



BOARD OF APPEAL

GARRETT S. HOAG
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DANA T. LOWELL

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TELEPHONE
CE 5-1664

Petition of Paul B. and Mary B. Nicholas
(Aggrieved Parties)

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 8:10 p.m. on March 31, 1966, on the petition of Paul B. and Mary B. Nicholas, claiming to be aggrieved from the issuance of a permit by the Inspector of Buildings to construct a dwelling and garage on Lot 2, No. 16 Sunnyside Avenue on property owned by A. J. and F. A. Camuti. Said petition was filed under the provisions of Section XXIV of the Zoning By-law and Chapter 40A, Section 13, of the General Laws.

Statement of Facts

The property involved, which contains 10,000 square feet, is located within a single-residence district requiring a minimum lot area of 10,000 square feet.

On April 30, 1965, an application was submitted by A. J. Camuti and A. J. LaCava, requesting permission to construct a dwelling house on the lot involved. A diagram was drawn on the application by MacCarthy Engineering Service, Natick, Mass., which showed the proposed location of the dwelling on the lot. On December 3, 1965, a permit was issued for the proposed dwelling in accordance with the application submitted.

On December 30, 1965, after the forms were set in place, the same engineer checked the forms and made another plot plan which was submitted to the Inspector of Buildings for his approval. The plot plan showed the position of the house to vary from that submitted on the original application. The house had been turned on its axis and was 12.2' from the rear corner of the house to the lot line. The Inspector of Buildings did not approve the new position of the house and the foundation was not poured.

On January 4, 1966, the Inspector allowed A. J. Camuti to submit a new diagram, drawn by MacCarthy Engineering Service, Natick, Mass., dated January 4, 1966, which was to be attached to the original application, and the application altered to agree with the engineer's new diagram.

After a ten-day waiting period, during which the Inspector advertised the change in plans and sent notices to the abutting property owners, he approved the location of the foundation forms on January 14, 1966, and the foundation was poured. Subsequently, he found that this procedure was improper and on January 21, 1966, he notified the owners in writing that permit No. 15320 was no longer valid and a new permit would have to be obtained before proceeding with the construction of the house.

On February 24, 1966, a new application was submitted with a diagram on the application, drawn by MacCarthy Engineering Service, showing the dwelling in its present location, 31.9 feet back from Sunnyside Avenue,

Nicholas
(Aggrieved Parties)

twenty-one feet from the northwesterly lot side line but fourteen and a half feet from the nearest point of the easterly side line which runs in a straight line northwesterly from Sunnyside Avenue which it meets at approximately a 45 degree angle and 22 feet from said side when measured on a line parallel to the street line. During the ten-day waiting period notices were sent to the abutting property owners and notice of the pending permit was advertised in the newspaper. On March 2, 1966, Paul B. Nicholas notified the Inspector of Buildings that he opposed the request of A. J. and F. A. Camuti for a permit to construct a dwelling at 16 Sunnyside Avenue and that he intended to appeal if such permit was granted.

On March 7, 1966, the Inspector of Buildings issued a permit for the proposed dwelling in accordance with the application submitted. On the same date the Inspector notified the owners in writing that an objection had been received to the issuance of the permit and any work done during the next ten-day period would be at their peril pending a possible appeal to the Board of Appeal.

On March 14, 1966, the petitioners filed their request for a hearing before this Board claiming to be aggrieved by the issuance of the permit in that the dwelling, if located where shown on the diagram shown on the application of February 24, 1966, pursuant to which the current building permit was issued, will be in violation of the side yard requirements of Section XIX of the Zoning By-law and detrimental to their property as well as to surrounding properties.

Decision

The question presented to this Board for decision is whether the building permit issued by the Building Inspector should be revoked on the ground that the house, if located as proposed, would be in violation of the side yard requirements of the Zoning By-law.

The relevant provisions of the Zoning By-law are contained in Section XIX thereof and are as follows:

Definitions

SIDE YARD. An open space on the same lot with the building, between the building and the side line of the lot, extending the full width or depth of the building and unoccupied above the ground level except by uncovered steps and projecting eaves.

Requirements

SIDE YARDS. There shall be provided a side yard not less than twenty feet in width on each side of every building and structure....

It appears from the plot plan submitted to the Board at the hearing that, except for a narrow strip of land extending in a northwesterly direction from the main portion of the property, the lot here involved has a triangular shape. The base of this "triangle" fronts on Sunnyside Avenue.

In construing zoning ordinances, general rules and principles pertaining to the construction of statutes and ordinances are applicable. 8 MacQuillin, The Law of Municipal Corporations (3d Ed. 1965) Sec. 25.71. Where words have not been specifically defined in the zoning ordinance they must

be construed according to their natural import in common and approved usage. Williams v. Inspector of Buildings of Belmont, 341 Mass. 188; Foster v. Mayor of Beverly, 315 Mass. 567. Furthermore, the zoning ordinance must be construed reasonably with regard both to the objects sought to be attained and to the general structure of the ordinance as a whole. Petros v. Superintendent & Inspector of Buildings of Lynn, 306 Mass. 368. When ambiguous language is used in a zoning ordinance, its meaning and scope may be found by examining the language in the light of other provisions in the ordinance, by ascertaining the object sought to be accomplished, and by considering all other relevant circumstances. Pascale v. Board of Zoning Appeals of New Haven, 150 Conn. 113, 186 A. 2d 377 (1962).

The General Court in the Zoning Enabling Act set forth some of the reasons for zoning regulations. Some of the evident purposes which are served by a side yard requirement were included in the enabling act as follows:

"to conserve health; to secure safety from fire, panic and other dangers; to provide light and air; to prevent overcrowding of land." Mass. G. L. (Ter. Ed.) c 40A Sec. 3.

The Board is convinced that, in common usage, when the base of a triangular shaped lot fronts on the street, the lines adjoining the base would be called the side lines of the lot. Accordingly, in view of the general purpose and objectives of the zoning ordinance, it is the Board's opinion that the words "side line of the lot" contained in the By-law apply to the lines adjoining the front line of the lot, with the resulting side yard requirement. And they remain the side lines of the lot no matter how the building is placed.

The Zoning By-law does not spell out how the side yard is to be measured in order to ascertain its minimum width. Applying the general rules of statutory construction herein before referred to, the Board finds that the only method of measurement which is consistent with the objects which the Zoning By-law seeks to accomplish is to measure the shortest distance between the building and the side line of the lot. The diagram shown on the application shows measurements on a line parallel to the street line and the distance so measured to be more than the required twenty feet. But we know of neither sanction for such a measurement nor logic to support it. Suppose the street line curved or waved; how would one measure them? A consideration of any one of the purposes intended to be served by a side yard regulation convinces us that our conclusion, that the shortest distance between the side line and the building must not be less than twenty feet, is the only reasonable interpretation of the Zoning By-law. For example, one of the purposes enumerated in the enabling act is "to secure safety from fire." This purpose certainly would not be served if the minimum width of a side yard were to be measured in any way other than by the shortest distance between the building and the side line of the lot since the danger of fire is directly related to the shortest straight line distance between the source of the fire and the potentially threatened object.

Moreover, the Board finds support for its view in a case from another jurisdiction, State v. Village of Shorewood Hills, 237 Wis. 501 N. W. 568 (1941), wherein the Supreme Court of Wisconsin was faced with the question whether the owner of a particular corner lot was required by the zoning ordinance of the village to maintain a fifteen foot side yard or a twenty-five

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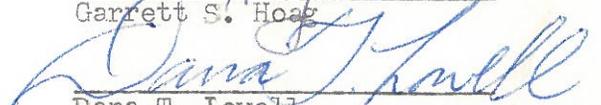
foot setback from the side street. The zoning ordinance of the village contained a definition and side yard requirement very similar to those contained in the Wellesley Zoning By-law. In the lot under consideration in the Wisconsin case the side line along the street was not perpendicular to the front line. Although the opinion of the court did not refer verbally to the method of measuring the width of the required yard, the diagram included as part of the court's opinion shows clearly that the yard was measured by means of a straight line drawn from the nearest point of the side line to the nearest point of the building. State v. Village of Shorewood Hills, supra, at 502,297 N. W. at 569.

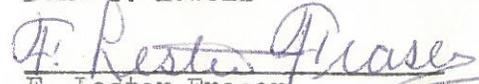
We find the building permit invalid ab intio.

Accordingly the petition is allowed and the building permit revoked.

~~Mr. Fraser, however, does not agree with the above finding and he would not allow the petition. in his opinion the location of the house involved would not be in violation of the side yard requirements of the Zoning By-law.~~

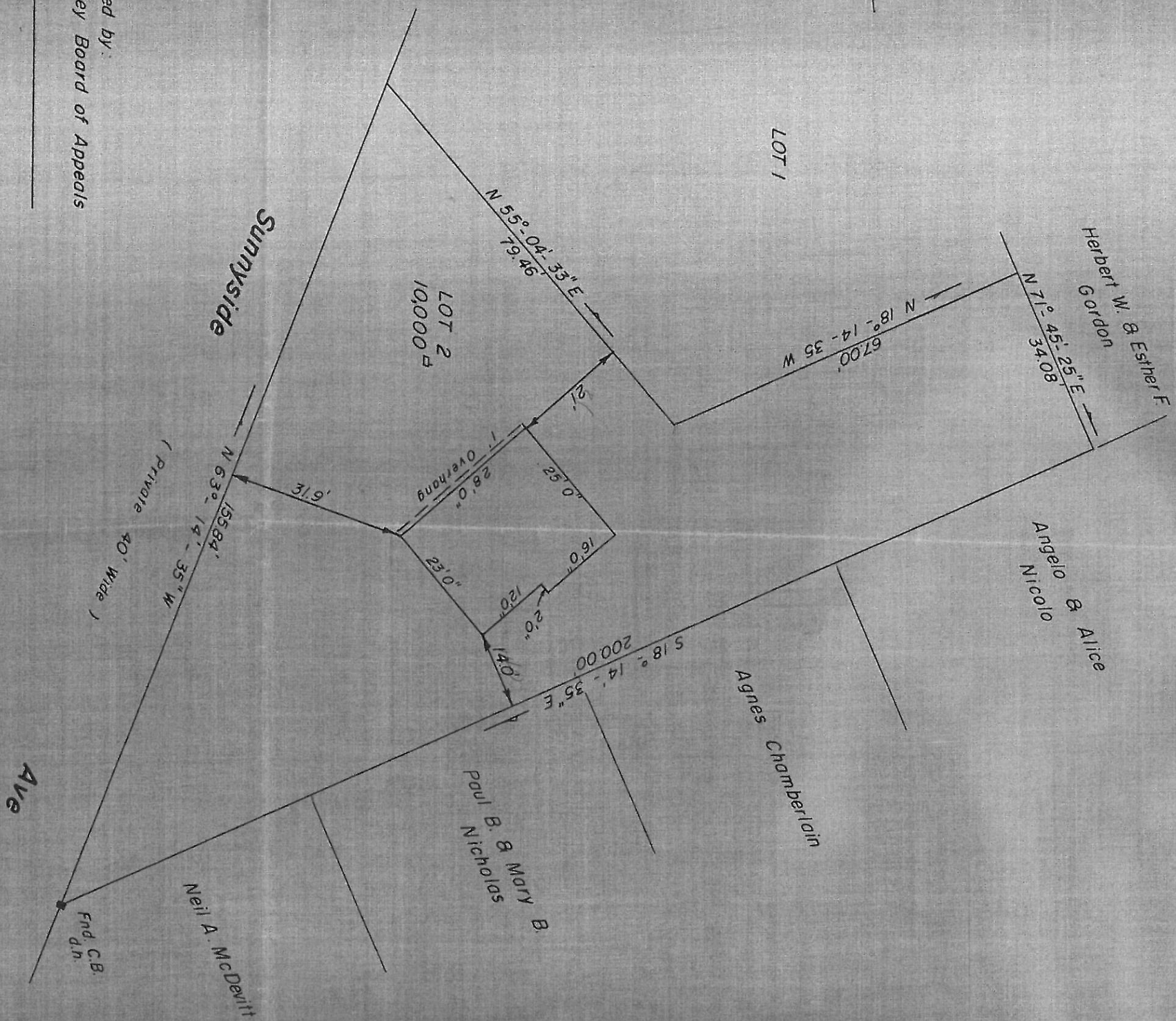

Garrett S. Hoag


Dana T. Lowell


F. Lester Fraser

Filed with Town Clerk _____

1966 JUN 3 11 31 AM
TOWN CLERK'S OFFICE



Approved by:
Wellesley Board of Appeals

Date: _____

*Plan of Land in Wellesley, Mass.
(Showing Existing Building)*

Scale 1" = 20'

June 10, 1966



Plan by: *MacCarthy Engineering Service Inc.*
Natick, Mass.