

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF APPEAL

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

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

Petition of Mary Casassa

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 December 18, 1963, on the petition of Mary Casassa requesting a special exception from the terms of Section XIX of the Zoning By-law or a variance as provided by Chapter 40A, Section 15, of the General Laws, which would permit the land appurtenant to house numbered 63 Smith Street to be divided into two lots, namely Lot "A" and Lot "B" with Lot "B" providing less than the required Front Yard at least thirty feet in depth and at least forty feet in width for the entire depth of the front yard.

Robert Sullivan, attorney for the petitioner, spoke in support of the petition.

A letter recommending that the petition be granted was submitted from Avarad M. Mitchell, M. D.

The Planning Board in its report stated that this is not a proper case for the granting of an exception from the provisions of Section XIX of the Zoning By-law and that it would be inappropriate to grant a variance under Section 15 of Chapter 40A of the General Laws.

On November 21, 1963, the petitioner filed her request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Statement of Facts

The property involved consists of a lot of land containing 23,650 square feet with a dwelling thereon. It is located within a single-residence district requiring a minimum lot area of 10,000 square feet.

The petitioner seeks permission to divide the property into two lots and submitted a plot plan drawn by Gleason Engineering Company, dated October 9, 1963, showing the proposed division of the property. Said plan showed Lot "A" with the petitioner's existing house thereon containing 10,680 square feet and Lot "B", containing 12,970 square feet. While the proposed Lot "B" would have a frontage of forty feet abutting Smith Street and that width would extend back a depth of thirty feet, it would then narrow to a width of approximately thirty-two feet, narrower than is permitted by Section XIX of the Zoning By-law, for a distance of sixty feet.

Decision

A similar request was made by the petitioner in July, 1963, when the petitioner requested permission to divide the property involved into two house lots which would result in the reduction of the side yard of the existing house on Lot "A" to less than that required by Section XIX of the Zoning By-law. That request was denied by this Board as it was unable

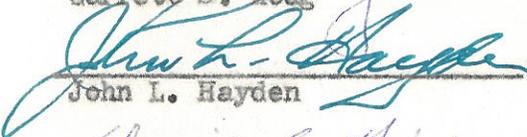
to make the findings prescribed as conditions under which exceptions may be granted from the Zoning By-law, and it was unable to find any condition affecting the land involved which does not affect generally the zoning district in which it is located, owing to which a literal enforcement of the provisions of Section XIX of the Zoning By-law with respect to front yards would involve a substantial hardship to the petitioner, a condition which it must find in order to have authority to grant a variance under the provisions of Section 15, Chapter 40A of the General Laws.

The Board is familiar with the situation involved and the petitioner's problem. The petitioner who is a widow with one child and has been ill for some time. She desires to have her sister and her husband build on the proposed Lot "B" in order to be close by which would in her doctors' opinion prove most beneficial to her health and welfare.

While the Board agrees there is a need for the petitioner's sister to be near, the Board cannot find, as it could not in its previous decision, a condition affecting the land or building involved and not the zoning district generally, owing to which a literal enforcement would involve substantial hardship to the petitioner, or that a variance would not derogate from the intent of the By-law. The hardship is there but the condition of the land is not. The cases cited in the petitioner's brief confirm the fact that the condition required as a condition precedent to our authority to grant a variance under Section 15 of Chapter 40A of the General Laws must pertain to the land or building. The petitioner argues that assuming Lot "B" were under separate ownership we would be authorized to grant a variance for otherwise it could not be used for the purpose permitted in the district. We assume that her assumption includes the assumption that Lot "B" has been under separate ownership since before the adoption of the front yard restriction in the Zoning By-law. In such a case the owner of Lot "B" could build a single residence without a variance for Zoning laws are not retroactive. But the assumed facts are not present here, the present lot of 23,650 square feet is, and when the Section XIX was adopted, was a single lot with a single residence on it. The petitioner is not deprived of the use of any of her land as the owner of lot "B" would be in petitioner's assumed case if he were denied the right to build. All of the present lot is now in use as a single residence and we have had no condition such as we must find as provided by Section 15, if we are to have authority to grant a variance, called to our attention. Therefore, the Board has no power to grant the requested variance.

Accordingly, the request is denied and the petition dismissed.

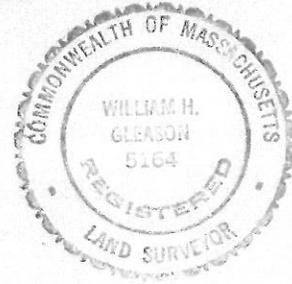

Garrett S. Hoag


John L. Hayden

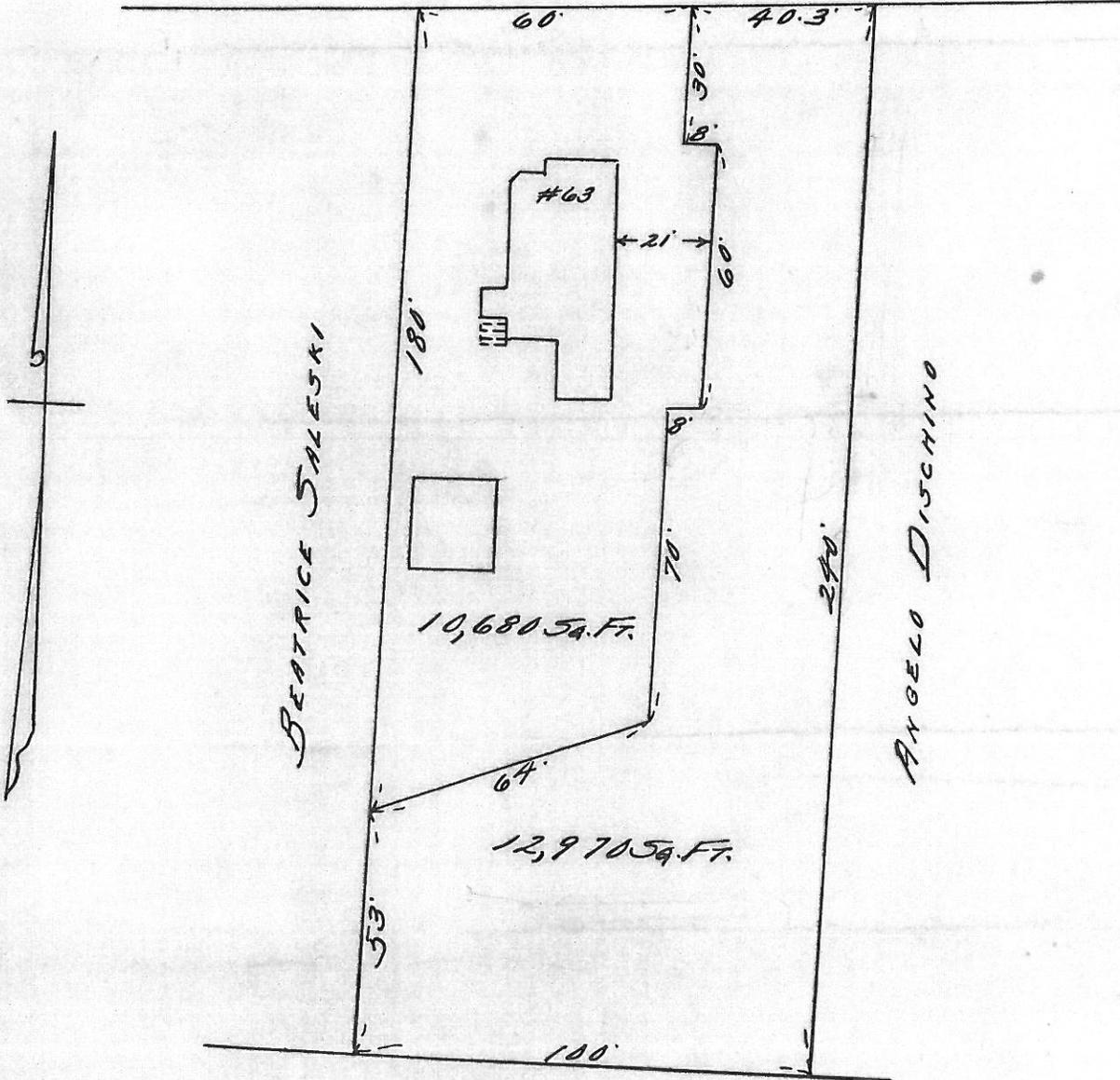

David C. Wiswall

Filed with Town Clerk _____

PLAN OF LAND
 IN
WELLESLEY, MASS.
 OWNED BY
MARY CASASSA
 SCALE 40 FEET TO AN INCH
 OCTOBER 9, 1963.
 GLEASON ENGINEERING COMPANY



SMITH STREET



LINWOOD H. JR. & DOROTHY H. HEWETT

PLANNING BOARD APPROVAL NOT REQUIRED
 UNDER THE SUBDIVISION CONTROL LAW
