

TOWN OF WELLESLEY



MASSACHUSETTS

63-43

BOARD OF APPEAL

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

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

Appeal of Forrest M. Jr. and Lois E. Maddix

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 8:15 p.m. on October 17, 1963, on the appeal of Forrest M. Jr. and Lois E. Maddix from the refusal of the Inspector of Buildings to issue a permit to them to convert their existing attached garage into a bedroom on the side of their dwelling at 25 Sheridan Road. The reason for such refusal was that the Inspector of Buildings contended that said conversion would create a violation of Section XIX of the Zoning By-law which requires that there shall be provided on each side of every dwelling hereafter erected or altered a side yard not less than twenty feet in width.

On September 27, 1963, the Inspector of Buildings notified the appellants that a permit for the proposed conversion could not be issued for the above-mentioned reason and on the same date the appellants took an appeal therefrom. Thereafter, due notice of the hearing was given by mailing and publication.

Letters favoring the request were received from Robert F. Thurell, Jr., 29 Sheridan Road and Richard B. and Kathleen D. Gladstone, 19 Sheridan Road.

The Planning Board opposed the granting of the request in its report.

Statement of Facts

The house involved is located on a lot containing more than 20,000 square feet, in a single-residence district requiring a minimum lot area of 15,000 square feet. The portion of the dwelling which is designed for residence purposes is twenty-two feet from the lot side line but the garage attached thereto is only ten feet from that line. It was constructed in 1940, pursuant to building permit issued, after the Zoning By-law requiring a twenty-foot side yard became effective. That permit was issued pursuant to the Building Inspector's erroneous interpretation of that By-law as permitting an attached garage to be considered an "accessory building" and as such to be built less than twenty feet from the lot side line. That interpretation persisted and building permits based on it were issued until it was corrected by ruling of the Town Counsel on September 3, 1941.

A plot plan drawn by Gleason Engineering Company, dated September 20, 1963, and plans showing how it is proposed to convert the attached garage into a bedroom without altering its ground plan were submitted.

The appellants applied to the Building Inspector for a permit to make certain changes to the existing attached garage in order to convert it into a bedroom. The changes proposed consist of removing the garage doors and installing windows and an entrance door with clapboards to match the existing house. The rear entrance door was also to be changed. The Inspector contended

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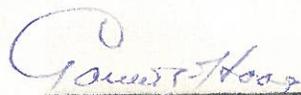
that the attached garage is non-conforming and any change of use would constitute a violation of the twenty-foot side yard requirement, even though no change in the present ground plan of the garage is planned.

Decision

This Board has considered a case which at first blush appears to be similar to this but which in fact differs in one decisive respect. In Petition and Appeal of Marion Hill and Albert Leonard, recorded with the Town Clerk August 15, 1958, we held that a building built before the adoption of any By-law establishing a side yard restriction and used from the outset for a purpose permitted in a single-residence district could be used for a different purpose also permitted in a single-residence district without need of permit or variance from this Board. As in that case we are here asked to decide whether a use permitted in a single-residence district made of a building less than twenty feet from the lot side line may be changed to another use permitted in a single residence district. But there the similarity ends. In the Leonard case the building was legally less than twenty feet from the lot side line, having been placed there before the side yard restriction was adopted (See Section XVII paragraph A) while in the case before us the building stands less than twenty feet from the lot side line in violation of Section XIX notwithstanding that violation was not at the time thought to be such by either the Building Inspector or the owner who built it. In our opinion, we are without authority to grant this appeal first because the building involved is in violation of the Zoning By-law, and second because if the building was legally placed the proposed alterations and change of use could legally be effected without any permit or order of this Board. If we should, nevertheless, purport to act favorably on this appeal, the encroachment on the side yard would not be validated. The building would remain subject to an order to cease and desist from encroaching on the side yard prescribed by By-law.

We think the appropriate procedure to obtain the appellants' goal is a petition for a variance under Section 15 of Chapter 40A, of the General Laws.

Accordingly, the appeal is denied.



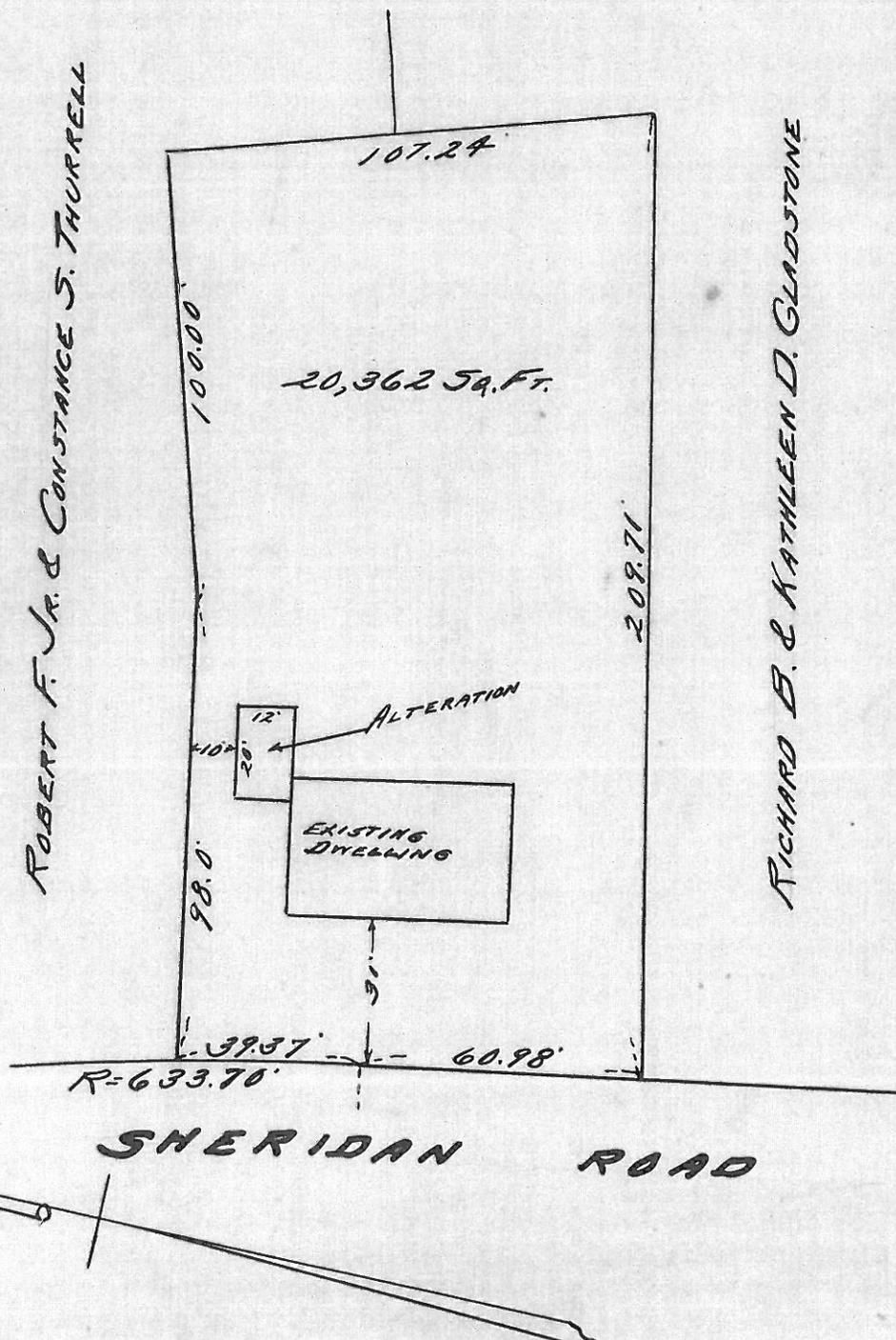
Garrett S. Hoag


John L. Hayden


Dana T. Lowell

Filed with Town Clerk _____

PLAN OF LAND
IN
WELLESLEY, MASS.
OWNED BY
FORREST M. JR. & LOIS E. MADDIX
SCALE 40 FEET TO AN INCH
SEPTEMBER 20, 1963.
GLEASON ENGINEERING COMPANY



ROBERT F. JR. & CONSTANCE S. THURRELL

RICHARD B. & KATHLEEN D. GLADSTONE

SHERIDAN ROAD