



63-40

BOARD OF APPEAL

GARRETT S. HOAG
JOHN L. HAYDEN
DANA T. LOWELL

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

Appeal of James McDonald

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:00 p.m. on October 17, 1963 on the appeal of James McDonald from the refusal of the Inspector of Buildings to issue a permit to him to construct a dwelling on Lots 206 and 209 Sunnyside Avenue. The reason for such refusal is that said dwelling would violate Chapter IV, Section I, of the Building Code which requires that all such buildings shall be placed at least fifty feet from the center line of any public or private street.

The appellant spoke in support of his appeal.

On September 3, 1963, the Inspector of Buildings notified the appellant that a permit for the proposed dwelling could not be issued for the above-mentioned reason, and on the same date the appellant took an appeal in writing from such refusal. Thereafter due notice of the hearing was given by mailing and publication.

Statement of Facts

The parcel of land involved is on the corner of Sunnyside Avenue and Oakdale Avenue and consists of two lots, namely, Lot 206 and Lot 209. It contains 10,000 square feet and is located within a single-residence district requiring a minimum lot area of 10,000 square feet.

The appellant seeks permission to construct a dwelling 26' x 28' thirty feet from Sunnyside Avenue and thirty feet from Oakdale Avenue. Sunnyside Avenue was laid out as a thirty-foot way and is shown as such on a plan recorded in the Registry in 1913. A new subdivision plan was approved by the Planning Board on July 1, 1963, making Sunnyside Avenue a forty-foot way and providing access to eight house lots. A turn-around circle was provided at the end, starting approximately ten feet beyond the southeasterly boundary line of the lot involved. The remaining portion of Sunnyside Avenue beyond the circle was laid out as a forty-foot way but not included in the subdivision as a portion required to be built under the Planning Board Rules and Regulations, relating to subdivisions.

The issue involved is whether that portion of Sunnyside Avenue extending along the boundary of the lot involved is technically a forty-foot way or a thirty-foot way. The Building Code requires that all buildings in the area involved, shall be placed at least fifty feet from the center line of any public or private way. While the proposed dwelling, if constructed as shown on the plan submitted, drawn by Edward S. Holland, Reg. Eng., and dated August 1963, will lie thirty feet from Sunnyside Avenue, it will be only forty-five feet from the center line of the street if Sunnyside Avenue is only a thirty-foot way.

Decision

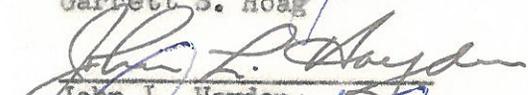
The Board has considered the appeal for a variance under Chapter I, Section 10, of the Building Code and it is the opinion of this Board

that the setback requirement of Chapter IV, Section 1, of the Building Code do not appear to have contemplated a case such as this. The lot is a corner lot almost triangular in shape. To meet the setback requirements of the Zoning By-law and Building Code from both streets would result in forbidding the construction of any house on the lot except one too small for practical use. It is the opinion of this Board that the construction of a dwelling on the lot involved as shown on the plan submitted would not prove detrimental to the appearance or character of the neighborhood and that unless a variance is granted by this Board manifest injustice would result to the appellant.

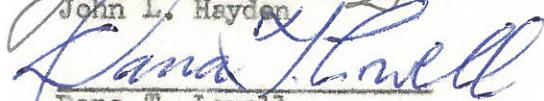
Accordingly, the requested variance from the Building Code is authorized and the issuance of a permit by the Building Inspector of a permit for the proposed dwelling in accordance with the plan submitted and on file with this Board is hereby granted.



Garrett S. Hoag

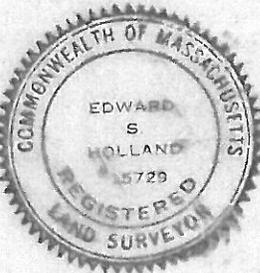
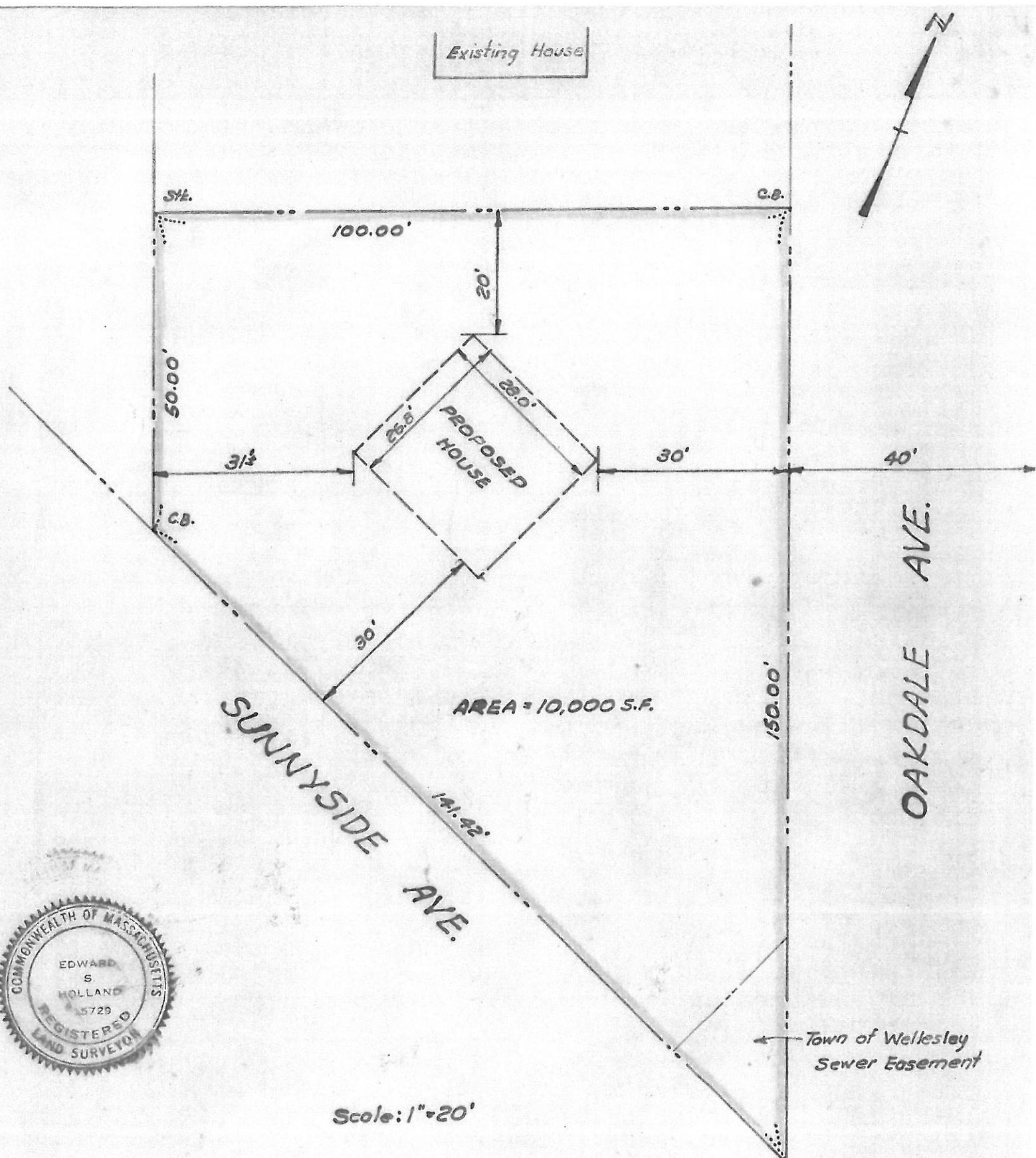


John L. Hayden



Dana T. Lowell

Filed with Town Clerk _____



Scale: 1" = 20'

To accompany appeal of James Q. McDonald