



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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431-1019

ZBA 87-52
Petition of Georgiana Kinlin
Partridge Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, July 30, 1987 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley, pursuant to the request of GEORGIANA KINLIN requesting clarification of a prior decision of the Zoning Board of Appeals at a Public Hearing on December 14, 1983 and/or a variance from the terms of Section XVIII (Area Regulations) and pursuant to Section XXIV-D of the Zoning Bylaw which will allow construction of a single family dwelling on a lot of land on PARTRIDGE ROAD containing 8,691 square feet of land, located in a Single Residence District in which the minimum lot size regulations are 15,000 square feet.

On June 30, 1987, the petitioner filed an application for a hearing before this Authority and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Joseph Fleming, an attorney representing Georgiana Kinlin who was also present. Mr. Fleming stated that in his opinion, by granting the variance to divide the single lot into two lots in 1938, it was the intent of the Zoning Board at that time to create two buildable lots, although this was not explicitly stated in said decision. The area requirements in 1938 for the district in which Partridge Road is located were 10,000 square feet. Mr. Fleming pointed out that although the area requirement for the district is 15,000 square feet today, many properties in the neighborhood do not meet that requirement.

Mr. Fleming explained that Mrs. Kinlin was suffering a hardship in having to pay taxes on the property and therefore wished to sell the second lot.

Mr. Fleming presented letters from Irving and Madlaine Smith, 142 Oakland Street; Philomena C. Smith, 150 Oakland Street; Kathie DeMarco, 12 Partridge Road; and Charles H. and Constance N. Defuiller, 151 Oakland Street all stating no opposition to the petition.

Other than Attorney Fleming and Mrs. Kinlin, no others were present expressing favor or opposition to the request.

Statement of Facts

The property in question is a vacant lot fronting on Partridge Road containing 8,691 square feet of land. On December 6, 1938 the Zoning Board of Appeals heard a request by Delia Kinlin for a building permit to build a single residence on a

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lot of land known as 142 Oakland Street which then contained approximately 17,000 square feet and to divide said lot into three small lots, on the largest of which, with an area of about 7,000 square feet, it was proposed to erect the house in question.

At that time, the Zoning Board of Appeals granted the variance, stating:

"1. The lot of land on which the house is to be placed shall be increased in area to contain no less than 8,500 square feet."

Subsequently, the lot at 142 Oakland Street was divided into one lot containing 8,563 square feet upon which a house was built and the remaining lot of 8,691 square feet which fronts onto Partridge Road for which the variance is presently requested.

In 1938 the area requirements for the district in which Partridge Road is located were 10,000 square feet. Today, the area requirements are 15,000 square feet.

At no time since 1938 were these two lots held in anything but common ownership.

Georgiana Kinlin is requesting a variance pursuant to the provisions of Section XVIII (Area Regulations) which would allow the lot to be deemed buildable for the purpose of construction of a single family dwelling.

Partridge Road is located in a district in which the area requirements for a buildable lot are 15,000 square feet. Section XVIII-A of the Zoning Bylaw states:

"thereafter, no dwelling or clubhouse shall be erected or placed on a lot containing less than such a minimum area."

A Plot Plan was presented entitled "Plot Plan of Land in Wellesley, Mass.", drawn by J.J. Caffrey, Registered Land Surveyor, dated April 20, 1987.

The Planning Board on June 28, 1987 voted "...to recommend denial of the request. The Planning Board sees no justification for renewing or affirming this variance since whatever rights under it were not exercised for fifty years. The Board also notes that the granting of this variance would effectively establish two undersized lots - this one and the lot at #144 Oakland which is presently in the same ownership and contains 12,731 square feet in a 15,000 minimum district."

A letter was received from Elizabeth Walker, 15 Partridge Road, dated July 29, 1987, in opposition to granting of the variance.

Decision

This Authority has made a careful study of the evidence presented. In clarification of the granting of the variance by the Zoning Board of Appeals on December 6, 1938, this Board is of the opinion that it was not the intent of the past board to create two buildable lots, for nowhere in the decision was this intent explicitly stated. Even had that been the intent of the Zoning Board of Appeals in 1938, that intent cannot dictate the decisions of the Board of Appeals in 1987.

It is the opinion of this Authority that the variance granted in 1938 was not granted in perpetuity, and has lapsed, as it was not acted upon.

At no time has the property ever been held in anything but common ownership, so there would be no grounds for invoking Section XVII (Non-conforming Uses and Structures).

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The area requirements in the district in which Partridge Road is located have changed from a minimum of 10, 000 square feet to a minimum of 15,000 square feet. In the opinion of this Authority a lot of 8,691 square feet is too far from conformity to be allowed.

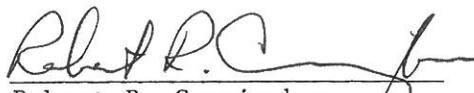
In the opinion of this Authority, the request for the variance is not made with a specific construction project in mind, but to obtain a variance for a buildable lot for some future project, the granting of which is not within the province of the Board of Appeals.

This Authority sees no justification for a variance being granted to allow construction of a dwelling and fails to find a "substantial hardship" within the meaning of Section XXIV-D of the Zoning Bylaw. Therefore, the requested variance is hereby denied and the petition dismissed.

On July 30, 1987 the three member board hearing this case voted unanimously in favor of this decision. On August 22, 1987 Mr. Porter died without having affixed his signature
APPEALS FROM THIS DECISION, IF ANY, to this decision.

Stephen S. Porter, Chairman

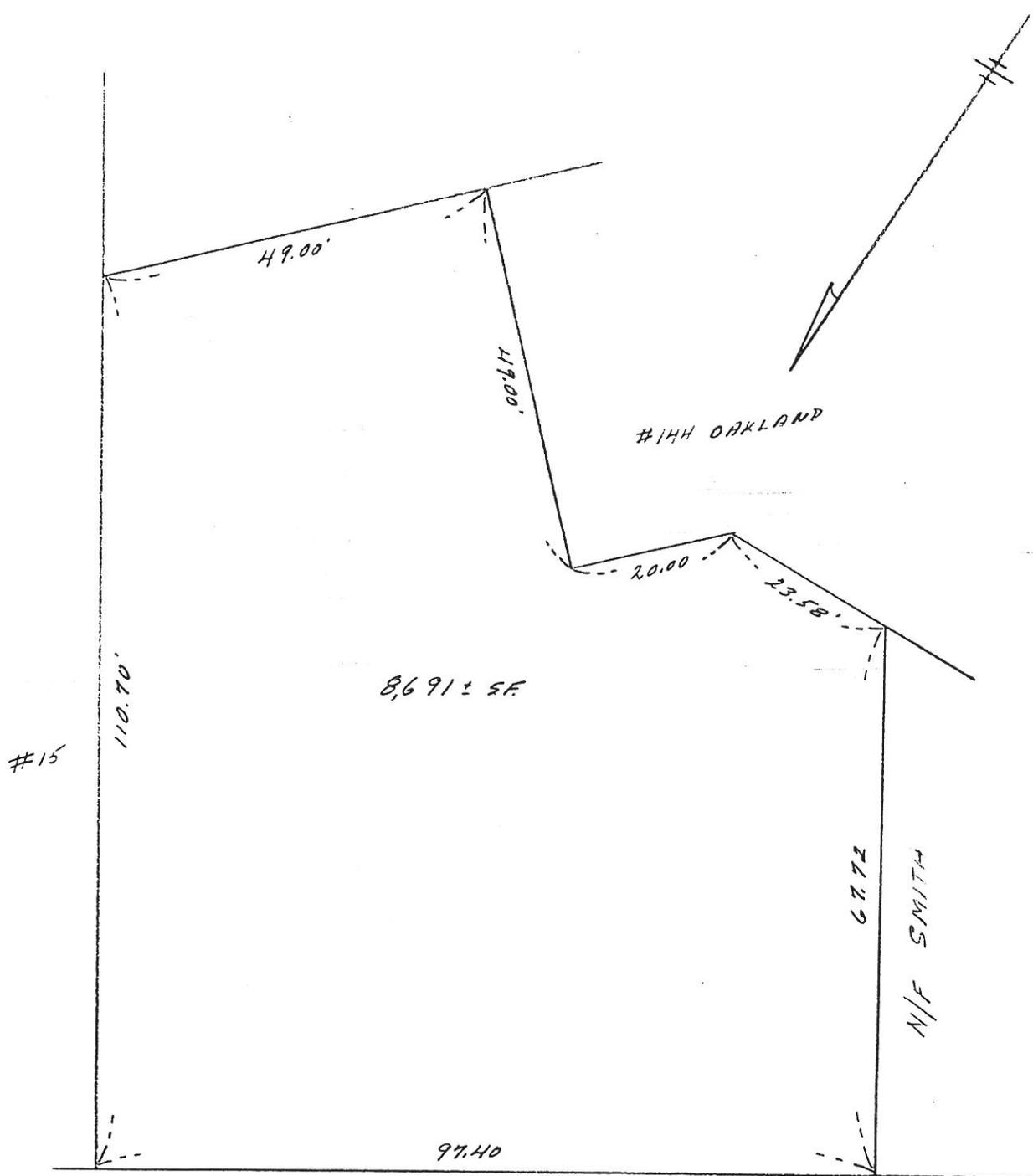
SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK


Robert R. Cunningham

cc: Planning Board
Inspector of Buildings


William E. Polletta

DEC 5 2 15 PM '87



PARTRIDGE ROAD

PLOT PLAN OF LAND
IN
WELLESLEY, MASS.

SCALE 1"=20'
J.J. CAFFREY, RLS

APRIL 20, 1987
WALTHAM, MASS.

