



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
 TELEPHONE
 235-1664

Appeal of James H. Odell
 (Dana W. and Lois L. Scott)

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 June 24, 1971, on the appeal of James H. Odell, claiming to be aggrieved from the issuance of a permit by the Inspector of Buildings to erect a swimming pool at 69 Forest Street, owned by Dana W. Scott and Lois L. Scott. Said appeal was taken under the provisions of Section XXIV of the Zoning By-law and Chapter 40A, Section 13, of the General Laws.

On May 5, 1971, the appellant filed an appeal with this Board and thereafter due notice of the hearing was given by mailing and publication.

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

Melvin Newman, attorney, represented Dana W. and Lois L. Scott at the hearing.

A letter registering disapproval of the swimming pool was received from H. Gordon Young and Phyllis A. Young, 48 Clovelly Road.

Statement of Facts

On February 2, 1971, an application was filed by Dana W. and Lois L. Scott for a permit to construct a swimming pool at the location involved. A plan of the pool was submitted together with a plot plan drawn on the application by Alexander Crucoli, Land Surveyor, which showed the proposed location of the pool as well as the existing house on the property. On April 30, 1971, the Building Inspector issued a permit for the proposed pool in accordance with the plans submitted and thereafter an appeal was taken by the appellant.

At the hearing attorney White stated that on September 29, 1966, the Board of Appeal held a hearing on the pool involved and at that time made a finding that a swimming pool is a structure as defined in the Building Code of Wellesley and further found the subject pool to be located and being used in violation of Section XVI-C and XIX of the Zoning By-law. The plot plan filed at that time showed the pool's northerly and southerly sidewalls to be 18.6 feet and 20.1 feet from the side yard line and the Scott house respectively and the easterly or front end wall to be 25.5 feet from the street, or less than the required setbacks. The case was appealed to the Superior Court and the Board's decision was sustained by that Court as it was also in the Supreme Judicial Court. Subsequently, the Town of Wellesley filed a Bill in Equity in the Courts to have the pool removed, and at that time the Scotts told the Court that they were bringing another petition before the Board of Appeal and the Judge agreed to await the decision of the Board.

After the Supreme Judicial Court decision, the Scotts apparently decided to reduce the size of the pool and applied for a building permit for the installation of a pool, the liner sidewalls of which appear to be 20 feet

from the side boundary lines and 30 feet from Forest Street. However, the walks and supporting materials surrounding the pool still encroach upon the required setbacks.

Melvin Newman, attorney for the Scotts, stated that the case had been going on for five years, and he felt that the Board of Appeal and the Town of Wellesley were being used for personal interests of the objector. Pursuant to some sort of understanding with the Building Inspector, the Scotts reduced the size of the pool in order to satisfy the setback requirements of the Zoning By-law and thereafter they received a permit to proceed from the Building Inspector.

James H. Odell, 63 Forest Street, abutting property owner, stated that the value of his property had decreased as a result of the installation of the pool and that in his opinion, it is too close to his land. In fact, he alleged, the structure when viewed in its entirety was only three feet from his property.

Subsequent to the hearing Mr. Scott personally advised this Board of his intention to remove the swimming pool structure and requested advice as to how the Town wished him to proceed with respect to the final grade of the land. This request was duly communicated to the Building Inspector for appropriate action. Subsequently, the pool was removed. The swimming pool proper was removed, leaving only the raised earthen support and the fence.

Decision

The Board has made a careful study of all the evidence submitted and has again reviewed the Court rulings. The question presented to the Board for its decision is whether the building permit issued by the Building Inspector on April 30, 1971, should be revoked. The Board is unanimously of the opinion that said building permit should be revoked for the reasons hereinafter set forth.

In the findings made by the Superior Court and the decision of the Supreme Judicial Court, it was stated that the pool is to be deemed a structure for the purposes of the yard or setback provisions of the Wellesley by-law. The Supreme Judicial Court in its opinion stated, "It is a large permanent installation constructed of wood, steel, stone and earth, with a plastic liner. Although mostly below ground level, there is, because of it, a material occupation of a substantial area above ground. We think it is within the strict exclusion of the front and side yard provisions." It was pointed out that since the pool is a structure, there is no basis for contending that there may be less than thirty feet between it and the street line. The Court also stated that the by-law could also be construed to require that there be twenty feet between the pool and the side lot line.

Consistent with the Court's decision and its construction of applicable provisions of the by-law, the Board is of the opinion that the swimming pool structure was in violation of the Zoning By-law when the building permit was issued notwithstanding the described reduction in size of the pool liner

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and that the building permit granted on April 30, 1971, was and is invalid.

Accordingly, the appeal is granted and the building permit is
revoked.


Richard O. Aldrich

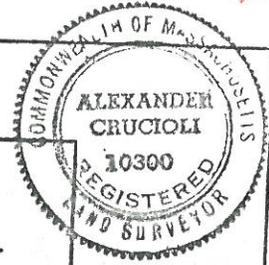

Dana T. Lowell


Robert T. Colburn

Filed with Town Clerk 7/20/73

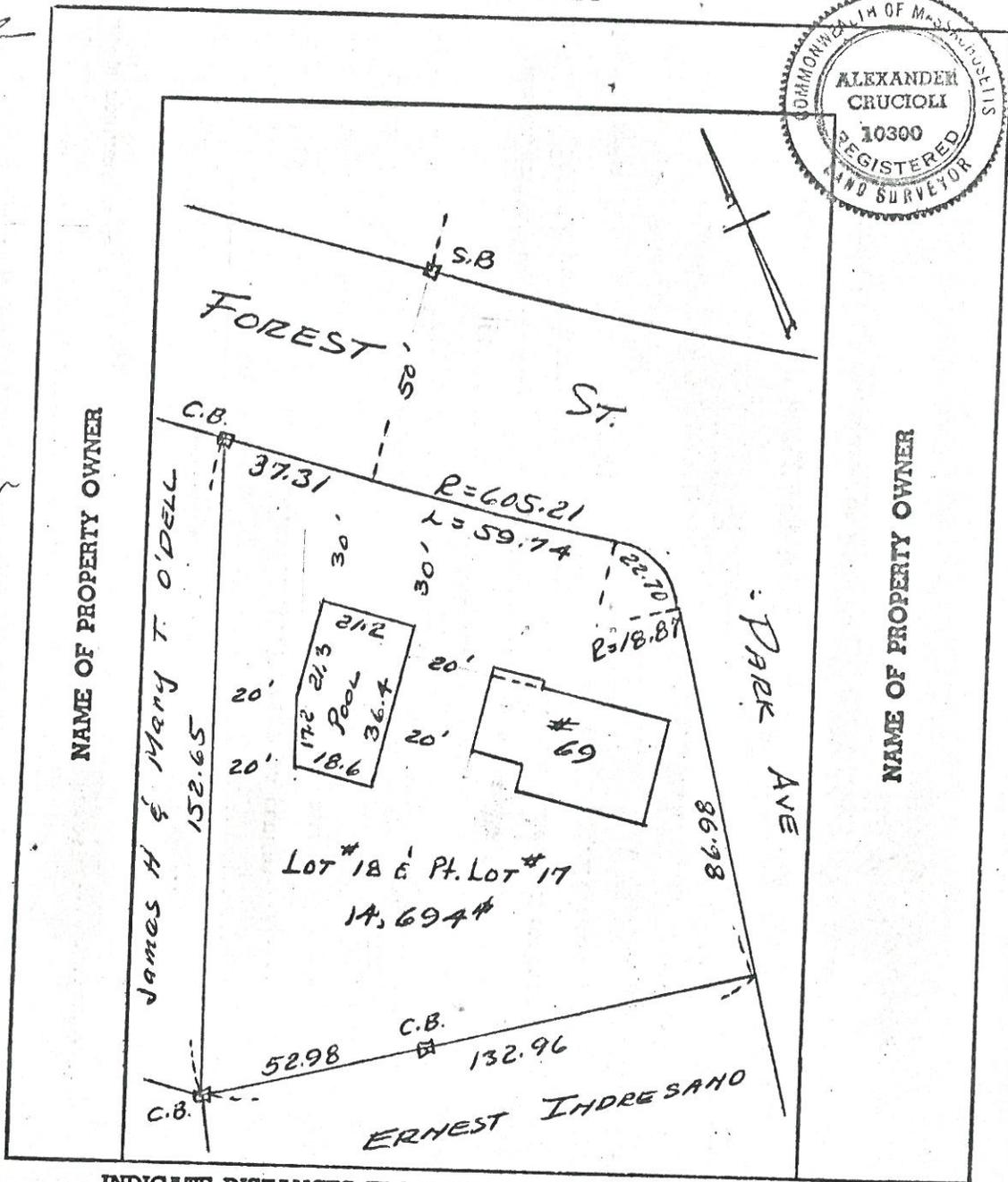
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DIAGRAM



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NAME OF PROPERTY OWNER

James H & Mary T O'DELL

NAME OF PROPERTY OWNER

ERNEST INDRESANO

INDICATE DISTANCES FROM LOT LINES AND BUILDINGS ON LOT

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