



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

APR 8 8 40 AM '94

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ZBA 94-17
Petition of Christine E. Cahill
386 Weston Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, March 24, 1994 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 CHRISTINE E. CAHILL, requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow her nonconforming deck, approximately 14 feet by 16 feet, with less than the required right side yard, to remain at her nonconforming dwelling with less than the required right side yard setback at 386 WESTON ROAD, in a Single Residence District. Said deck was constructed approximately 20 years ago by a prior owner without a building permit.

On March 7, 1994, 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 Christine Cahill, who was accompanied by Jerry Rossman of Mass. Bay Survey. Mr. Rossman said that his company did a mortgage survey plan in 1990 for Austin O'Connor, the purchaser of the property at that time. Somehow, the nonconformance of the deck was not noted on the plot plan. When Ms. Cahill was about to purchase the property, Mass. Bay Survey was contacted by Ms. Cahill's attorney to do another instrument survey, at which time the deck was found to be in violation of the side yard setback.

Mr. Rossman said that the Assessor's Office records show that there was no deck on the property in 1988. Ms. Cahill's neighbor, Mr. Derosier, said that the deck had been built by the owner of the property prior to 1986. The deck did not appear on a 1976 survey plan. The exact date of construction cannot be determined, but it appears that the deck was built sometime between 1976 and 1985.

Ms. Cahill said that she had not been aware of the violation until 5 days before the closing. Funds have been held in escrow pending the decision of the Board.

The Board noted that although the Statute of Limitations may have expired, there would still be a cloud on the deed if the violation were not resolved. In past cases, the Board has required that the petitioner go through the same process as if the deck was to be initially proposed, and that a building permit be obtained for the deck at the proper time. The Board

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further noted that the deck is far less nonconforming than the house.

No other person present had any comment on the petition.

Statement of Fact

The subject property is located at 386 Weston Road, on an 11,735 square foot lot, in a Single Residence District, with a minimum right side yard clearance of 9.3 feet from the right rear corner of the dwelling. The subject deck is approximately 14 feet by 16 feet and has a minimum right side yard clearance of 17.1 feet.

The one and one-half story dwelling was built prior to the issuance of building permits, which began in 1915. The property has changed ownership several times, but the first time the deck appeared on a survey record was in 1990, when Mass Bay Survey was hired to complete a mortgage survey plan for a prior owner, Austin O'Connor. The survey showed the deck to be conforming. In 1994, when Ms. Cahill was in the process of purchasing the house, a new survey was done which showed the deck to be 17.1 feet from the right side lot line, in violation of the 20 foot setback requirement of Section XIX of the Zoning Bylaw. Based on information provided by Mr. Derosier, 388 Weston Road, it is believed that the deck was constructed some time between 1976 and 1985. The Building Department has no record of a building permit issued for the construction.

The petitioner is requesting a variance to bring the property into conformance with the current Zoning Bylaw.

A Plot Plan dated February 28, 1994, drawn by Paul Sawtelle, Registered Land Surveyor; elevation drawings also done by Paul Sawtelle; and photographs were submitted.

On March 15, 1994, the Planning Board reviewed the petition and voted to recommend that the requested variance be granted.

Decision

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

This Authority is of the opinion that a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship to the petitioner. Furthermore, the allowance of the variance would not be detrimental to the neighborhood, nor in derogation of the intent or purpose of the Zoning Bylaw as the encroachment of the deck into the right side yard is far less than that of the existing nonconforming dwelling.

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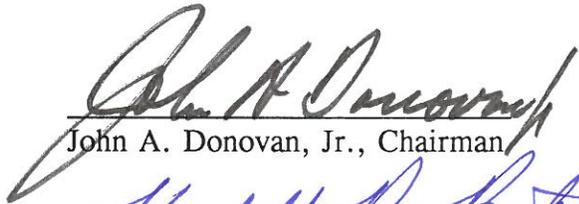
Therefore, the requested variance from the terms of Section XIX of the Zoning Bylaw is granted to allow the existing nonconforming deck to remain subject to the following conditions:

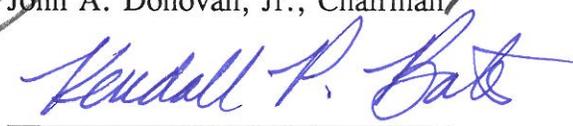
1. Application by the petitioner to the Inspector of Buildings for a building permit for said deck, as shown on the submitted plot plan, shall be made within thirty (30) days of the date of grant of this variance.
2. No further alteration or addition to said deck shall be made without permission from the Board of Appeals 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


John A. Donovan, Jr., Chairman


Kendall P. Bates


William E. Polletta

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N/F Chester & Jeannette Auguston

N/F Philip Jameson
& Ann Carter

N/F Margaret Oconnor

N/F David L. & Harriett Derosier

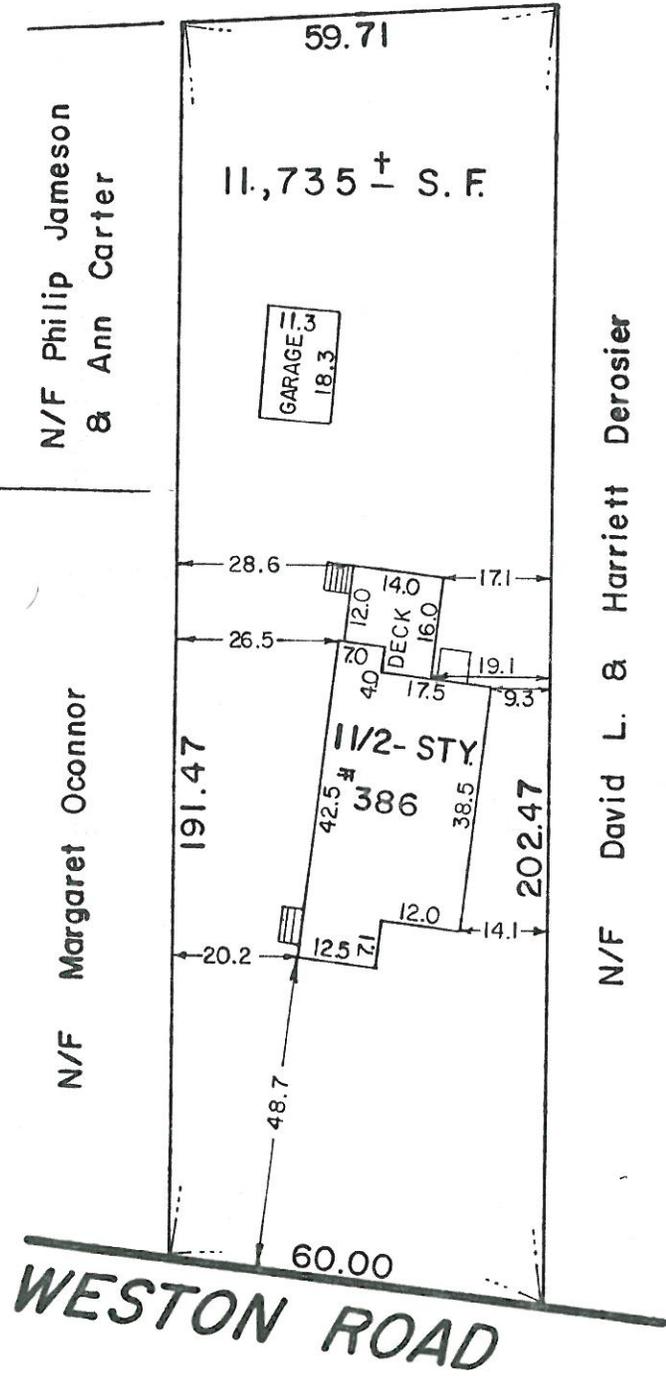
BUILDING ZONE =
RESIDENTIAL 10,000 S.F.

ASSESSORS REF =
MAP 181, ROUTE 047

LOT COVERAGE = 12.5 %

RECORD OWNER:

CHRISTINE E. CAHILL
386 WESTON ROAD
WELLESLEY, MASS.



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WESTON ROAD

PLAN OF LAND
IN

WELLESLEY, MASS.



SCALE: 1" = 30'
MASS BAY SURVEY, INC.

FEB. 28, 1994
NEWTON, MASS.

Paul J. Kavelle