TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JUN 2 15 PM '95

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

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Executive Secretary
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ZBA 95-39
Petition of Douglas and Naomi McCracken
1 Hewins Farm Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on May 25, 1995 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 DOUGLAS AND NAOMI McCRACKEN requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow a second story overhang of .25 feet to remain at their nonconforming dwelling with less than the front yard setback from HEWINS FARM ROAD, at 1 HEWINS FARM ROAD, in a Single Residence District. Said zoning violation created by the overhang is due to a construction error and was not created by the petitioners.

On May 8, 1995, the petitioners filed a request for 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 Douglas McCracken. The Board commented that the builder could have made the overhang conform, if he had been more careful.

No other person present had any comment on the petition.

Statement of Facts

The subject nonconforming dwelling is located at 1 Hewins Farm Road, on a 20,001 square foot lot, in a Single Residence District, and has a minimum front yard clearance of 29.8 feet from Hewins Farm Road.

The house was constructed by Classic House, Inc. in 1991. The plot plan dated July 16, 1991, drawn by Robert F. Drake, Registered Professional Land Surveyor, which appears on the Zoning Certification Form, shows the foundation to be set back 30.9 feet from Hewins Farm Road. The house is a garrison colonial in which the second floor overhangs the first floor at the front of the house. A Mortgage Inspection Plan, dated 6/29/93, drawn by Paul T. Grover, Registered Land Surveyor shows the second floor overhang to be 29.75 feet from the property line abutting Hewins Farm Road.

The petitioners then had the property resurveyed by Mr. Drake. A plot plan dated February 22, 1994, drawn by Robert F. Drake, Registered Professional Land Surveyor, shows the

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JUN 7 2 15 PM '95
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WELLESLEY, MA 02181

front setback from Hewins Farm Road as 29.8 feet at the left front corner and 29.9 feet at the right front corner. This zoning violation has been created by the encroachment of the overhang at the front of the house.

The petitioners are requesting a variance to allow the .25 foot overhang to remain, as the violation is due to the error of the builder and the removal of the overhang would result in a substantial hardship to the petitioners.

The aforementioned plot plans, front and right side elevations, and photographs were submitted.

On May 16, 1995, the Planning Board reviewed the petition and voted to comment that the builder should be familiar with the zoning requirements, but requiring compliance would cause a hardship for the owners.

Decision

This Authority has made a careful study of the materials presented. Due to a construction error, the dwelling is a nonconforming structure and does not comply with the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that the .25 foot encroachment of the front overhang is de minimum and can be allowed, as a literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardhship to the petitioners and desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw, particularly as the encroachment is due to the error of the builder, and was not created by the petitioners.

Therefore, the requested variance is granted to allow the second story overhang to remain, and the .25 encroachment is allowed.

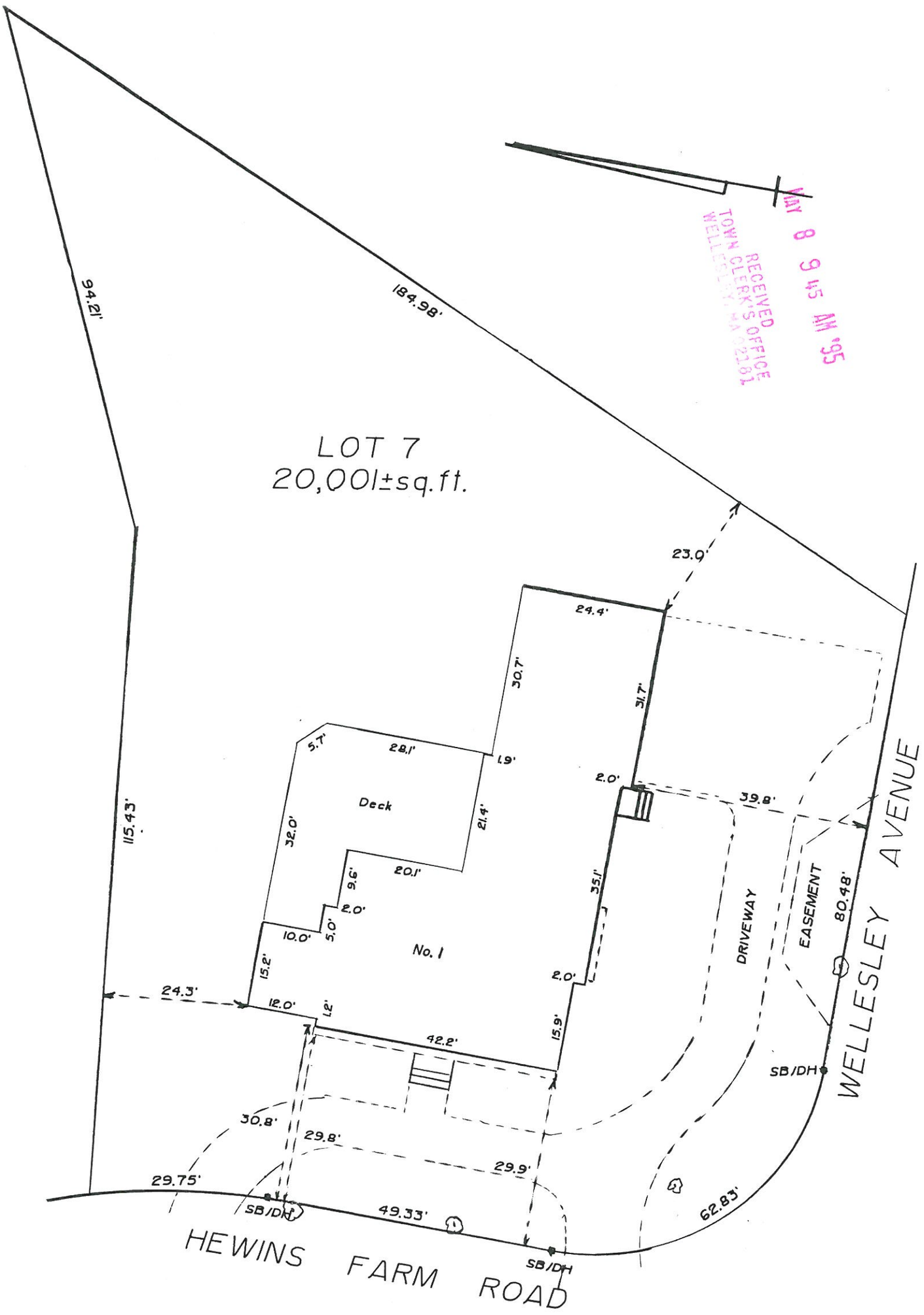
APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

John A. Donovan, Jr., Chairman

Kendall P. Bates

Robert R. Cunningham

cc: Planning Board
Inspector of Buildings
edg



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COMMONWEALTH OF MASSACHUSETTS
ROBERT F. DRAKE
No. 30321
REGISTERED PROFESSIONAL LAND SURVEYOR

APPLICANT DOUGLAS McCRACKEN

PLOT PLAN
IN
WELLESLEY, MASS.
SCALE 1"=20' FEBRUARY 22, 1994

DRAKE ASSOCIATES INC.
770 GROVE STREET FRAMINGHAM, MASS.
CIVIL ENGINEERS LAND SURVEYORS