



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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WELLESLEY, MA 02181

ZBA 93-79

Petition of Arthur L. Keigler and Gabriele M. Ganswindt  
20 Pine Plain Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, October 28, 1993 at 8 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of ARTHUR L. KEIGLER AND GABRIELE M. GANSWINDT requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow the existence of a nonconforming deck, approximately 18 feet by 32 feet, which extends across the rear and along the left side of their nonconforming dwelling with less than the required left and right side yard setbacks, at 20 PINE PLAIN ROAD, in a Single Residence District. Said deck was constructed by a prior owner without a Building Permit and with less than the required left side yard setback.

On October 4, 1993, the petitioners requested a hearing before this Authority, and thereafter, due notice of the hearing was made by mailing and publication.

Presenting the case at the hearing was James Parent, attorney representing Mr. Keigler, who was also present. Mr. Parent said that a variance was requested from the 20 foot side line requirement, as the deck is 8.4 feet from the left side line.

Mr. Parent gave a brief summary of the details of the closing at which the deck was discovered to be in violation of the Zoning Bylaw. He stated that his subsequent research of the Town records showed that in 1975, the Stearns, the prior owners, applied for a variance, which was granted (ZBA 75-39) for a two-story addition coming 16.1 feet from the left side line. The following year, the Stearns requested a variance to allow construction of the two-story addition about 11 feet from the left side line (ZBA 76-16). The Board denied this petition, but again allowed the previous request of 16.1 feet. The addition was constructed in 1978. According to Mr. Stearns, the deck was built about the same time as the addition. There is a building permit on file for the addition, but none for the deck.

Mr. Parent stated that the hardship deals with the question of the future marketability of the title of the property. If the deck was constructed in 1978, the issue is not the removal of the deck, but the alleviation of the technical zoning violation.

Mr. Parent added that the deck is an attractive feature of the house, is well screened by a stockade fence and shrubbery from the abutting property, and is not as intrusive as the permitted two-story addition, as it is only 3 to 4 feet above ground level.

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The Board noted that if a variance were to be granted, a condition would be imposed in the decision requiring that a building permit be obtained.

No other person present had any comment on the petition.

#### Statement of Facts

The subject nonconforming dwelling, with a minimum left side yard clearance of 8.4 feet and a minimum right side yard clearance of 16.6 feet, is located on an 8,750 square foot lot at 20 Pine Plain Road, in a Single Residence District.

The petitioners are requesting a variance from the terms of Section XIX of the Zoning Bylaw to allow the existence of their nonconforming deck, approximately 18 feet by 32 feet, with a minimum left side yard clearance of 8.4 feet. Said deck was constructed without a building permit and has less than the required 20 foot side yard clearance.

Mr. Parent presented a history of the property at the Public Hearing. According to Mr. Parent, Mr. Stearns, the prior owner, believes that the deck was constructed about 1978, which would be 15 years ago.

Massachusetts General Laws, Chapter 40A, Section 7 states, in substance, that if no enforcement action is taken in regard to a zoning violation within a ten year period from the commencement of the violation, no subsequent action can be taken to compel the removal, alteration or relocation of the structure in violation.

A Plot Plan dated July 19, 1993, drawn by Paul J. DeSimone, Registered Land Surveyor; and photographs were submitted.

On October 12, 1993, the Planning Board reviewed the petition and voted to recommend that the petition be approved as submitted.

#### Decision

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

It is the opinion of this Authority that, in accordance with the provisions of MGL Chapter 40A, Section 7, this Authority cannot order the subject deck to be removed, altered or relocated. It can only allow the existence of the deck in order for the dwelling to be legally brought into conformance with the current Zoning Bylaw.

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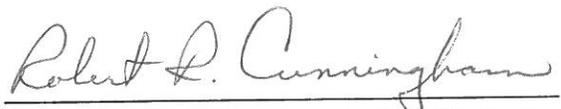
It is the unanimous opinion of this Authority that a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship to the petitioners, and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

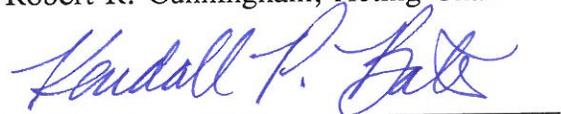
Therefore, the requested variance is granted, subject to the application by the petitioners to the Inspector of Buildings for a building permit for the nonconforming deck as shown on the submitted plot plan, said application to be made within thirty (30) days of the date of grant of this variance and subject to the condition that no further alteration or addition to this deck can be made without a variance granted by the Permit Granting Authority and/or a building permit issued by the Inspector of Buildings.

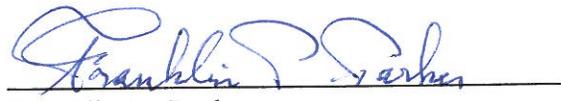
The Inspector of Buildings is hereby authorized to issue a permit for said deck upon receipt and approval of a building application and any other materials he may require.

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

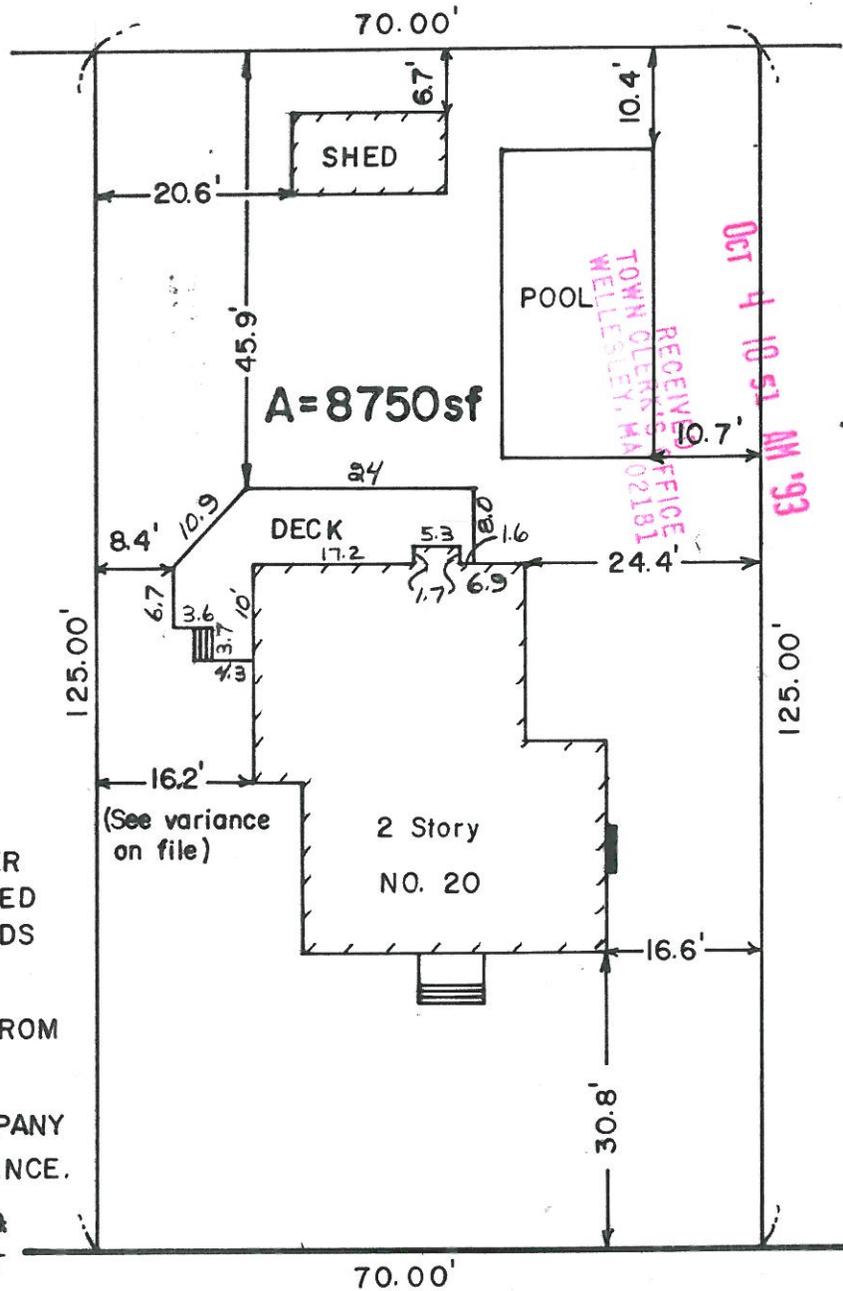
  
Robert R. Cunningham, Acting Chairman

  
Kendall P. Bates

  
Franklin P. Parker

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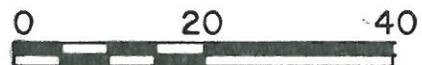
**NOTES:**

1. BEING LOT SHOWN ON A PLAN BY PHILIP A. PLAISTED, ENGINEER DATED NOV. 1, 1928 AND RECORDED AT NORFOLK REGISTRY OF DEEDS BOOK 1828 PAGE 151.
2. THIS PLOT PLAN WAS MADE FROM AN INSTRUMENT SURVEY.
3. THIS PLOT PLAN IS TO ACCOMPANY AN APPLICATION FOR A VARIANCE.
4. OWNER: ARTHUR L. KEIGLER II & GABRIELE M. GANSWINDT

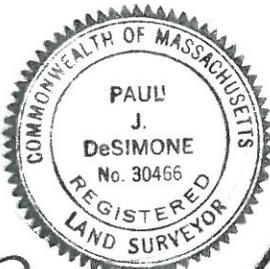
I HEREBY CERTIFY THAT THE EXISTING BUILDINGS SHOWN ON THIS PLAN ARE LOCATED ON THE GROUND AS SHOWN THEREON.

**PINE PLAIN ROAD  
PLOT PLAN  
IN  
WELLESLEY, MA.**

JULY 19, 1993



SCALE: 1" = 20'



*Paul J. DeSimone*

CAMERON BROTHERS INC.  
485 PLEASANT ST.  
MALDEN, MA. 02148