



BOARD OF APPEAL

GARRETT S. HOAG
DANA T. LOWELL
F. LESTER FRASER

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Appeal of James A. Buschini

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 8:25 p.m. on June 30, 1966, on the appeal of James A. Buschini, Trustee, Jay Bee Realty Trust, from the refusal of the Inspector of Buildings to issue a permit for the construction of a dwelling on Lot 11-C, College Road. The reason for such refusal was that the Inspector of Buildings contended that the lot involved contains less than 15,000 square feet as required by Section XVIII of the Zoning By-law. If the Board is of the opinion that the lot is not large enough, then the appellant appeals under Section XVIII of the Zoning By-law and under Chapter 40A, Section 15, of the General Laws, for a variance from the terms of the Area Regulations of the Zoning By-law, and he further appeals under Section XIX of the Zoning By-law and Chapter 40A, Section 15, of the General Laws for a variance from the terms of the Frontage Requirement of the Zoning By-law.

On June 9, 1966, the Inspector of Buildings notified the appellant in writing that a permit for the proposed dwelling could not be issued for the above-mentioned reasons, and on June 10, 1966, the appellant took an appeal from such refusal.

Henry D. White, attorney, represented the appellant at the hearing.

Joseph R. Sullivan, Surveyor with the MacCarthy Engineering Service, Natick, Mass., stated that he did the engineering work on the plan submitted to the Planning Board in 1963, and recorded in 1964, and had conferred with Mr. William Gleason, Gleason Engineering Company, who agreed with his figures.

Robert H. Dunning, Land Surveyor, Arlington, stated that he calculated the plans recorded and found the lot to contain in excess of 15,000 square feet.

Eleanor Steinfeld, 31 College Road, opposed the granting of the request as she felt that the lot line falls within her driveway and she will not have access to her garage.

Thomas Fitzgerald, 24 College Road and Eleanor P. Angelakos, 21 College Road also appeared in opposition to the request. The matters raised by the various objectors were not germane to the issue before the Board.

Statement of Facts

The lot involved is located within a single-residence district requiring a minimum lot area of 15,000 square feet. The appellant seeks a special exception and variance which will permit the construction of a dwelling on the lot involved, if in the opinion of the Board, the lot does not contain the required area.

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AFTER 5:00 P.M.

The lot involved is one of the lots laid out in the original subdivision of College Road, drawn by Gleason Engineering Company, and approved by the Planning Board on October 30, 1941. It originally contained 15,050 square feet according to said subdivision, and in 1947 a portion of the lot containing 2,050 square feet was conveyed to the owner of the house at #35 College Road, thereby reducing the area of the lot to 13,000 square feet. Subsequently, a new plan was drawn by MacCarthy Engineering Service, Natick, Mass., changing the lot line between the lot involved and Lot 10, house #31. This plan shows the lot involved to contain 15,200 square feet and the adjacent lot to contain 15,400 square feet. Said plan was endorsed by the Planning Board on August 6, 1963 as "Approval under the Subdivision Control Law not required," and was recorded in the Norfolk Registry of Deeds on January 30, 1964, Book 4138, Page 350. The appellant contends that any apparent area discrepancy between said plan and the original subdivision plan is attributed to an error made at the time the original subdivision plan was drawn by Gleason Engineering Company, and that there is in fact sufficient area within the lot in question as required by the Zoning By-law.

However, the Town Engineer determined from his calculations based on said recorded MacCarthy plan that the lot in question contains 14,941 square feet.

Decision

The Board has made a careful study of all pertinent facts in this case, has examined all the plans submitted, and has taken a view of the locus.

The Board accepts the Town Engineer's determination of the lot's area and adopts said area for purposes of this decision.

The original subdivision plan has not been officially amended to the knowledge of this Board. When the new plan showing an increase in the area of the lot was filed, the Town did not take issue as to the area of the lot and the owner of the property has been assessed for the land as shown on the original plan, with the reduction of the parcel which was conveyed to the adjoining lot in 1947.

The Board is unanimously of the opinion that the relief requested by appellant can and should appropriately be granted.

Section XVIII, Area Regulations, requires that this Board base any exception therefrom upon a finding that the adjoining areas have previously been generally developed by the construction of houses on lots generally smaller than is prescribed by this section and the standard of the neighborhood so established does not reasonably require a subdivision of the applicant's land into lots as large as prescribed or upon a finding of economic inappropriateness of lots containing the required area. The Board is unable to make either of such findings as this is the only remaining undeveloped lot within the subdivision which was developed with lots containing 15,000 square feet or over. However, it has considered the request under the provisions of Chapter 40A, Section 15, of the General Laws and feels a variance can be granted under that provision.

Section XIX of the Zoning By-law requires that there shall be provided for every building or structure hereafter erected a front yard at least sixty feet in width for the entire depth of the front yard. This lot has a frontage of only 52'. The Board assumes for purposes of this decision (without deciding the question) that the sixty-foot frontage requirement incorporated in the Zoning By-law in 1964 is applicable in this case. To grant an exception

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from the requirement, this Board must find that, 1. Compliance with the requirements is impracticable because of the width, depth or shape of the lot, and 2. The lot was held of record under a separate and distinct ownership from adjacent lots on April 1, 1939. Although the Board finds that the facts in this case do not satisfy these conditions, it has also considered the request under the provisions of Chapter 40A, Section 15, of the General Laws, and feels that appropriate relief can and should be granted under this provision of law.

Appellant's problems in this case are in large measure attributable to the fact that the lot in question is the last one in the subdivision and therefore suffers from whatever errors and insufficiencies may have accumulated in the course of prior development. These conditions and the further difficulty implicit in the uncertain water line of Morse's Pond, do not generally affect the zoning district in which the lot lies. Appellant has apparently acted in good faith, and to deny him permission to construct a dwelling now, in the opinion of this Board, would result in substantial hardship. Neither the area discrepancy nor the inadequacy of the frontage is large when considered in the light of all the circumstances and the intent and purpose of the pertinent provisions of the Zoning By-law.

The Board feels that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the by-law.

Accordingly, the requested variances are authorized and granted and the issuance of a permit for the construction of a dwelling on the lot involved is hereby authorized in accordance with the plan submitted and on file with this Board subject to compliance with all other applicable provisions of the Zoning By-law or other provisions of law.

Richard O. Aldrich
Richard O. Aldrich

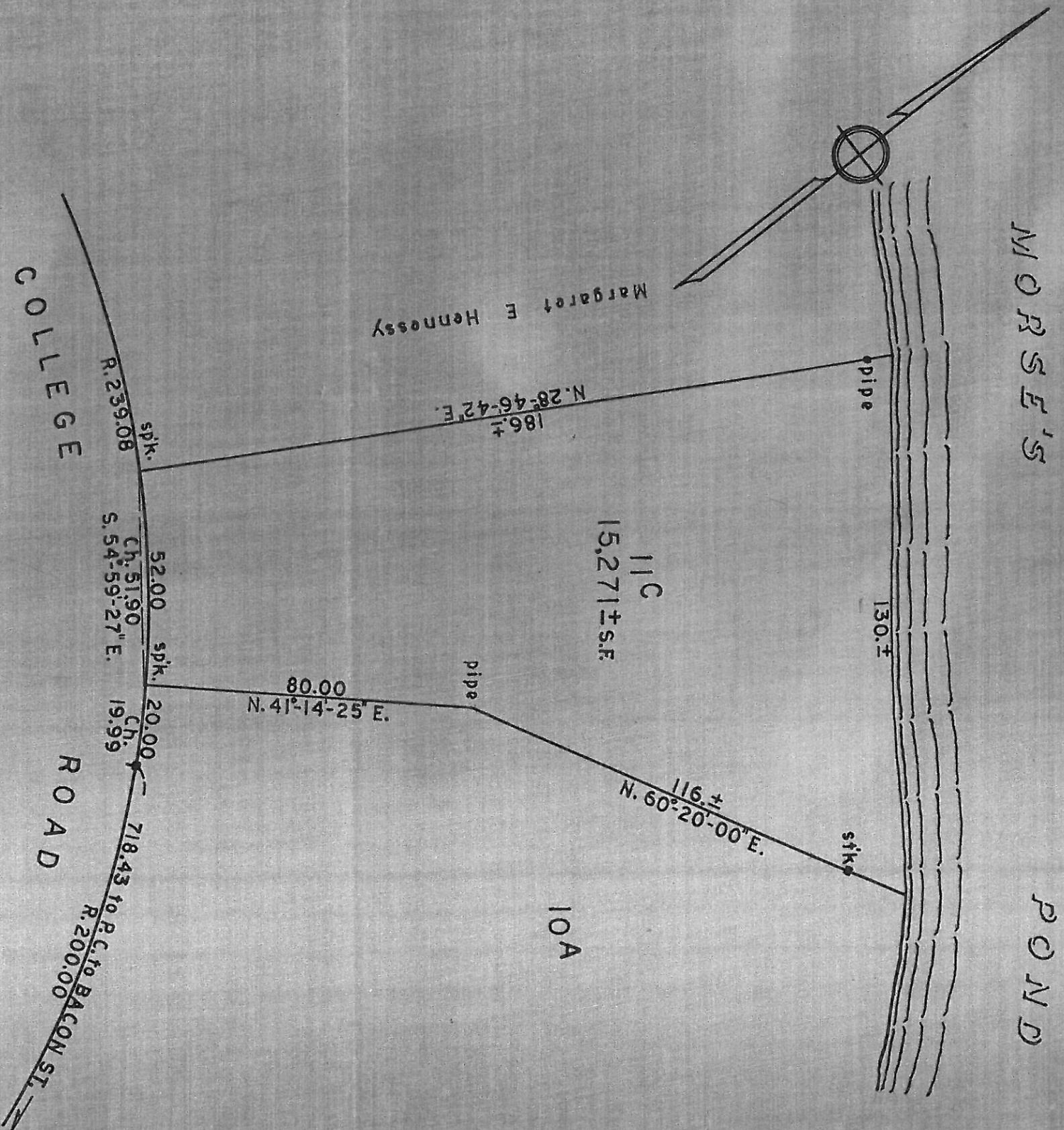
F. Lester Fraser
F. Lester Fraser

Edward T. Kilmain
Edward T. Kilmain

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Filed with Town Clerk _____



PLAN OF LAND
 WELLESLEY, MASS.
 SCALE: 1" = 30' MARCH 31, 1966
 Robert H. Dunning, Surv.
 Arlington