

TOWN OF WELLESLEY



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WELLESLEY, MASS.

SHERMAN J. L. BROWN  
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GARRETT S. HOAG

1958 MAY 9 AM 8:57  
BOARD OF APPEAL

KATHARINE E. TOY, CLERK  
TELEPHONE  
CE. 5-1664

Petition of Daniel P. O'Connor

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the first floor of the Intermediate Building at 324 Washington Street at 8:15 p.m. on March 20, 1958 on the petition of Daniel P. O'Connor for a variance from the terms of Section 9-A of the Zoning By-law to permit the construction of a dwelling on Lot 21, Bow Street, now owned by Margaret V. Maguire.

Statement of Facts

On February 14, 1958 the petitioner filed his written request for a hearing before the Board and thereafter due notice of the hearing was given by mailing and publication.

Petitioner stated that he had agreed to purchase Lot 21 subject to the issuance of a variance by this Board. Lot 21 contains less than the 10,000 square feet required in the district.

Section 9-A provides in part

".....nothing contained in this Section shall prevent the construction or placing of any building on any lot in any of said 10,000 feet, 15,000 feet and 20,000 feet districts containing a smaller area, provided such lot when the effective date of the provisions of this Zoning By-law originally established such districts did not adjoin other land of the same owner available for use in connection with said lot....."

Therefore, if Lot 21 and the westerly portion of Lot 20 were, on April 13, 1937, the effective date of the Zoning By-law establishing the 10,000 foot district, not of the same owner, the petitioner is entitled to a permit to construct a dwelling on Lot 21 which complies with the building laws and other provisions of the Zoning By-law without recourse to this Board. If, however, such lots were of the same owner on said date, a permit could not be granted for such a dwelling unless a variance had been granted by this board.

According to the documents, of which copies were submitted in evidence, Bridget A. Ryan owned Lot 21 and the westerly portion of Lot 20 until her death in 1929. She lived in a single residence located on Lot 20 within a foot or two of the line dividing that lot from Lot 21. Mrs. Ryan also owned Lot 9, which was across Bow Street from her home. In 1929 she died owning the three parcels of land referred to and left a will, paragraph 1 of which provided in part:

"I devise the land with buildings thereon, now occupied by me on Bow St., Wellesley, Norfolk County, Mass., together with all my household furnishings therein to John E. Ryan and Margaret V. Ryan, both of said Wellesley in trust, however, ....."

In paragraph 2 of her will, Mrs. Ryan left:

".....the residue of my real and personal estate whatsoever or wheresoever situated, to such child or children of mine living at my death and such issue of any child or children of mine then deceased ...."

in fee.

#### Conclusion

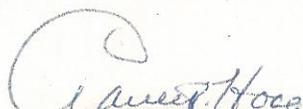
At the hearing the petitioner submitted argument that Lot 21 and the adjoining portion of Lot 20 have not been held in common ownership since April 13, 1937, the effective date of the 10,000 square-foot minimum district. Had the petitioner been successful in the proof he attempted to make, he would have succeeded in establishing that this Board has no jurisdiction to grant the variance requested by his petition. He was, however, not successful.

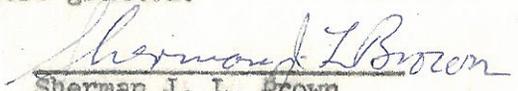
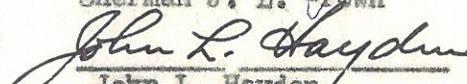
Examination of the plan prepared by W. W. Wight, C. E., dated 1894, the furnished copy of the will of Bridget A. Ryan, who passed away in 1929, and the furnished copy of the deed of Lots 9 and 21 on Bow Street dated May 4, 1940, convinces us that Lot 21 and the adjoining portion of Lot 20, as shown on said plan were held in common ownership until May 4, 1940. Bridget A. Ryan's devise of "the land with the buildings thereon, now occupied by me, on Bow Street, Wellesley, Norfolk County, Massachusetts..... to John E. Ryan and Margaret V. Ryan, both of said Wellesley in trust....." was, in our opinion, a devise of Lot 21 as well as a devise of the portion of Lot 20 adjoining Lot 21 which Mrs. Ryan owned. The fact that the dwelling house on Lot 20 is within a foot or two of the line dividing the two lots seems to indicate that she occupied, and intended to devise, the two lots as one parcel.

Since the lots were in common ownership after the effective date of the establishment of the 10,000 foot district, this Board has jurisdiction, under the provisions of Section 9-A of the Zoning By-laws, to grant the variance requested. An inspection of the neighborhood and an examination of the map above referred to leads us to find that adjoining areas have previously been generally developed by the construction of houses on lots generally smaller than 10,000 square feet and the standard of the neighborhood so established does not reasonably require a sub-division of the land into lots as large as 10,000 square feet.

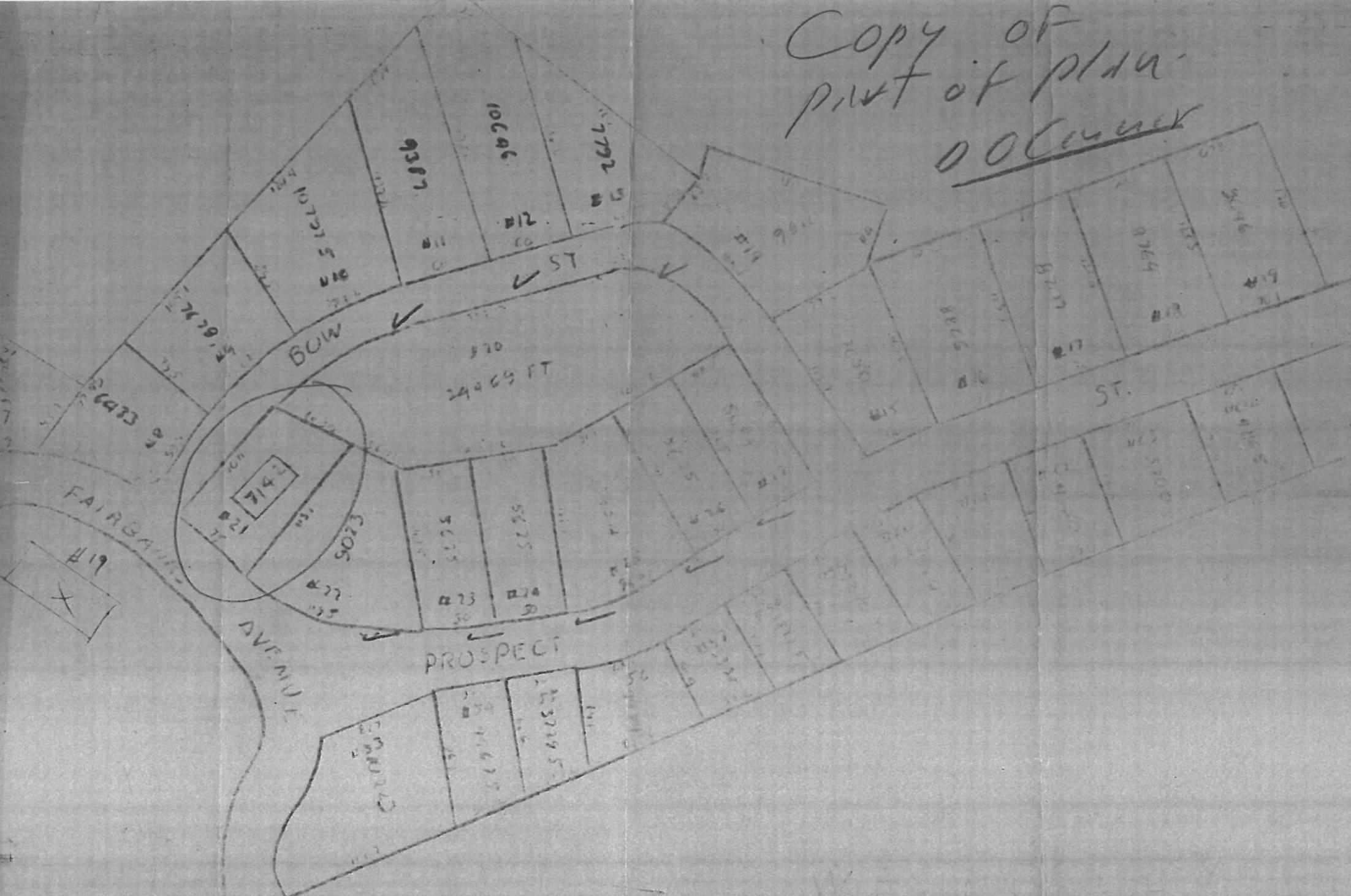
It appears from the evidence presented that the proposed dwelling will, in all respects, conform to the applicable yard restrictions. An inspection of the premises reveals that Lot 21 rises sharply from the elevation of dwelling on Lot 20 and that therefore the disadvantage which would normally flow from the proximity of that dwelling to the lot line will be distinctly minimized.

The variance petitioned for is therefore granted.

  
Garrett S. Hoag

  
Sherman J. L. Brown  
  
John L. Hayden

Copy of  
part of plan  
00000000



#19  
X

Scale 70-1" CE  
W.W. Wagh CE  
1957



Be it remembered, that I, Bridget A. Ryan, of Wellesey in the County of Norfolk and commonwealth of Mass. being of sound mind and memory, but knowing the uncertainty of this life, do make this my last will and testament hereby revoking any and all wills and codicils heretofore made by me.

1. I devise the land with buildings thereon, now occupied by me, on Bow St., Wellesey, Norfolk County, Mass. together with all my household furnishings therein to John E. Ryan and Margaret V. Ryan, both of said Wellesey in trust, however, that they shall permit such one or more of my sons or daughters as shall at my death be unmarried, to reside therein, rent free, so long as she or he or they or any of them shall remain unmarried, he, she, or they, during that time, keeping the same in good repair, order and condition and paying all taxes, rates and assessments, and the house and the furnishings therein insured against fire in an amount to be determined by my said trustees, and I declare that from and after the death or marriage of any said unmarried sons and daughters, or in case none of them shall willing to reside in said house, my said trustees shall stand possessed of said premises upon trust, however, to sell the same under the following conditions.

That any of my said sons or daughters, notwithstanding that he or she may be a trustee of this my will, and acting in trust thereof, shall be competent to purchase said land with buildings thereon together with the household furnishings therein from the trustees or his or her co-trustee by private contract any rule of equity notwithstanding, but so that in case of such sale by private contract, the sale shall be at a price determined by the assessed valuation of the assessors of said Town of Wellesey, Mass. and shall be in all respects conducted by my trustees or by such my trustee other than the purchaser, if a trustee, and I further declare that all income profits and interest which may accrue from such sale shall be added to and considered a part of my residuary estate. Upon the further condition that if any of my said sons and daughters shall be unwilling to purchase said land and buildings thereon together with the household furnishings therein, then I authorize my said trustees to sell the same at private sale or public auction and they shall, for the purpose aforesaid, execute all such conveyances as he, she or they shall think fit, all income, profits and interest which may accrue from such sale to be added to and considered a part of my residuary estate.

2. After the payment of my just debts and funeral expenses and my legacies or bequests by this my will or any codicil thereto, I give the residue of my real and personal estate whatsoever or wheresoever, situated, to such child or children of mine living at my death and such issue of any child or children of mine, then deceased, and his or her heirs, executors, administrators or assigns, respectively in equal shares as between brothers and sisters, and so that this child or the children collectively of any deceased child or grandchildren shall take only the share which his, her or their parent would have taken if living.

3. I declare that, if any question should arise concerning the the construction and administration of my will or any clause matter or thing therein contained, or with relation thereto, my trustees or trustee, acting either on their own judgment or under professional advice, may determine such question and such determination shall be final and binding on all persons interested under this my will or in any codicil thereto

4. I do not require that my said trustees give surety or sureties on their official bond.

5. I hereby appoint my son, John E. Ryan, executor and my daughter, Margaret V. Ryan, executrix of this my last will and request that they be exempt from giving surety or sureties on their official bond.

In Testis any where of, I hereunto set my hand in the presence of three witnesses and declare this to my last will the eleventh day of December 1928.

Bridget A. Ryan

On this eleventh day of December, 1928, Bridget A. Ryan of Wellesley, Mass, has signed the foregoing instrument in our presence, declaring it to be her last will, and as witnesses thereof we three do now, at her request, in her presence and in presence of each other hereunto subscribe our names.

Marcy E. McDaniel  
James McDaniel  
Francis T. McNamara

February 2, 1938.

Mr. John E. Ryan  
61 Arlington Street  
Brighton, Mass.

Dear Mr. Ryan:-

I have examined the records at the Norfolk Registry of Deeds and the Norfolk Registry of Probate and find that there are three parcels of land in Wellesley belonging to the estate of Bridget Ryan.

These parcels consist of Lot 21 containing 7142 square feet of land at the corner of Bow Street and Fairbanks Avenue, Lot 9 containing 7078 square feet of land on the northerly side of Bow Street, and a parcel adjoining Lot 21 containing about 3900 square feet of land on Bow Street.

By the terms of the will the Trustees are authorized to sell the land with the buildings thereon which were occupied by Mrs. Bridget A. Ryan at the time of making the will, i.e., December 11, 1928. This would probably be construed to mean only the dwelling house and the parcel of land connected therewith. The Trustees would, therefore, have no power to sell the rest of the land without an order from the Court or the consent in writing of all the heirs-at-law.

I believe that in order to convey a good title free from doubt it would be best to obtain from the Probate Court a license for the Trustees to convey all the real estate. If the Court will grant such a license anybody purchasing from the Trustees, by virtue of such license, would obtain a good title.

I presume it would be more difficult to get a deed signed by all of the present heirs-at-law, than it would undoubtedly be to obtain a license from the Probate Court authorizing the Trustees to convey all the real estate.

Kindly let me know whether or not you wish me to proceed on this basis.

Yours very truly,

JAMES A. WATERS

*ask for  
probate  
license  
1-10-38*

February 15, 1938

Mr. John E. Ryan  
91 Arlington Street  
Brighton, Massachusetts

Dear Mr. Ryan:-

If you can procure the signatures of all the heirs-at-law, it will not be necessary to obtain a license to sell from the Probate Court, it will simply be necessary for all the heirs-at-law, with their respective husbands and wives, to sign a deed in which the Trustees would join, conveying all of the real estate to Mrs. McGuire.

The Trustees would then prepare and file a Final Account which should also be assented to in writing by all the heirs-at-law, and the estate can then be finally closed.

The total expense of this procedure would be about \$35.00 including the work which I have done to date. The cost of obtaining a license from the Probate Court would be about \$25.00 more.

If you wish, I will prepare the necessary papers to be signed by the heirs-at-law. Kindly let me hear from you.

Yours very truly,

JAMES A. WATERS

