69-54

TOWN OF WELLESLEY MASSACHUSETTS

BOARD OF APPEAL

RICHARD O. ALDRICH
DANA T. LOWELL
F. LESTER FRASER

KATHARINE E. TOY, CLERK
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235-1664

Appeal of Humble Oil & Refining Company

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 September 18, 1969, on the appeal of Humble Oil & Refining Company from the refusal of the Inspector of Buildings to issue a permit to it to construct a service station and gasoline pumps at 9 Central Street. The reason for such refusal was that said service station would violate Section XIX of the Zoning By-law which requires a thirty-foot front yard and side yard, and Chapter IV, Section 1 (a) of the Building Code which requires that all such buildings shall be placed at least forty feet from the center line of any public or private street.

On August 20, 1969, the Inspector of Buildings notified the appellant in writing that a permit for the proposed service station could not be granted for the above-mentioned reasons and on August 28, 1969, the appellant took an appeal from such refusal. Thereafter due notice of the hearing was given by mailing and publication.

Thomas Carens, attorney for the appellant spoke in support of the appeal.

Herbert Austin, Editor of the "Townsman" which occupies the adjacent building, spoke in favor of the appeal.

Statement of Facts

The property involved is located at the corner of Central Street and Crest Road and is within a Business District.

At present there is a gasoline service station and pump island on the property which was built in 1926. The appellant seeks permission to replace it with a new modern station which will be more efficient and thus better serve the public.

It is proposed to construct a building approximately 28' x 57'; forty feet back from Central Street and to the street line of Crest Road at the northeast corner of the building. The remaining portion of the building will be a greater distance from the street line and will vary from 0' to 15'.

Appellant's attorney maintains that the Front Yard and Side Yard provisions of Section XIX, Yard regulations, are not applicable in this case.

If, however, the Board rules that said yard regulations do apply in this instance, then the appellant seeks an exception from the requirements of Section XIX of the Zoning By-law as well as the requirements of Chapter IV, Section 1 (a) of the Building Code.

It was pointed out that the lot is only 78' wide at the rear and there is a twenty-foot easement over the westerly portion of the lot which cannot be built upon. Therefore, it is impossible to replace the present building, which extends across the entire width of the lot, with a building of adequate size and comply with the by-law requirements.

The Building Code, Chapter IV, Section 1 (a), requires that the proposed building shall be placed at least forty feet from the center line of the street. Crest Road is fifty feet wide, therefore, the required setback would be fifteen feet.

Attorney Carens points out that the existing building abuts Crest Road on the easterly side and the adjacent building also abuts the street line. It is, therefore, the contention of the appellant that substantial hardship will result if the requested variance is not granted as it is operating a forty-three year old facility and that the change requested will not result in substantial detriment to the public good and will not nullify or derogate from the intent or purpose of the by-laws.

A plot plan was submitted, drawn by Gleason Engineering Company, dated June 26, 1969, which showed the location of the proposed building on the lot.

Decision

It is the opinion of this Board that the Front and Side Yard requirements of Section XIX of the Zoning By-law do not apply to this property in this instance although the language of the By-law is perhaps not as clear in this regard as one might wish. In any event the Board is further of the view that the construction of the proposed service station and pump island on the lot involved as shown on the plan submitted will not change the character of the neighborhood and that the granting of the requested exception and variance will not prove a detriment to the public good. In its opinion, the new building will be an improvement both in appearance and from a safety factor as there will be less obstruction for the motorists at the corner of Crest Road and Central Street. It will also provide the public with more efficient and improved service which should benefit the Town.

The Board finds that a real need exists for the new building to be constructed as requested and the facts in this case satisfy the conditions set forth in Section XIX of the Zoning By-law and Chapter I, Section 10, of the Building Code on which the Board's authority depends to grant a special exception from the application of the front and side yard restrictions of the Zoning By-law and the setback requirement of the Building Code.

The existing building was built in 1926 and the lot involved was held of record on April 1, 1940 under a separate and distinct ownership from adjacent lots. The lot is relatively narrow for a service station which requires service bays, a sales room, an office, a storage room and rest rooms, as well as off-street parking for several cars at one time. Although it is 78' wide at the rear, it does have a twenty-foot easement across the westerly side which cannot be built upon. Therefore, compliance with the front and side yard requirements of Section XIX of the Zoning By-law is impracticable because of its width and shape of the lot. If necessary, an exception from these requirements would be warranted under the circumstances.

In view of the evidence presented, it is the opinion of this Board that manifest injustice would result to the appellant unless this permit is granted.

Accordingly, the requested variance is granted and the issuance of a permit for the proposed service station as shown on the plans submitted and on file with this Board is hereby authorized.

Richard O. Aldrich

Edward T. Kilmain

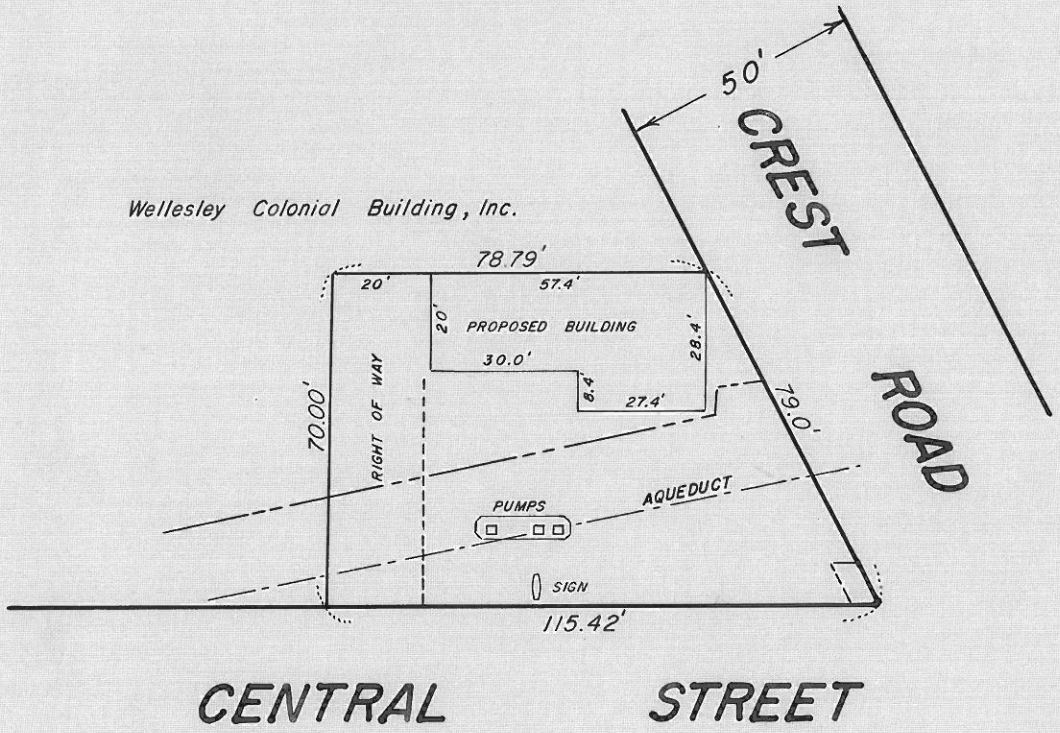
Robert T. Colburn

Filed with Town Clerk _____

PLAN OF LAND
IN

WELLESLEY, MASS.

OWNED BY

HUMBLE OIL & REFINING CO.

Scale 40 feet to an inch
June 26, 1969
Gleason Engineering Company