66-5

TOWN OF WELLESLEY MASSACHUSETTS

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Appeal of Andrew Sorenti

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 February 10, 1966, on the appeal of Andrew Sorenti from the refusal of the Inspector of Buildings to issue a permit either to complete the building of a dwelling with attached garage or erect a dwelling with attached garage on Lot 3, 27 Oak Street.

On January 14, 1966, the appellant requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

John A. Cunniff, attorney, represented the appellant at the hearing.

Statement of Facts

Lot 3 is the rearmost lot of three lots laid out in tandem by appellant's subdivision in 1950 of a parcel of land on Oak Street containing 37,300 square feet which he acquired in 1932. Lot 1 has a frontage on Oak Street of 100 feet and an area of 10,000 square feet. Lots 2 and 3 lie directly to the rear of lot 1, contain 11,800 square feet and 16,884 square feet respectively, have frontages of 9.9 feet on Oak Street by adjacent parallel strips of land running out to the street alongside lot 1 and have access to the street by a corridor of land which is 19.8 feet wide by virtue of cross easements in the 9.9 foot strips.

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On January 13 and 14, 1966, Appellant, by his Attorney, applied for a permit to complete the building of a single family dwelling or to erect such a dwelling, on the lot in question. These applications were denied in writing by the Building Inspector on the latter date for the reason that lot 3 did not have the 60-foot frontage required by Section XIX of the Zoning By-law. Thereafter, on January 14, 1966, appellant entered this appeal, requesting a variance from the frontage requirement under Section 15 of Chapter 40A of the General Laws.

Appellant's attorney summarized the facts as to the circumstances and events attending Appellant's efforts to erect a dwelling on lot 3 from June 19, 1951, the date when his subdivision plan was filed in the Land Court, to the initiation of the pending proceeding. Most of these facts are a matter of record in an earlier decision of this Board filed in the Town Clerk's office on January 26, 1961, denying Appellant's request for a special exception and variance from the then applicable frontage requirement of 40 feet, in the decree dated December 18, 1961, of the Superior Court to the effect that the Board's action was within its jurisdiction and did not require modification and in the decision of the Supreme Judicial Court (345 Mass. 348) affirming said decree. Therefore, a detailed repetition of these facts at this time is not necessary. There is now pending in the Superior Court an action by the Town of Wellesley seeking an injunction to require Appellant to

tear down the partially completed house on lot 3.

Appellant's principal contentions are that the subdivision when made and recorded was legal, that the prohibitive application of the amendment to the Wellesley Zoning By-law requiring initially a 40-foot frontage (presently 60-foot) was solely a result of a mistake on his part when he was being advised by counsel, that he had made a substantial investment in the development of the property prior to his encountering any legal obstacles, that his further investment was made in good faith as a result of misapprehension of the facts and misunderstanding of the law, that the frontage requirement of the By-law initially adopted on June 21, 1951 affects lot 3 much more adversely than it does the great majority of lots in the zoning district, thereby creating hardship within the contemplation of Section 15 of Chapter 40A of the General Laws.

Decision

The Board concludes that the decision in the earlier case is not controlling here. Whether to deny an appeal on the ground of res judicata is in the first instance a matter for the Board of Appeal to determine in its reasonable discretion. No vested rights have intervened since the earlier decision and this Board is apprised of new facts and considerations which clearly warrant its entertaining this appeal as a new matter on its merits.

Appellant expended a substantial sum of money in clearing and filling the 37,300-foot lot acquired in 1932 and in building a 200-foot driveway to serve the three lots laid out in the subdivision, a plan of which was legally filed in the Land Court in 1951.

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The circumstances of Appellant's having proceeded with construction of a house between September, 1956 and the spring of 1960, in part after expiration of his building permit, are not clear, and this mistake is not of controlling significance in any event, since the Board's conclusion on the question of hardship does not depend upon the existence of a partially completed house in the lot.

The lot acquired in 1932 is the largest, with one or two exceptions, lying between Oak Street and the Diehl property. It has the greatest depth from Oak Street of all such lots and is one of only three of such lots which are susceptible of subdivision into three lots. Lot 3 is abutted on two sides by property zoned and used for industrial purposes.

Several large lots in the area have been subdivided into lots lying one behind the other and having access to Oak Street by long driveways. These developments generally appear to be reasonably laid out, well maintained and attractive.

The effect of the frontage by-law adopted in 1951 and amended in 1964 was and is to deprive Appellant of any reasonable use and, therefore, to destroy the value, of a 16,884-foot building lot situated in a 10,000-foot district and validly laid out in a plan which was legally filed and recorded prior to the effective date of said by-law. That such a result was not intended the Board feels is clear from the fact that the by-law contained an exception which would have saved Appellant's right to erect a dwelling on the lot had he been properly advised and taken the proper course of action. An intent to avoid or mitigate such harsh results is also apparent in the tenor and purpose of various provisions of the General Laws and in recent decisions of the Supreme Judicial Court. In fact one can find in Justice Cutter's concurring opinion in the earlier Sorenti case a suggestion that the decision might well have

been different had the record before the Court permitted some of the findings set forth above.

The Board finds that under the circumstances a literal enforcement of the provisions of the frontage by-law would involve substantial hardship to Appellant and that the requested relief is desirable and may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of said by-law.

Accordingly, the requested variance is granted and the Building Inspector is authorized to issue permits for completion or construction of a single-family dwelling with attached garage in accordance with plans and specifications on file with him subject, however, to the following conditions:

1. Appellant shall cause a dwelling with attached garage to be completed or erected on the lot in question substantially in accordance with plans on file with the Building Inspector and of first-class materials and in a workmanlike manner.

2. Appellant shall cause the detached garage or shed now situated on said lot to be removed and the lot to be graded and seeded.

3. Appellant shall cause the driveway from said lot to the street to be surfaced with an asphalt or bituminous concrete material in a workmanlike manner.

4. The work described in 1, 2, and 3 above shall be accomplished in compliance with all applicable provisions of law and shall be completed within six months from the filing of this decision in the Town Clerk's office or in such further time as the Board in its discretion shall allow.

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Dana T. Lowell
Dana T. Lowell

F. Lester Fraser
F. Lester Fraser

Richard O. Aldrich
Richard O. Aldrich

Filed with Town Clerk_____

SURVEY RECORD

Permit No. .....

Street OAK No. 27

Builder ANDREW SORRENTE

Address WELLESLEY

Owner SAME

Address SAME

Building dimensions 55' x 255'

Distances:

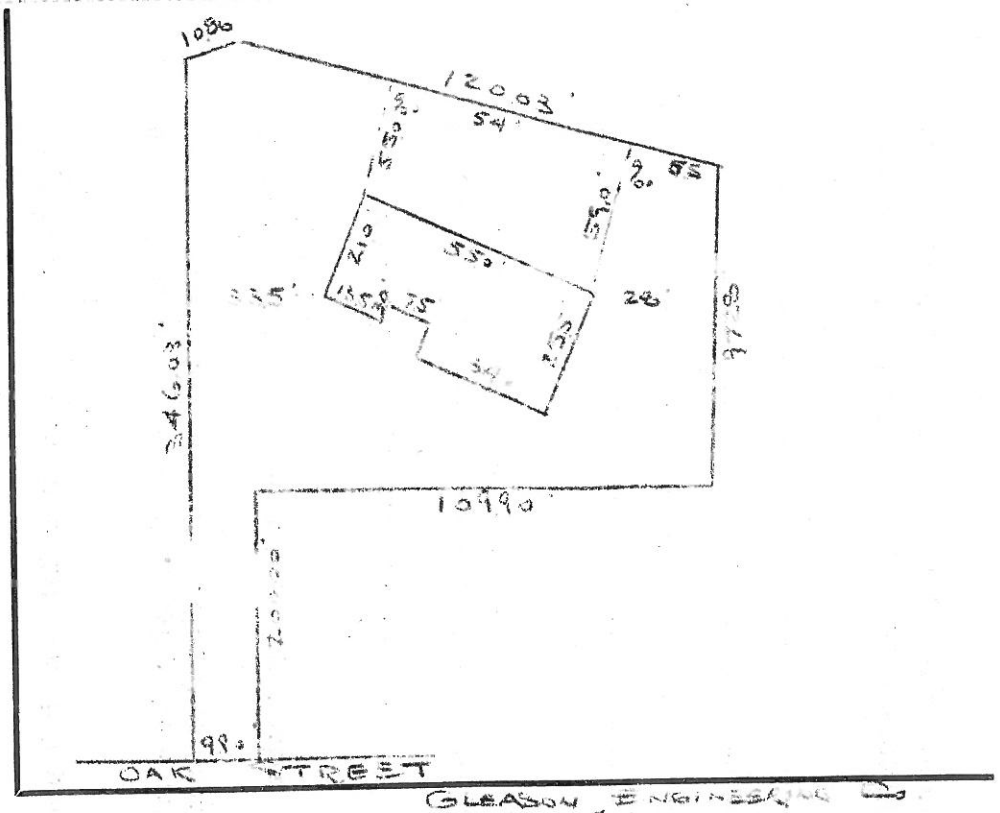
Adjoining Bldgs.....

Center of street 243'

Front Yard..... Rear Yard 55'

Side Yard 335' Side Yard 28

Area of Lot 16884 SQ FT



GLEASON ENGINEERING CO

Signed By: [signature]

Registered Engineer or Surveyor

Date Aug 25, 1960 Address Wellesley

DUPLICATE