TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 92-59
Petition of Timothy P. Dunn
29 Minuteman Lane

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, November 19, 1992 at 8 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley on the petition of TIMOTHY P. DUNN requesting a variance from the terms of Section XXIIB and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow an above-ground 24 foot round swimming pool to remain at his premises at 29 MINUTEMAN LANE, in a Single Residence District. Said swimming pool was constructed without a building permit, has less than the required left side yard, and is partially constructed on the abutting property to the rear at 22 HARRIS AVENUE.

On November 2, 1992, the petitioner requested 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 Timothy Dunn, who was accompanied by his wife, Nancy, and his in-laws, Mr. and Mrs. Tony Jarvis, owners of the property at 22 Harris Avenue. Mr. Dunn said that he was not aware that he needed a building permit for the pool as it was above ground and had no foundation. He said that it would be very difficult to move the pool as it contains 16,000 gallons of water. The liner containing the water has a life span of between 3 to 5 years. The pool does not have to be drained as it has a filtering system.

Mr. Jarvis asked if he could lease the portion of his property on which the pool is located to Mr. Dunn, but the Board said a lease arrangement would be unacceptable. The strip could not be sold as it would render the Jarvis property nonconforming. Mr. Jarvis also suggested that an agreement be written so that if either property was sold, the pool would have to be removed.

No other person present had any comment on the petition.

Statement of Facts

The subject pool is located on the property at 29 Minuteman Lane, in a Single Residence District. The petitioner is requesting a variance to allow the 24 foot round above-ground pool, which was constructed without a building permit; and is nonconforming in

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that it has a minimum left side yard clearance of 7.2 feet and extends 1.2 feet onto the abutting property at 22 Harris Avenue, to remain.

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A Plot Plan dated October 28, 1992, drawn by Frank A. Morris, Registered Professional Land Surveyor; and photographs were submitted.

On November 17, 1992, the Planning Board reviewed the petition and voted to recommend that the pool be allowed to remain on the condition that it be removed prior to sale of either property.

Decision

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

It is the opinion of this Authority that although the pool is nonconforming as to its location on both lots, the familial relationship between the owners of said properties is a mitigating factor.

It is the opinion of this Authority that a literal enforcement of the provisions of Section XXIIB of the Zoning Bylaw at this time would involve a substantial hardship to the petitioner and that temporary relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance is granted under the following conditions:

1. The petitioner must apply for a building permit within 14 days from the date of this decision.

2. If either property is sold within 5 years of the date of this decision, the pool must be removed prior to said sale.

3. Regardless of whether either property is sold, the pool must be removed 5 years from the date of this decision and cannot be rebuilt without a building permit and in a location that would conform to all zoning requirements.

4. Should the water in the pool have to be removed due to malfunction of any part of the pool prior to the above mentioned date, the pool cannot be rebuilt without a building permit and in a location that would conform to all zoning requirements.

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The Inspector of Buildings is hereby authorized to issue a permit for said above-ground pool upon his receipt and approval of a building application and construction plans.

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

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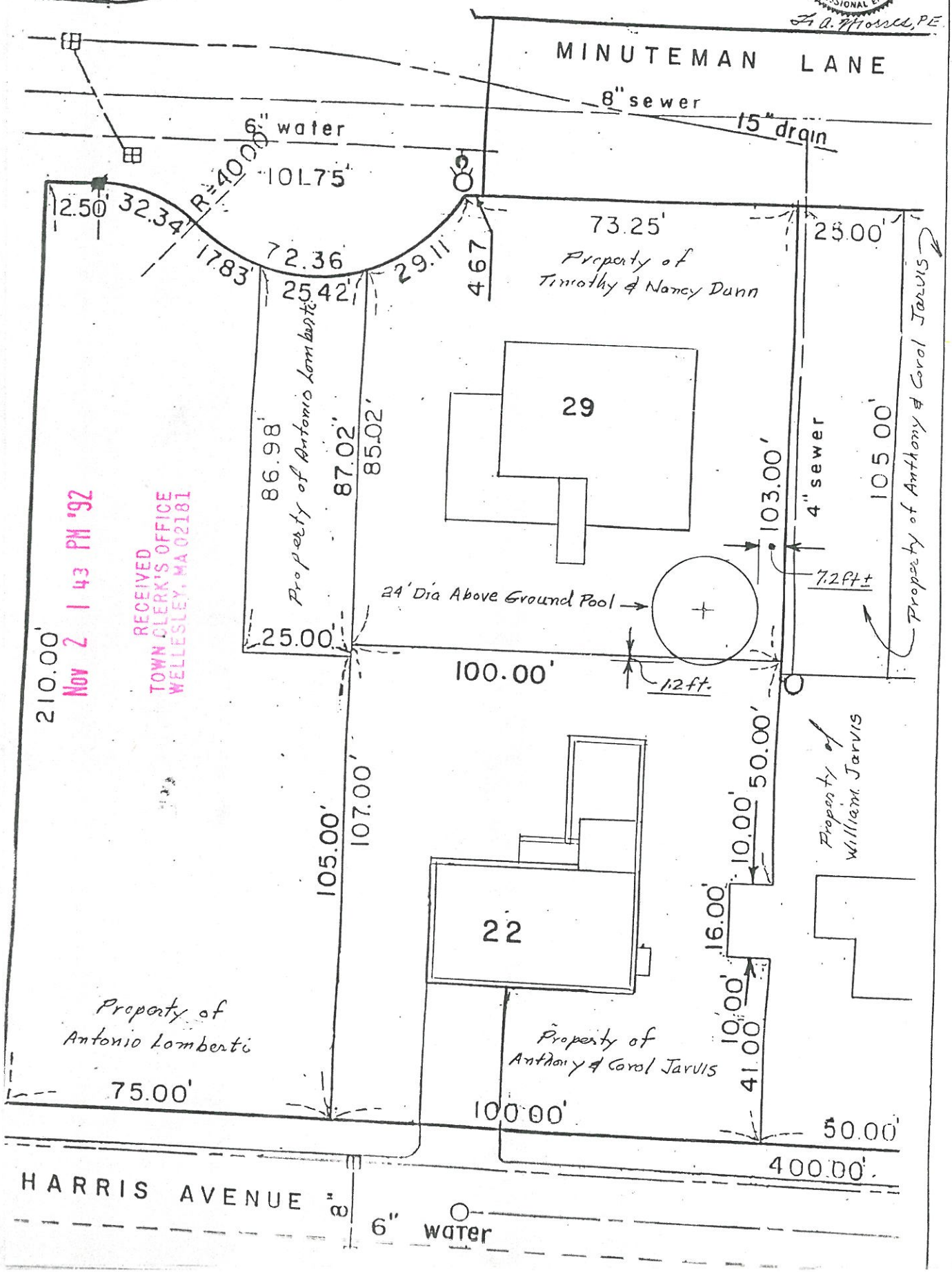
Plan of Land
Property of Timothy & Nancy Dunn
showing
Location of 24 ft. Diameter Above Ground Pool
29 Minuteman Lane Wellesley, Massachusetts
Scale 1" = 20' 28 October 1992
Prepared by Frank A. Morris C.E.
Noreast Engineering

COMMONWEALTH OF MASSACHUSETTS
FRANK A. MORRIS 24502
REGISTERED PROFESSIONAL ENGINEER

F. A. Morris, P.E.



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