TOWN OF WELLESLEY MASSACHUSETTS

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

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

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ZBA 88-80
Petition of P. Charmienne Hughes
33 College Road

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) on the petition of P. CHARMIENNE HUGHES requesting a variance from the terms of Section XIX and pursuant to Section XXIV-D of the Zoning Bylaw to allow an illegally constructed greenhouse approximately 13.3 feet by 8.1 feet at her non-conforming dwelling at 33 COLLEGE ROAD to be brought into conformance with the current Zoning Bylaw of the Town. Said greenhouse was constructed without a building permit and leaves less than the required left side yard.

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

Presenting the case at the hearing was Charmienne S. Hughes, who was accompanied by her mother, Mrs. P. Charmienne Hughes. Ms. Hughes said that her mother had hired Vito de Matos to construct the greenhouse. Mr. de Matos never applied for a building permit. Mrs. Hughes did not realize that the greenhouse was illegal until she received a Notice of Violation from the Building Department. At that time, she had a Plot Plan done and filed an application for a variance. There was never an intent to violate Town laws. Ms. Hughes added that removal of the greenhouse would be a financial hardship.

The Board stated that if Mrs. Hughes had initially applied for a variance for the construction, she would probably have been denied as the greenhouse constitutes a major encroachment on the left side yard.

No other persons present had any comment on the petition.

Statement of Facts

The non-conforming dwelling is located at 33 College Road, in a Single Residence District, on a 14,941 square foot lot with a minimum left side yard clearance of 15.2 feet.

The petitioner is requesting a variance to allow an illegally constructed deck, approximately 11.3 feet by 8.1 feet, to be brought into conformance with the current Zoning Bylaw of the Town. Said deck was built without a building permit and leaves a minimum left side yard of 7.1 feet.

On May 4, 1988, Mrs. Hughes received the first Notice of Violation from the Building Department stating that no building permit had been filed and there was a possible violation of Section XIX of the Zoning Bylaw. She was assured by the builder, Vito de Matos, that corrective action was being taken. On July 11, 1988, Mrs. Hughes

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received a Final Notice of Violation, at which time, she instituted corrective action herself, as no action had been taken by the builder.

A Plot Plan dated August 23, 1988, drawn by George N. Giunta, Registered Land Surveyor; a brochure describing the greenhouse; and photographs were submitted.

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

A letter dated September 22, 1988, signed by William C. Remsen, 31 College Road, in favor of the petition, is on file in the office of the Board of Appeals.

Decision

This Authority has made a careful study of the evidence presented.

Variances 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.

Therefore, it is the unanimous opinion of this Authority that this request for a variance be denied and that the petitioner be hereby ordered to remove the greenhouse, as described in the foregoing Statement of Facts, 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.

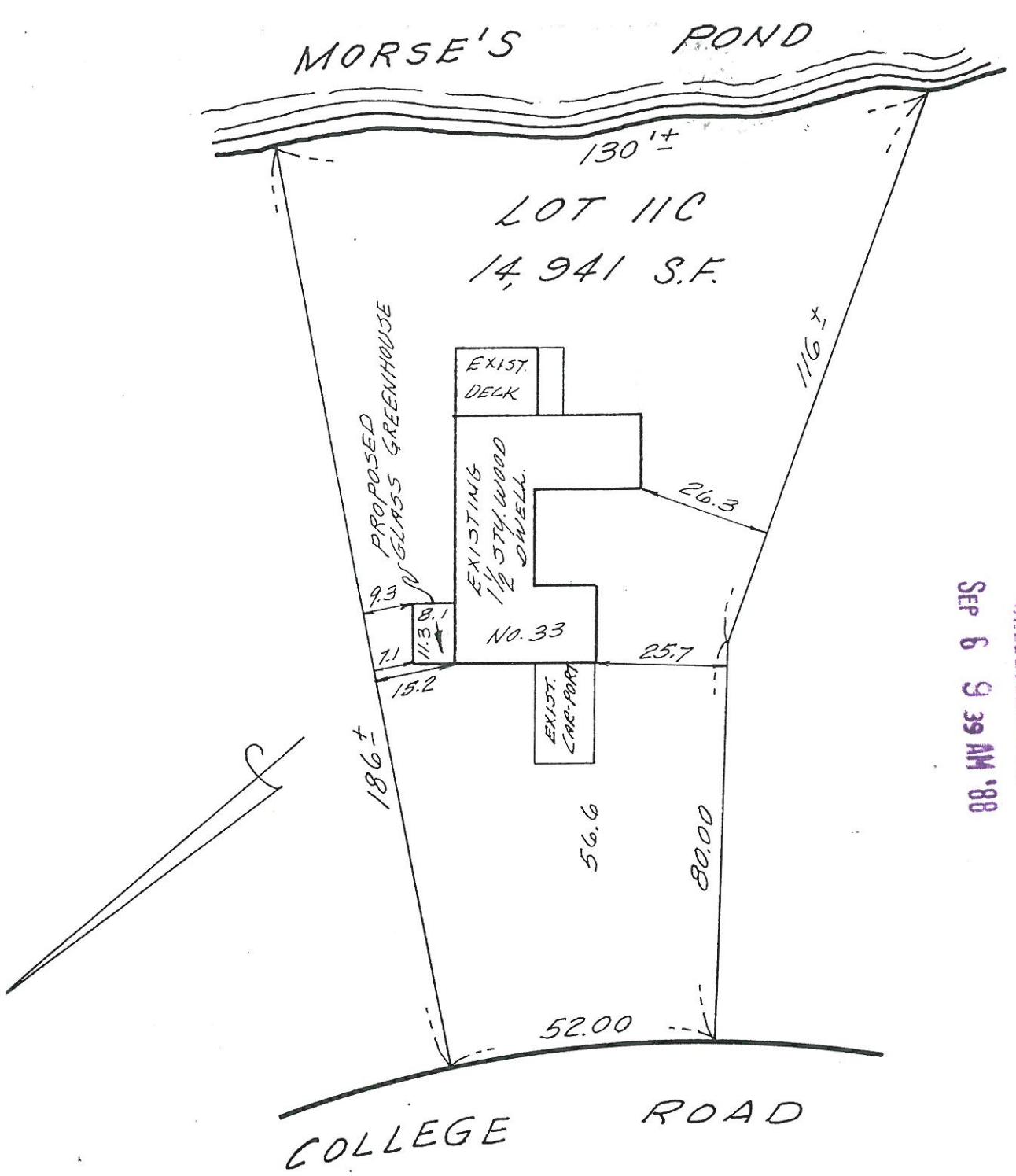
John A. Donovan, Jr., Chairman

Robert R. Cunningham

Kendall P. Bates

cc: Planning Board
Inspector of Buildings

edg



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PLOT PLAN OF LAND IN WELLESLEY —— MASS.

AUG. 23, 1988 SCALE 1"=30'

NEEDHAM SURVEY ASSOCIATES
76 NEHOIDEN ST.
NEEDHAM, MASS.

COMMONWEALTH OF MASSACHUSETTS
GEORGE N. GIUNTA
No. 7011
REGISTERED LAND SURVEYOR