



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 95-80

Petition of Hugh E. and Pamela S. Haggett
30 Shore Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, November 30, 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 HUGH E. AND PAMELA S. HAGGETT requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to demolish their existing nonconforming dwelling and detached garage, and to construct a new two-story dwelling with attached two car garage, which will have less than the required left, front and right side yard setbacks at their premises at 30 SHORE ROAD, in a Single Residence District.

A variance is also requested from the terms of Section XVIII and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow the existence of two houses on one lot during the construction period of the new dwelling. Section XVIII requires one lot for each dwelling constructed upon it.

On November 13, 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 were Hugh and Pamela Haggett. Mr. Haggett said that his existing house is in very poor condition that it cannot be remodelled, and must be demolished. The proposed house would have the same front setback as the existing house. Part of the existing house is on Town land. The new house would be totally within the property boundaries. It will be about 30 feet from the existing dwelling.

Mr. Haggett explained that for financial reasons, he plans to live in the existing house, while the new house is being constructed. The existing house would then be demolished in order to build the attached garage.

The Board stated that Mr. Haggett's plan does not conform to zoning regulations which do not allow two residences on one lot.

Mr. Haggett stated that the Building Inspector had told him that an occupancy permit would not be issued for the new house until the existing house was demolished. He was under the impression that the Building Inspector would allow the two houses during the construction period. He would be willing to put up a bond to ensure that the existing house would be demolished.

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The Board stated that it had no problem with the proposed house, but did have a problem with allowing the new house to be constructed prior to demolition of the existing house, as the granting of such a variance would set an unfortunate precedent, and questioned whether the Building Inspector had actually agreed to allow such a situation to occur. The Board suggested that the hearing be continued so that Mr. Haggett could resolve the discrepancy between his understanding and the Board's understanding of what the Building Inspector would allow.

The Board unanimously voted to continue the hearing on the petition to the Public Hearing to be held on January 18, 1996.

Due notice of the continued hearing was given by mailing and publication.

Prior to the hearing on January 18, 1996, the Board requested and received an opinion on the issue of two houses on one lot from Town Counsel which stated that there was no authority in the Zoning Bylaw on which the Board could rely to grant such a variance, if it were so inclined.

Presenting the case at the hearing on January 18, 1996 were the Haggetts, who were accompanied by their attorney, Robert Granich. Mr. Granich stated that he understood the Board was prepared to grant the variance for the construction of the new house. The issue was the existence of two houses on one lot during the construction period.

Mr. Granich raised the issue of the definition of a "dwelling". He contended that a structure does not become a "dwelling" until it is habitable. In his opinion, the Haggetts could begin construction and carry it forward to the point at which it became habitable without violating the Zoning Bylaw.

Mr. Granich stated that the Zoning Bylaw provides a mechanism to secure the Town against abandonment of the project by allowing the Building Inspector to set adequate security to protect the Town. The Haggetts are prepared to post a cash bond sufficient to provide for demolition of the existing structure.

The Board stated that Town Counsel has given his opinion that the Board does not have the authority to grant such a variance, and the Board would be reluctant to act in opposition to his opinion.

Mr. Granich stated that if the Board were to take that position, the Haggetts would request that the Board grant the variance to allow construction of the new house, assuming denial of the variance for two houses on one lot.

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The Board agreed that it would not grant the variance for construction without including a condition that the existing house be demolished prior to any new construction. The variance for two houses on one lot would be denied.

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Mr. Granich requested that the Haggetts be allowed to withdraw without prejudice the request for a variance for the two houses on one lot during the construction period.

The Board voted unanimously to allow the Haggetts to withdraw the aforementioned petition without prejudice.

Statement of Facts

The subject property is located at 30 Shore Road, in a Single Residence District, on a 9,373 square foot lot abutting Morses Pond. A twenty foot wide sewer easment runs through the right side of the property. The lot contains a nonconforming dwelling which extends onto Town land on the left and front portions of the lot, and a detached one-car garage. A shed structure belonging to the petitioners is located on Town land.

The petitioners are requesting a variance to demolish the existing dwelling and detached garage and construct a new two-story dwelling with attached two-car garage which would have a minimum front setback of 9.5 feet, a minimum left side yard setback of 9.5 feet and a minimum right side yard setback of 18.6 feet.

A variance is also requested to allow the existence of two dwellings on one lot during the period of construction.

A Plot Plan dated November 6, 1995, drawn by George N. Giunta, Registered Land Surveyor; Floor Plans and Elevations dated November, 1995, drawn by Hugh E. Haggett; and photographs were submitted. A Memorandum Regarding Petition for Variances prepared by Robert J. Granich was submitted subsequent to the Public Hearing on November 30, 1995.

On October 5, 1995, the Wetlands Protection Committee voted to issue an Order of Conditions, DEP #324-215.

On November 21, 1995, the Planning Board reviewed the petition and voted to offer no opposition to the request as proposed.

A letter dated January 18, 1996 was received from Albert Robinson, Town Counsel, in which he states:

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"...you have now asked my opinion on behalf of the Board on the question of whether there is any authority in the zoning bylaw on which the Board could rely if it wanted to somehow permit Mr. Haggett to build a new residence on his single-family lot while living in the old.

I find none. The bylaw clearly limits the use of his lot to one single-family dwelling. Section II, XVIII. There is no special permit procedure available, and the Town does not recognize use variances. The fact that some other town may have authorized this is, of course, irrelevant inasmuch as your Board's authority is governed by, and limited to the authority set for in this Town's bylaw."

Decision

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

At the aforementioned Public Hearing, this Authority unanimously voted to allow the petitioners to withdraw without prejudice their request for a variance to allow two dwellings to exist on one lot during the period of construction.

It is the opinion of this Authority that because of the shape of the lot and the topography of 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.

This Authority voted unanimously at the aforementioned Public Hearing to grant the requested variance to demolish the existing nonconforming dwelling and detached garage and to construct a new nonconforming dwelling.

Therefore, the requested variance is granted subject to the following conditions:

1. No building permit shall be issued prior to issuance of a demolition permit by the Inspector of Buildings and completion of total demolition of the existing dwelling, detached garage, and shed structure, which is located on Town property.
2. The proposed new dwelling and attached garage shall be constructed in accordance with the submitted plot plan and construction plans.

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3. All of the conditions stated in the Order of Conditions (DEP 324-215) issued by the Wetlands Protection Committee shall be incorporated into this decision.

The Inspector of Buildings is hereby authorized to issue a permit for the construction, subsequent to the petitioners' compliance with Condition One, upon his receipt and approval of a building application and detailed construction plans.

If the rights authorized by this variance are not exercised within one year of the date of grant of said 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.

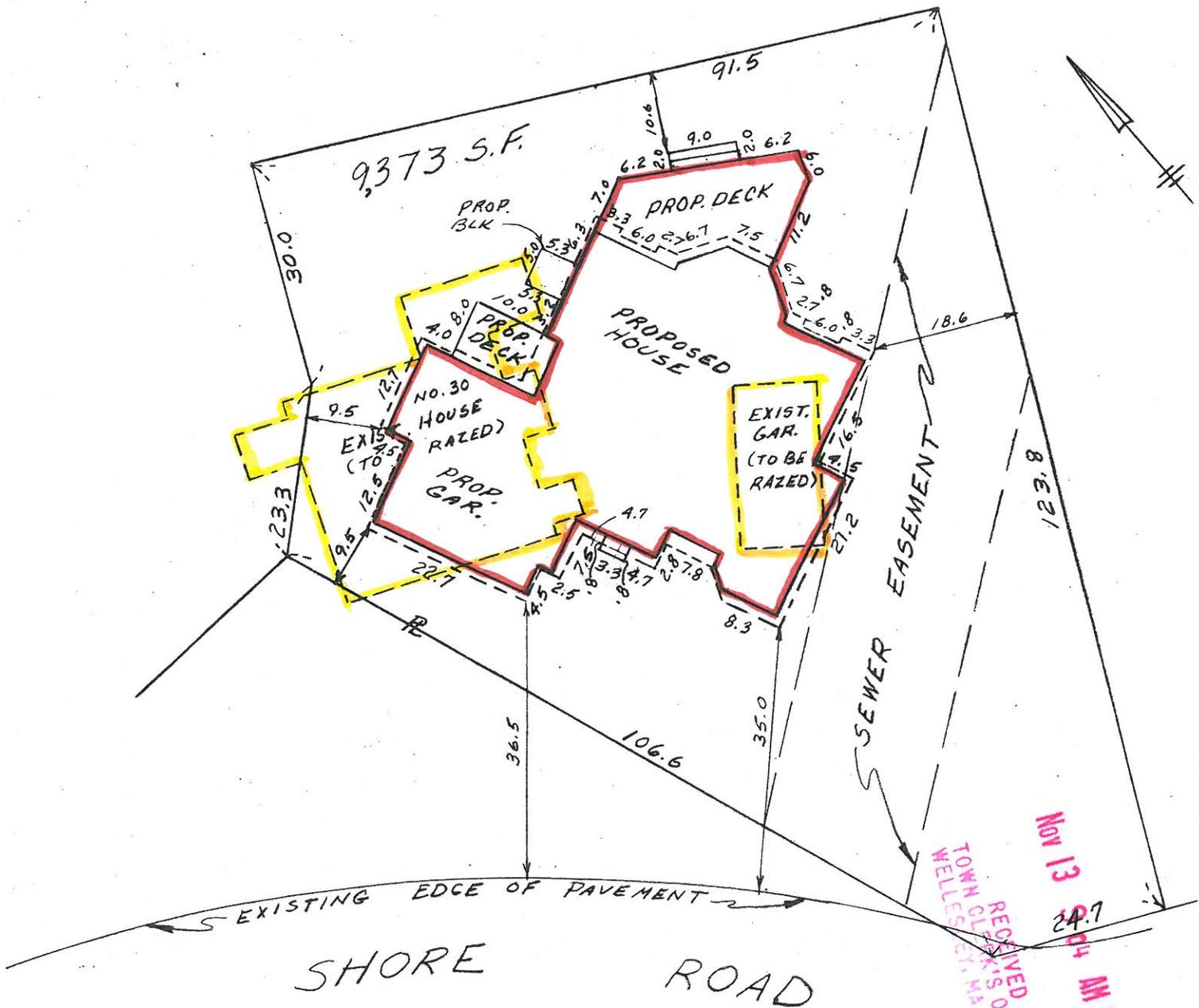
cc: Planning Board
Inspector of Buildings
Wetlands Protection Committee
edg


John A. Donovan, Jr., Chairman


Kendall P. Bates

Robert A. Bastille

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PLOT PLAN OF LAND
 IN
WELLESLEY — MASS.

NOV. 6, 1995 SCALE 1" = 20'

NEEDHAM SURVEY ASSOCIATES, INC.
 281 CHESTNUT ST
 NEEDHAM, MASS.

GEORGE N. GILMAN
 No. 27021
 REGISTERED
 LAND SURVEYOR