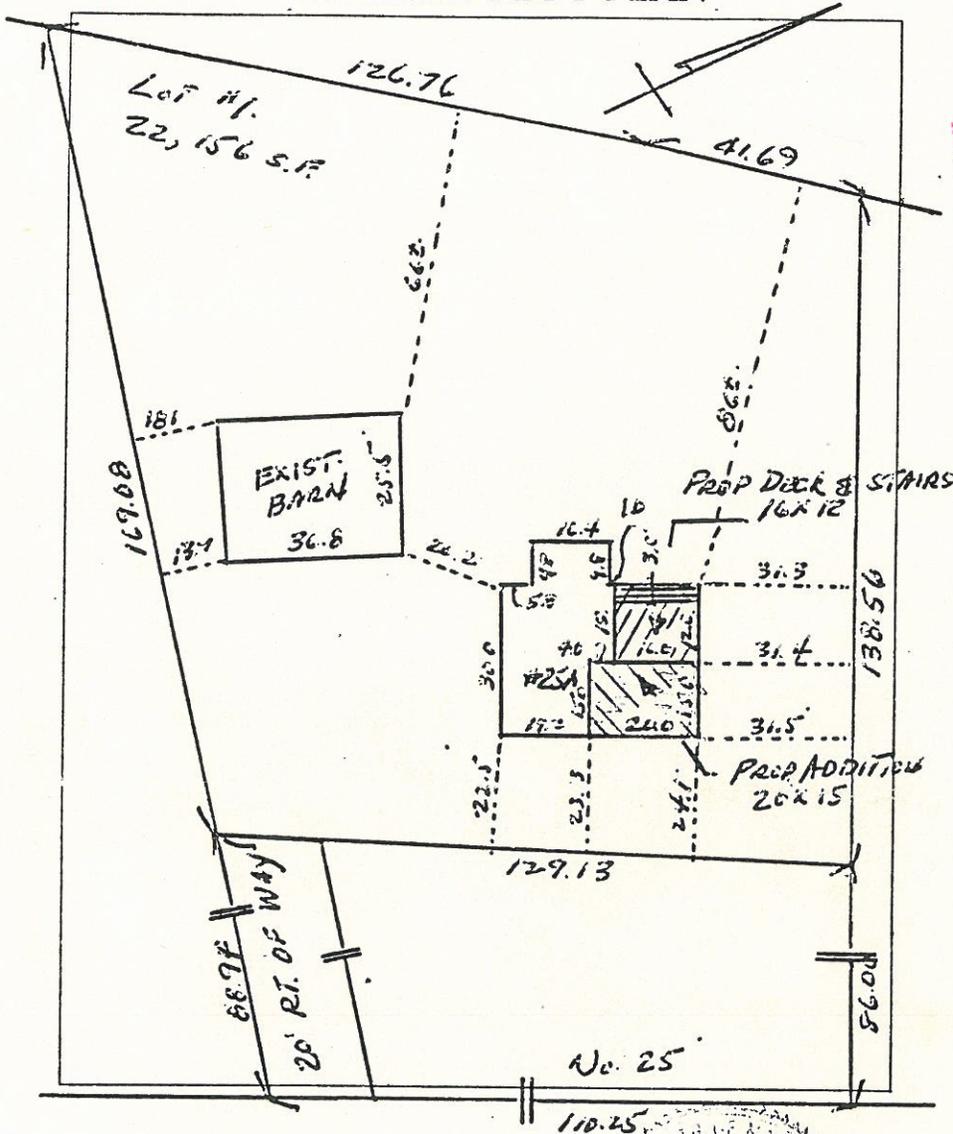

John A. Donovan, Jr., Chairman


Kendall P. Bates


Robert R. Cunningham

RECEIVED
TOWN CLERK'S
OFFICE
11 09 AM '93

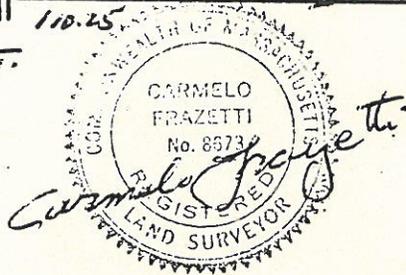
CERTIFIED PLOT PLAN

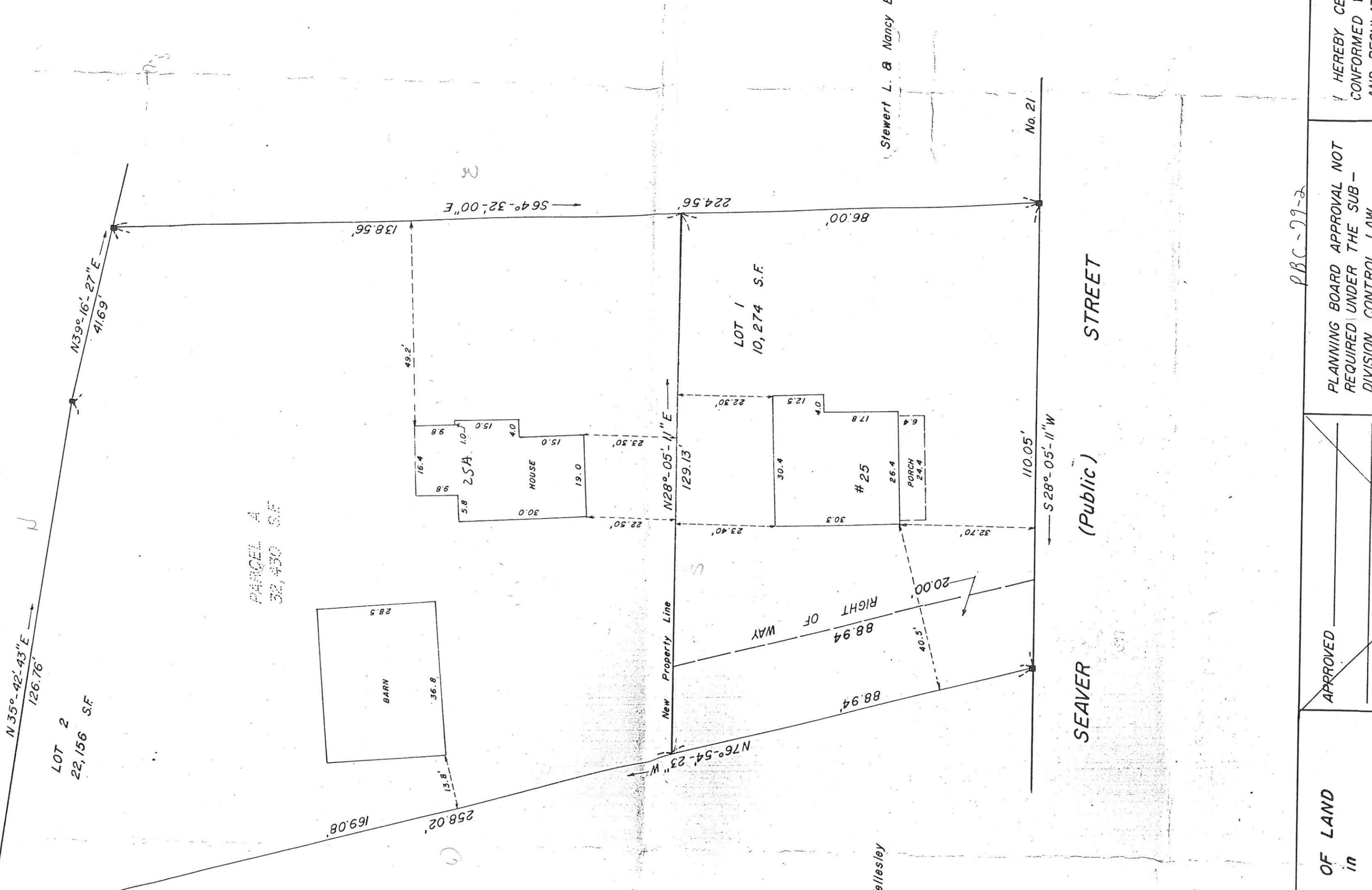


RECEIVED OFFICE
TOWN CLERK'S OFFICE
WELLESLEY, MA 02181

MAY 3 11 43 AM '93

SEWER
SCALE 1" = 40' ST.





HEREBY CEI
CONFORMED W
AND RE...

PLANNING BOARD APPROVAL NOT
REQUIRED UNDER THE SUB-
DIVISION CONTROL LAW

PBC-79-2

APPROVED

OF LAND
in