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ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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

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Executive Secretary
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431-1019

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FRANKLIN P. PARKER
SUMNER H. BABCOCK

ZBA 88-79
Petition of Maurice and Mary Foley
21 Howe Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, September 22, 1988 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley, on the petition of MAURICE AND MARY FOLEY requesting a variance from the terms of Section XIX and pursuant to Section XXIV-D of the Zoning Bylaw to allow completion of an illegally built deck approximately 21 feet 10 inches by 8 feet 4 inches at their non-conforming dwelling at 21 HOWE STREET, in a Single Residence District, and to allow said deck to be brought into conformance with the current Zoning Bylaw of the Town. Said deck was constructed without a building permit and leaves less than the required front setback and less than the required right side yard.

On September 6, 1988, the petitioners requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case were Maurice and Mary Foley. Mr. Foley said that the deck had been built to overlook a play area, although it could have been located so as to comply with the zoning laws. The deck area was originally a patio. The Foley said that they built the deck themselves and simply overlooked applying for a building permit.

The Board noted that the deck encroached substantially on both the front and right side yards and asked why the deck had not been located on the left side of the house. Mrs. Foley explained that the drop is severe on that side.

No other persons present had any comment on the petition.

Statement of Facts

The non-conforming dwelling is located at 21 Howe Street, in a Single Residence District, on a 12,556 square foot lot, with a minimum front setback of 9.02 feet from the house, 8.44 feet from the illegally built deck, and a minimum right side yard clearance of 13 feet from said deck.

On August 1, 1988, the Foleys received a Notice of Violation from the Inspector of Buildings stating no Building Permit had been issued for construction of a deck on the property and that the deck was possibly in violation of the Zoning Bylaw as well. The Foleys are now requesting a variance to complete the illegal deck, approximately 21 feet 10 inches by 8 feet 4 inches, and to allow said deck to be brought into conformance with the current Zoning Bylaw of the Town. The deck has a minimum front setback of 8.44 feet and a minimum right side yard clearance of 13 feet.

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A Plot Plan dated August 9, 1988, drawn by John J. Regan, Registered Land Surveyor; construction sketches; and photographs were submitted.

The Planning Board, on September 13, 1988, voted to oppose the granting of this variance request.

Decision

This Authority has made a careful study of the evidence presented. The subject house does not conform to the present Zoning Bylaws as noted in the foregoing Statement of Facts.

The Board is disturbed that the petitioners have constructed the deck without obtaining a building permit and disapproves of such violation of the town regulations which were adopted for the protection of the community and the welfare of its citizens.

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)

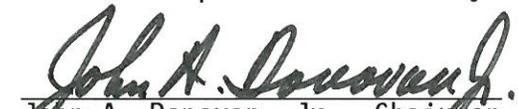
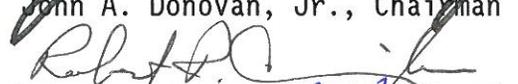
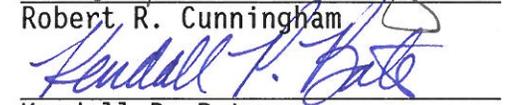
- "1.
 - a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, especially affecting such land 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. Furthermore, this Authority finds that any resultant hardship in this matter has been "self-created".

Therefore, it is the unanimous opinion of this Authority that this request for a variance be denied and that the petitioner is hereby ordered to remove the entire deck, as described in the foregoing Statement of Facts, and to complete this removal within thirty (30) days of the date of this decision. This petition is hereby dismissed.

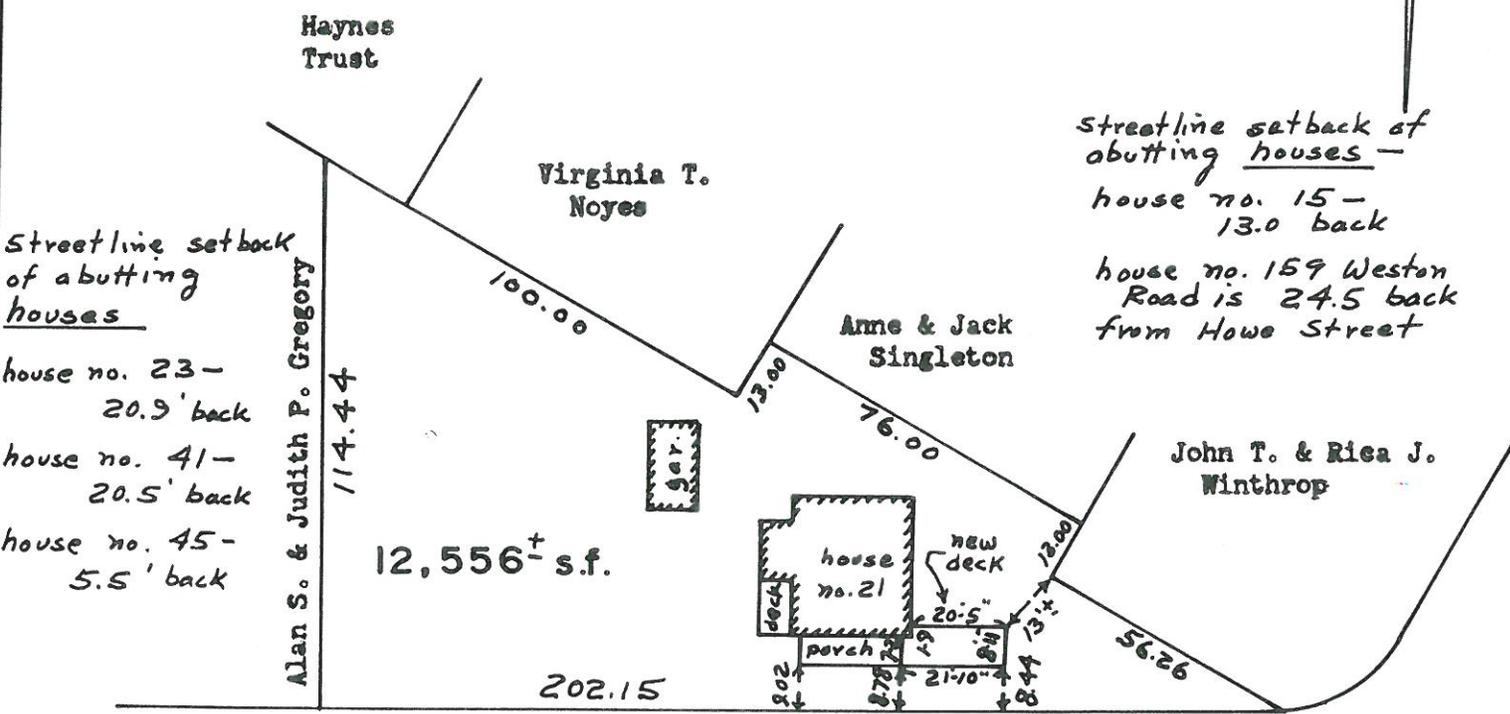
APPEALS FROM THIS DECISION, IF ANY,
SHALL BE MADE PURSUANT TO GENERAL
LAWS, CHAPTER 40A, SECTION 17, AND
SHALL BE FILED WITHIN 20 DAYS AFTER
THE DATE OF FILING OF THIS DECISION
IN THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
Inspector of Buildings


John A. Donovan, Jr., Chairman

Robert R. Cunningham

Kendall P. Bates

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Streetline setback of abutting houses
 house no. 23 - 20.9' back
 house no. 41 - 20.5' back
 house no. 45 - 5.5' back

Streetline setback of abutting houses
 house no. 15 - 13.0 back
 house no. 159 Weston Road is 24.5 back from Howe Street

HOWE STREET

Lot coverage -
 Existing buildings with new deck covers 1406± s.f. or 11% of lot.



John J. Regan

**PLAN OF LAND
 IN
 WELLESLEY MASS.
 TO ACCOMPANY THE PETITION OF
 MAURICE V. & MARY ALICE FOLEY
 21 HOWE STREET
 WELLESLEY**

SCALE 1 IN = 20 FT
 JOHN J. REGAN
 NEWTON HIGHLANDS

AUGUST 9, 1988
 LAND SURVEYOR
 MASS.