



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZONING BOARD OFFICE
JUN 16 11 53 AM '86
TOWN OF WELLESLEY, MASS.

ZBA 86-36
Petition of Donna and Edward Shea
11 Hardy Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, June 12, 1986 at 8 p.m. in Room 17 of the Town Offices at the Phillips Building, 12 Seaward Road, Wellesley Hills, Ma. on the petition of DONNA & EDWARD SHEA requesting a variance from the terms of Section XIX and pursuant to Section XXIV-D of the Zoning Bylaw to allow an existing deck approximately 12.9 feet by 16.2 feet at their non-conforming dwelling at 11 HARDY ROAD, leaving less than the required right side yard.

On May 22, 1986 the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Edward Shea, who stated that he had removed an existing rotten stairway and platform about a year ago and replaced them with a new and larger deck. He is in the process of re-financing and a land surveyor noted the zoning violation. He stated he needs the stairway and deck to allow access to the side and rear yards. The abutting house is nearly 50 feet away from the deck.

No others were present favoring or opposing the request.

Statement of Facts

The property in question is located at 11 Hardy Road, containing 9,638 square feet of land. The existing dwelling is non-conforming with a right side yard of 16 feet.

In 1985, the petitioners removed an existing back porch, 8.5 feet by 5 feet, and constructed an illegal deck approximately 16.2 feet by 12.9 feet at the rear corner of the dwelling, leaving a right side yard of 7 feet. The petitioners are now attempting to re-mortgage their property and cannot obtain financing with an illegal structure on the property.

A Plot Plan was presented, drawn by George N. Giunta, Registered Land Surveyor, Needham, Ma., dated May 16, 1986. A Mortgage Survey Plan, dated April 28, 1983, by George N. Giunta, was submitted showing the old back porch. Photos were also submitted.

The Planning Board, at its regular meeting of June 3, 1986, as stated in a letter of June 9, 1986, voted to oppose the granting of the variance "based on the fact that the request constitutes a substantial further encroachment into the inadequate yard."

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Decision

This Authority has made a careful study of the evidence presented.

This Board is disturbed that the petitioner constructed the deck without obtaining a building permit. The Board frowns upon such violations of the town regulations, which were adopted for the protection of the community and the welfare of its citizens.

This Board must deal with the deck as if it had not been built. Stairs are exempt from sideyard requirements. This Board is of the opinion that the petitioner has a substantial hardship because of the location of the non-conforming house on the lot and the fact that the door leading to the backyard is on the non-conforming side of the house.

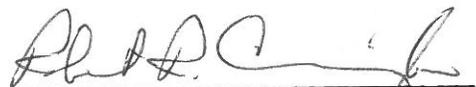
Therefore, the petitioner is allowed to retain the stairs. A variance is hereby granted to allow a deck coming no closer than the pre-existing stairs to the right side lot line (12 feet).

The petitioner is hereby ordered to remove the structure that extends closer than 12 feet to the right side lot line within 90 days of the date of this decision.

The Inspector of Buildings is authorized to issue a permit for a re-designed deck coming no closer than 12 feet from the right side lot line upon his receipt and approval of an application and construction plans. The petitioner is instructed to submit a new plot plan to the Board of Appeals indicating the actual structure.

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.


Stephen S. Porter, Chairman

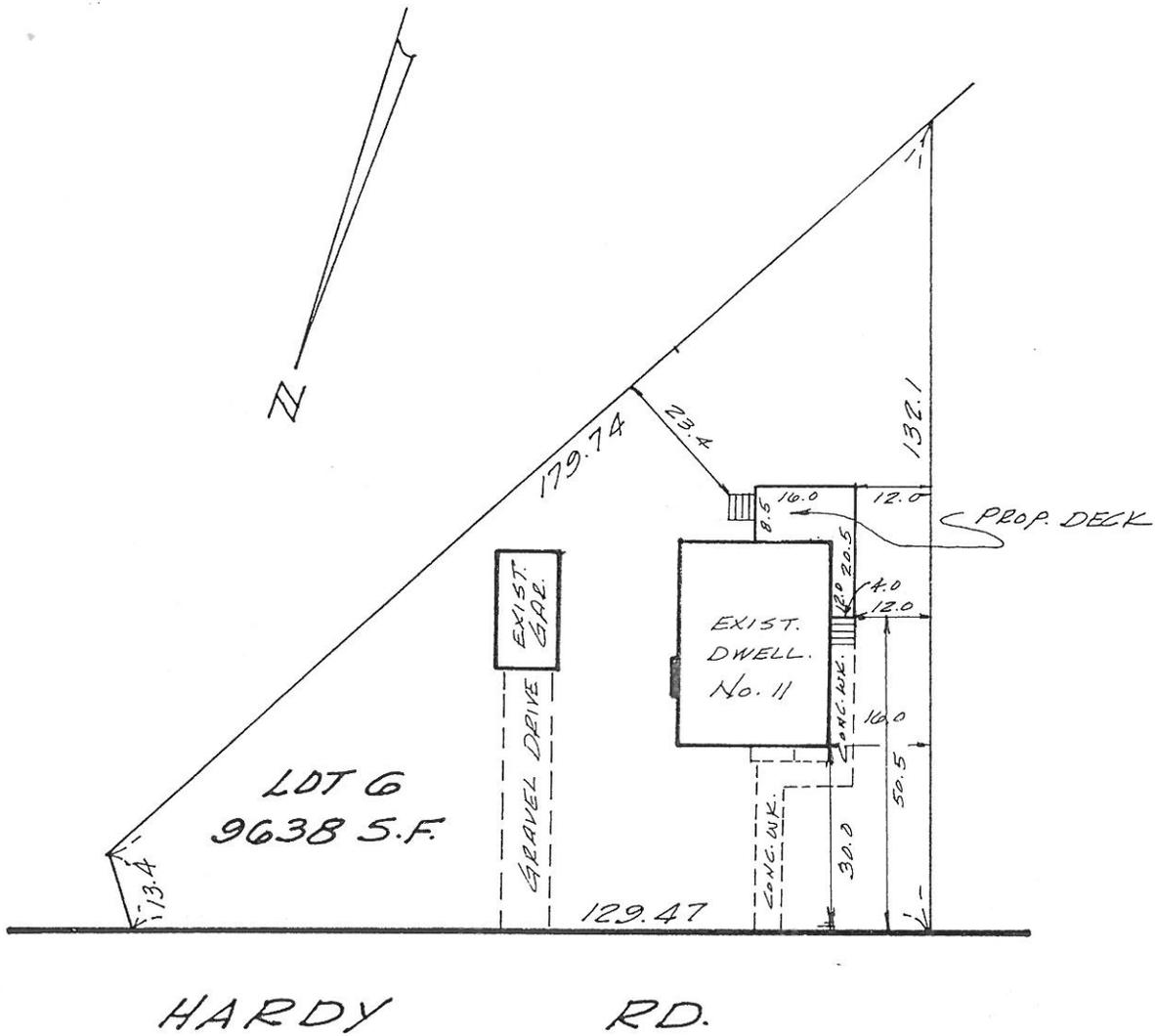

Robert R. Cunningham


William E. Polletta

cc: Planning Board
Inspector of Buildings

mam

RECEIVED
TOWN CLERK'S OFFICE
WESTFIELD MASS.
JUL 16 11 53 AM '86



PLOT PLAN OF LAND
 IN
 WELLESLEY-MASS.

MAY 16, 1986 SCALE 1" = 30'

GEORGE N. GIUNTA & ASSOC.
 76 NEHOLDEN ST.
 NEEDHAM, MASS.

