

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 X208

Nov 3 8 27 AM '95

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WELLESLEY, MASSACHUSETTS
WILLIAM E. POLLETTA
FRANKLIN P. PARKER
SUMNER H. BABCOCK

ZBA 95-73
Petition of Rosemarie Dibiase and Curt Moody
18 Sumner Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, October 26, 1995 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 ROSEMARIE DIBIASE AND CURT MOODY requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow their nonconforming deck and hot tub enclosure approximately 15.7 feet by 16 feet to remain at their nonconforming dwelling with less than the required right and left side yard setbacks at 18 SUMNER ROAD, in a Single Residence District. Said deck/hot tub was constructed without a building permit by the prior owner, and has less than the required left side yard setback.

On October 10, 1995, the petitioners filed a request for 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 Curt Moody, who said that he and his wife purchased the property a month ago. The day before the closing, they discovered from the land survey that the deck was 5 feet too close to the left side lot line, and that it had been built without a building permit. The left side abutter, Mrs. Williams, has no objection to the deck. The Stewarts, the right side abutters, also have no objection to the deck.

Mr. Moody said that in order to make the deck conform to the 20 feet side yard requirement between a third and a half of the structure would have to be removed. Therefore, they are requesting a variance to allow the deck to remain in its nonconforming state. He added that he had check with the Building Department and was informed that a building permit and an electrical permit would be needed.

The Board stated that in past similar situations, the Board has required that the petitioners obtain a retroactive building permit, and that this variance would contain a condition that applications be made for both the building and electrical permits.

No other person present had any comment on the petition.

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Statement of Facts

The subject property is located at 18 Sumner Road, in a Single Residence District, on a 12,810 square foot lot, and has a minimum right side yard clearance of 13.7 feet and a minimum left side yard clearance of 18.9 feet.

In a letter to the Board, which was submitted with the application, Edward Proctor, the prior owner, explained that about 18 years ago, he performed pro bono legal service for his secretary, whose husband was a carpenter. One weekend her husband appeared with lumber and constructed the subject deck. The violation was not discovered until the recent sale, when the petitioners' survey revealed it.

The petitioners are requesting a variance for the subject deck/hot tub approximately 15.7 feet by 16 feet, with a minimum left side yard clearance of 15 feet, to remain. Although the deck is an extension of the existing nonconforming dwelling, the structure encroaches on the left side setback 3.9 feet more than the existing dwelling due to the angle of the left side lot line.

A Plot Plan dated October 4, 1995, drawn by Paul J. Sawtelle, Registered Land Surveyor; Elevations and Top View; and photographs were submitted.

A letter in support of the petition was received from William Williams, II, written in behalf of his mother, Mrs. Letitia Williams, 5 Alden Road.

On October 24, 1995, the Planning Board reviewed the petition and voted to recommend denial of the request as submitted.

Decision

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

It is the opinion of this Authority that a literal enforcement of the provisions of the Zoning Bylaw would involve a substantial hardship to the petitioners, and that the allowance of the requested variance would not be detrimental to the neighborhood nor be in derogation of the intent or purpose of the Zoning Bylaw.

Therefore, it is the unanimous decision of the Authority to grant the requested variance for the subject deck/hot tub to remain with a minimum left side yard clearance of 15 feet, subject to the following condition:

ZBA 95-73

Petition of Rosemarie Dibiase and Curt Moody
18 Sumner Road

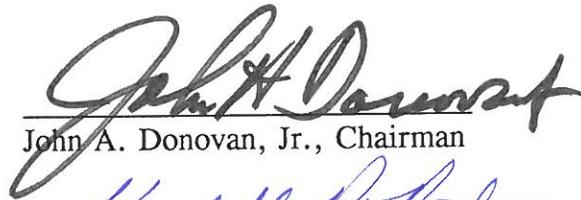
1. Within 30 days of the date of this decision, the petitioners shall apply for both a building permit and an Electrical Permit for the deck/hot tub structure. Copies of the approved permits shall be submitted thereafter to the office of the Board of Appeals.

The Inspector of Buildings and the Wiring Inspector are hereby authorized to issue respective permits upon receipt and approval of applications for construction and wiring and any plans and/or inspections each inspector may require.

If the rights authorized by a variance are not exercised within one year of the date of grant of said variance, they shall lapse, and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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
Wiring Inspector
edg



John A. Donovan, Jr., Chairman



Kendall P. Bates



Robert A. Bastille

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WELLESLEY, MA 02181

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SUMNER ROAD

ALDEN ROAD

R=736.64

R=289.50

R=320.00

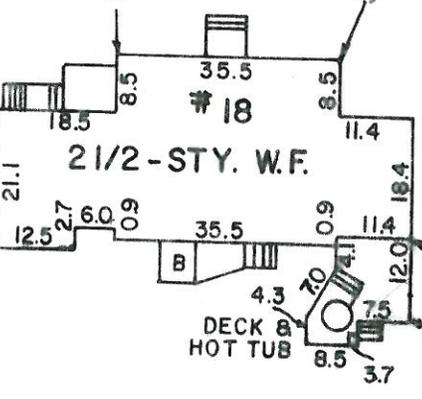
L=64.69

L=63.70

N/F PETER A. & LETITIA M. WILLIAMS

N/F GEORGEAN STEWART

N/F BABSON COLLEGE



12,810 ± S.F.
LOT COVERAGE = 13.7%
ROSEMARY DIBIASE
& CURT MOODY

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Oct 10 9 13 AM '95

NOTE = VARIANCE
GRANTED FOR WAIVER
OF SIDELINE REQUIREMENT
IN 1965 FOR ADDITION
ON THIS SIDE OF HOUSE.

ASSESSORS REF.
MAP 067, ROUTE 013
BUILDING ZONE
SINGLE RESIDENCE
20,000 S.F.
APPLICANT
EDWARD O. PROCTOR
RR 1, BOX 33
WARREN, VT 05674

Edward O. Proctor



PLAN OF LAND
IN

WELLESLEY, MASS.

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

OCT. 4, 1995
NEWTON, MASS.

Paul J. Sawtelle