



ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02181

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ZBA 96-62

Petition of Irena Finehouse
11 Cedar Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, September 19, 1996 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 IRENA FINEHOUSE 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 deck approximately 7.8 feet by 19.4 feet with a minimum right side yard setback of 11.2 feet at her nonconforming dwelling at 11 CEDAR STREET, in a Single Residence District. The deck was built by the petitioner in violation of the Zoning Bylaw and without a building permit.

On September 3, 1996, the petitioner 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 Irena and Sergei Finehouse. Mr. Finehouse said that when they bought the house, the mortgage survey showed that there was sufficient room for the deck. He had built decks on both the right and left sides of the house. He has removed the left side deck, which was very nonconforming, but would like to keep the deck on the right side.

Mr. Finehouse explained that he had taken out building permits for remodelling projects at #13 Cedar Street, and had applied for a building permit to remodel the basement at #11. The total cost of the building permits was so great that he built the deck, and planned to apply for the building permit at a later time. However, when the Assistant Building Inspector viewed the premises, he would not issue the permit for #11 until the deck was either removed or a variance was granted by the Board of Appeals.

The Board commented that the triangular shape of the lot makes it difficult to build in a conforming manner, and had Mr. Finehouse come before the Board prior to building the deck, relief might have been granted. However, it was the opinion of the Board that Mr. Finehouse knew that the deck required both a building permit and zoning relief and applied for neither, which makes the grant of a variance very difficult.

No other person present had any comment on the petition.

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Statement of Facts

The subject nonconforming property is a two-family dwelling located at 11-13 Cedar Street, in a Single Residence District, on an 8,380 square foot lot, and has a minimum left side yard clearance of 5.2 feet and a minimum right side yard clearance of 17.3 feet.

The two-family dwelling was built prior to 1900. In October, 1994, it was purchased by Irena and Sergei Finehouse, and sole ownership was transferred to Irena Finehouse in 1995. In October, 1994, Mr. Finehouse was issued a permit for plastering and insulation work on #13, and in January, 1995, was issued a permit for #13 to add two and one-half baths, finish the attic, and remodel the kitchen. Some time between January, 1995 and June, 1996, Mr. Finehouse added a nonconforming deck on the left side of #13, and a nonconforming deck on the right side of #11. In June, 1996, he applied for a building permit to remodel the basement. At that time, the Assistant Building Inspector viewed the premises, and refused to issue the permit until the illegal decks were removed or were granted relief by the Board of Appeals. Mr. Finehouse has removed the deck on the left side, but is requesting a variance to allow the 7.8 foot by 19.4 foot deck, with a minimum right side yard clearance of 11.2 feet, to remain.

A Plot Plan dated August 21, 1996, drawn by Bruce Bradford, Professional Land Surveyor; a floor plan and elevation dated August 8, 1996, drawn by Sergei Finehouse, and photographs were submitted.

On September 17, 1996, the Planning Board reviewed the petition and voted to recommend opposition to the granting of the variance, as any hardship has been self-created.

Decision

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

Variations 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 but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and

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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."

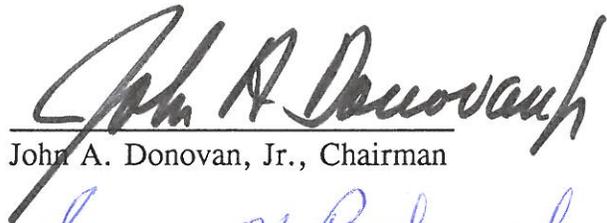
This Authority fails to find "substantial hardship", but finds that the hardship has been "self-created" within the meaning of Section XXIV-D of the Zoning Bylaw.

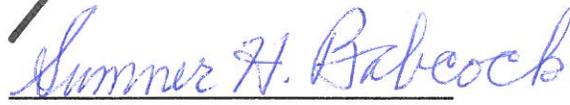
Therefore, it is the unanimous vote of this Authority, taken at the Public Hearing, that this request for a variance be denied, and this petition is dismissed with the following conditions:

1. The subject 7.8 foot by 19.4 foot deck shall be removed within 60 days.
2. A revised plot plan showing the absence of said deck shall be subitted to the office of the Board of Appeals.
3. No building permits shall be issued for #13 or #11 until compliance with the above conditions has been demonstrated and confirmed.

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


Sumner H. Babcock


Robert A. Bastille

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PLAN OF LAND IN WELLESLEY, MASS.

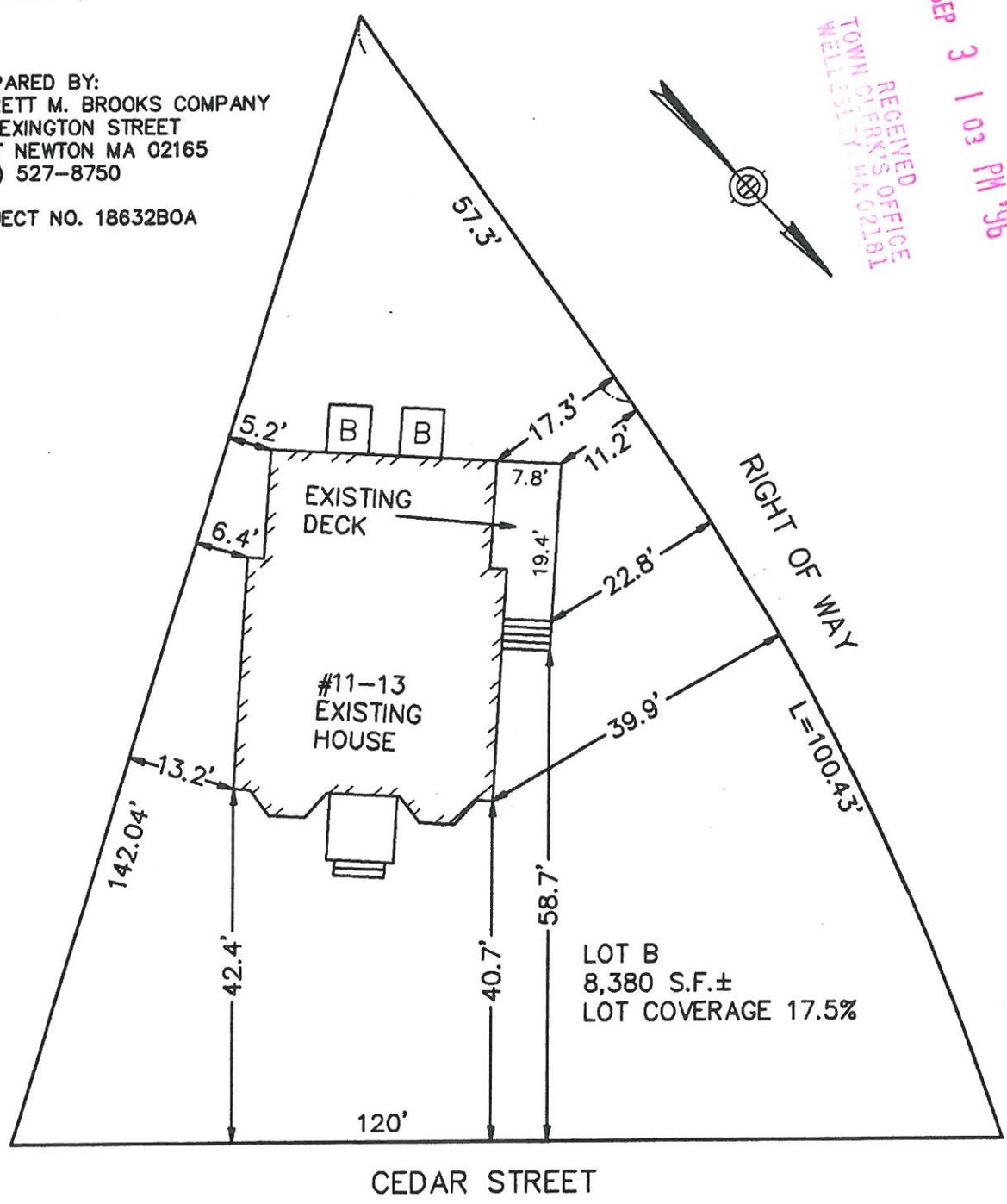
11 - 13 CEDAR STREET

SCALE 1 IN. = 20 FT AUGUST 21, 1996

PREPARED BY:
EVERETT M. BROOKS COMPANY
49 LEXINGTON STREET
WEST NEWTON MA 02165
(617) 527-8750

PROJECT NO. 18632BOA

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LOT B
8,380 S.F.±
LOT COVERAGE 17.5%

CEDAR STREET

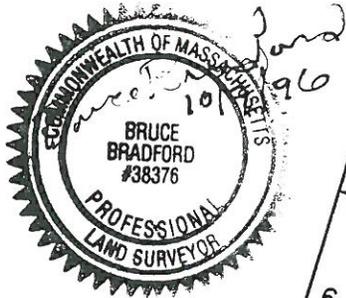
PLAN OF LAND IN WELLESLEY, MASS.

11 - 13 CEDAR STREET

SCALE 1 IN. = 20 FT OCTOBER 9, 1996

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