



64-29

BOARD OF APPEAL

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

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

Petition of William J. Brown, M. D.
John B. McCann, M. D., Robert J.
McInnis, Perry Norton, M. D. and
Jose L. Silva, M. D.

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 8:20 p.m. on July 30, 1964, on the petition of William J. Brown, M. D., John B. McCann, M. D., Robert J. McInnis, Perry Norton, M. D. and Jose L. Silva, M. D. for permission to construct a building for a medical institution on a lot of land on the northeasterly corner of Weston Road and Washington Street, now occupied by a building known as "Noanett" numbered 625 Washington Street and owned by Lewis J. Busconi. Said petition was filed on June 30, 1964, pursuant to the provisions of Section II 8 (d) of the Zoning By-law and Chapter 40A, Section 15, of the General Laws.

Gerald J. Burzillo, Attorney, represented the petitioners at the hearing.

The following persons appeared at the hearing and spoke in favor of granting the request: Ray Wason, Dover, Violet Mason, 628 Washington Street, Howard Bolles, 10 William Street, Arthur K. Wells, 71 Kingsbury Street, Ralph Bailey, 17 Strathmore Road and Julio DiGiando, 44 Denton Road. All felt there is a need for such an office building in the Town and it would not be detrimental to the neighborhood.

Peter Bite, 12-14 Weston Road, opposed the granting of the request. In his opinion such use of the property would increase the present traffic problem and more cars would be parked on Weston Road.

The Planning Board stated in its report that it generally followed a policy of recommending that changes such as this be referred to the Town Meeting for appropriate zoning action; also in the light of the current comprehensive plan and land use survey, they recommended that favorable action be deferred until the completion of the land survey.

Statement of Facts

The property involved is a lot containing 17,275 square feet of land at the northwest corner of Washington Street and Weston Road. The building now on the premises, formerly a Wellesley College freshman dormitory known as "Noanett," is to be removed by order of the Selectmen. The property is in a single-residence district in which the requested use is not regularly permitted. The petition is brought under paragraph 8 of Section II of the Zoning By-law which in subparagraph (d) authorizes this Board to grant permission for property within the district to be used for a "hospital, sanitarium, or other medical institution....." as provided in Section XXIV of the Zoning By-law, and under Section 15 of Chapter 40A of the General Laws which authorizes us to grant variances if we find that the conditions therein set forth have been satisfied and that a variance would be in the public interest.

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The property owned by one Busconi is under conditional agreement of sale to the petitioners, four medical doctors and one biochemist who intend, if their petition is granted to demolish Noanett and to build on the lot a two-story medical office building containing offices for nine medical doctors and a biochemist's laboratory. A plot plan drawn by Everett M. Brooks Co., Civil Engineers, Newtonville, and architectural plan prepared by Arthur H. Brooks, Jr. & Associates, Cambridge, were submitted. The former purported to show parking space for thirty cars and petitioners said they hoped to make a reciprocal arrangement with St. Andrew's Church which would permit the petitioners to use the church's parking lot at the corner of Washington and Cottage Streets.

Decision

As the Selectmen have ordered the building now on the premises removed and the petitioners quite apart from that order, intend to demolish it to make room for the proposed medical office building, we must apply the terms of Section 15 as if the lot were vacant. Upon doing so, we fail to find any "conditions especially affecting such parcel....but not affecting generally the zoning district in which it is located" owing to which a literal enforcement of the By-law would involve substantial hardship to the appellant. No evidence of such unique condition affecting the lot in question was presented at the hearing, and if there were such a condition the hardship which would result from the denial of this petition would not fall on the appellants who, having a conditional sale agreement only, can cancel. The Board, therefore, has no authority to grant a variance under Section 15. Whether we have authority to grant a special permit under Section II 8 (d) of the By-law is less clear. We may only if the proposed use is that of a "hospital, sanitarium, or other medical institution...." Certainly the proposed building will be neither a hospital nor a sanitarium. The question then is; is it an "other medical institution" within the meaning of that phrase as used in the by-law. In petition of Robert G. Burns filed with the Town Clerk June 14, 1957, this Board answered a similar question in the affirmative. Mr. Lowell would follow that precedent. Mr. Hoag and Mr. Hayden do not believe the proposed improvement would be a "medical institution" within the meaning of the by-law. They think it would be an office building - a specialized office building it is true - but not an institution within the usual meaning of that term, and that therefore we have no authority to grant the requested permit under the by-law even if we deemed it in the public interest to do so.

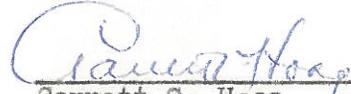
If, however, it is assumed for the purpose of argument that they are wrong, as a matter of law and that the proposed improvement is, "a medical institution", it would mean only that this Board had authority in its discretion to grant the special permit requested. If such were the case, they would not do so. The appearance of the neighborhood for several hundred feet in all directions is that of a single-residence district though in fact some of the houses in the neighborhood are occupied by more than one family legally or otherwise. There are, however, no commercial buildings large or small within several hundreds of feet of the locus. Mr. Hayden and Mr. Hoag would not exercise their discretion so as to permit the construction of a large commercial building in the midst of which is, or at least appears to be an attractive single-residence neighborhood. Although a plan was submitted which showed parking spaces for thirty cars, Mr. Hayden and Mr. Hoag feel that this would be wholly inadequate to accommodate the cars that might reasonably be expected for a building which is designed to provide office space for nine doctors, their employees and patients. They further believe that if such a radical change in zoning is to be effected, it should be done only by the Town Meeting - not by this Board.

Petition of William J. Brown, M.D. -3-

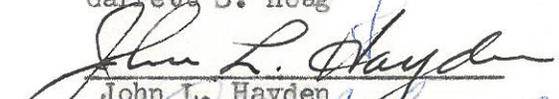
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In addition it seems to them that it would be quite unappro-
priate for this Board to grant the permit here requested while the Compre-
hensive Plan and Land Use Survey authorized by the Town is unfinished.

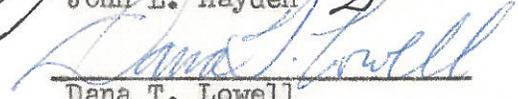
Accordingly, the request is denied and the petition dismissed.



Garrett S. Hoag



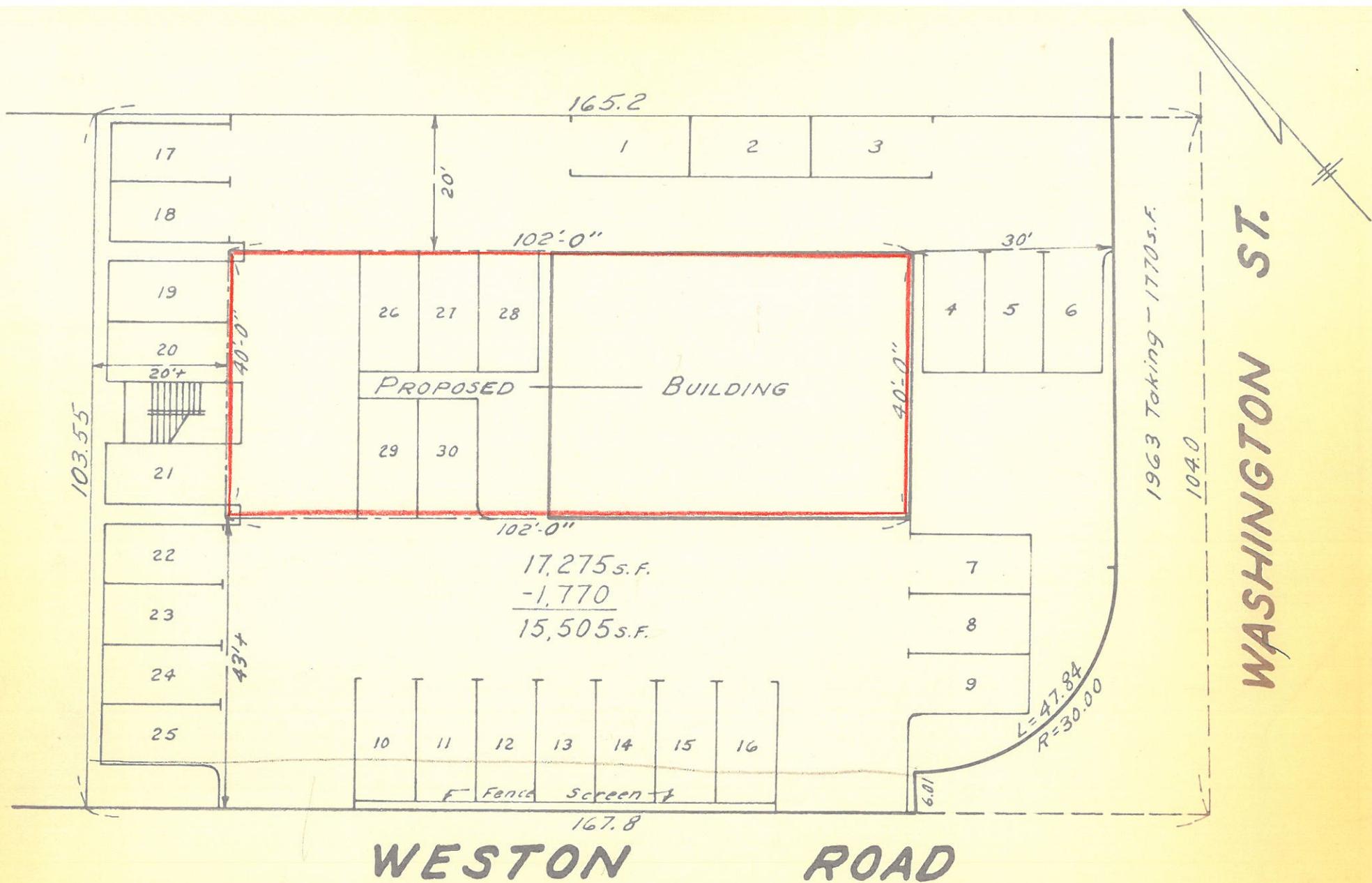
John L. Hayden



Dana T. Lowell

Filed with Town Clerk _____

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BURLINGTON, VERMONT
AUG 11 1964



PLAN OF LAND
IN
WELLESLEY • MASS.

SCALE: 1 IN. = 20 FT. JUNE 29, 1964
EVERETT M. BROOKS CO. CIVIL ENG'RS.
NEWTONVILLE • WAYLAND • W. ACTON ~ MASS.

