

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02181-5992

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MAY 16 1998 P 12:15

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ZBA 98-20

Petition of David B. and Jane T. Pillemer
33 Atwood Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, April 2, 1998 at 8 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of DAVID B. AND JANE T. PILLEMER 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 their 10 foot by 10.7 foot deck, with less than the required right side yard setback, at their nonconforming dwelling with less than the required right side yard setback at 33 ATWOOD STREET, in a Single Residence District. Said deck was built without a building permit and is in violation of the Zoning Bylaw.

On March 9, 1998, 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 were David and Jane Pillemer. Dr. Pillemer said that they had the deck built in 1986, shortly after they bought the house. The carpenter, who built the deck, told them that a deck did not require a building permit. In 1994, when they applied for a Special Permit/Finding to add a second story to their home, they discovered that the deck was in violation and that a building permit was required. At the hearing on their petition, they offered to remove the deck. At that time, the Board said that it did not want to be punitive.

Dr. Pillemer explained that they have now sold the house, and have to apply for a variance to legalize the deck. When they filed the application in 1994, they did not understand that they should have applied for the variance immediately. There have been no complaints from the neighbors regarding the deck.

The Board stated that it should have required that the deck be legitimized or removed in 1994.

No other person present had any comment on the petition.

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Statement of Facts

The subject dwelling is located at 33 Atwood Street, in a Single Residence District, on a 9,210 square foot lot and has a minimum right side yard setback of 11.9 feet from the right rear corner of the dwelling. The nonconforming 10 foot by 10.7 deck has a minimum right side yard clearance of 10.8 feet from the right rear corner.

At the Public Hearing, Dr. Pillemer explained that the deck was built without a building permit in 1986. The setback violation and necessity for a building permit were not discovered until 1994. At the Public Hearing in June, 1994, the Pillemers offered to remove the deck. When the Board decided that was unnecessary, the Pillemers did not understand that they should have applied for a variance to legalize the deck at that time. They are now attempting to rectify the situation as they have sold their home.

A Plot Plan dated January 26, 1998, drawn by Richard Clinton Nelson, Registered Professional Land Surveyor; and photographs were submitted.

On March 24, 1998, the Planning Board reviewed the petition and offered no comment.

Decision

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

This Authority does not condone the building of any structure without a building permit, and/or, if necessary, without the grant of relief from the Zoning Board of Appeals. However, in this instance, this Authority is of the opinion that a misunderstanding existed, and that the Board should have conditioned that the petitioners apply for a variance in its 1994 decision (ZBA 94-40).

This Authority is of the opinion that a literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioners, and that the allowance of a variance would not be detrimental to the neighborhood.

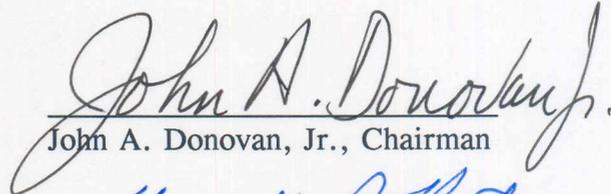
Therefore, the requested variance is granted, as voted unanimously by this Authority at the Public Hearing, to allow the existing 10 foot by 10.7 foot deck with a minimum right side yard setback of 10.8 feet, on the condition that the petitioners apply for a building permit within 30 days of the date of this decision.

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The Inspector of Buildings is hereby authorized to issue a building permit upon receipt and approval of a building application and any plans he might 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

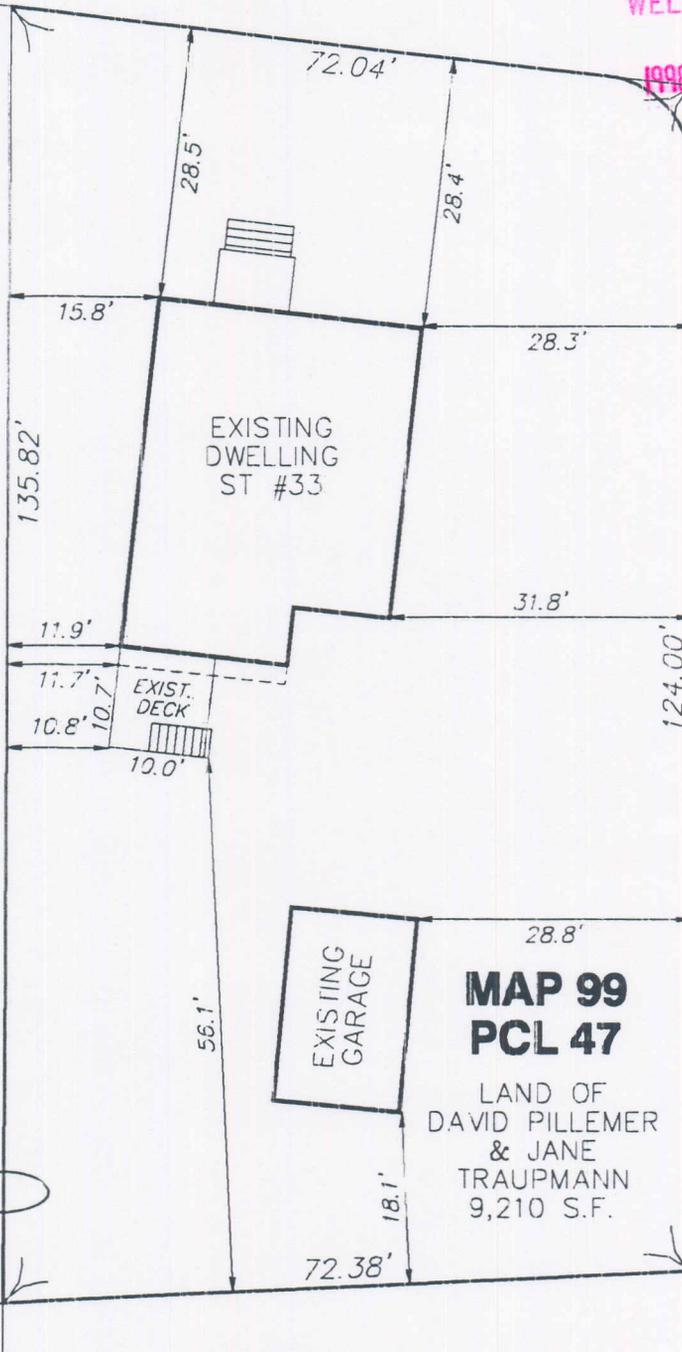
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ATWOOD STREET

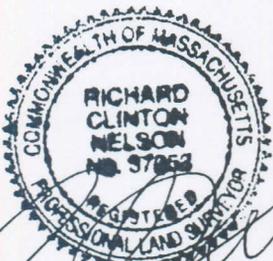
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1998 MAR -9 A 10:05

MAP 99
PCL48
DAVD & ANNE
SANFORD



MORTON STREET



MAP 99
PCL 64

PAUL M. LOUGHNAME
& DEANNA LEICHT

MAP 99
PCL 46

PETER & EUGENIA
BARGES

EXISTING LOT
COV=15.2%

CERTIFIED PLOT PLAN
OF LAND IN
WELLESLEY, MASS.
SCALE: 1"=20'
DATE: JAN 26, 1998
COLONIAL SURVEYING, CO.
73 TRAPELO ROAD, SUITE 2
BELMONT, MA 02178
(617) 489-0880