

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF APPEAL

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

ST. MARY'S
MAY 11 4 52 PM '72
KATHARINE E. TOY, CLERK
TELEPHONE 238-1864
WELLESLEY OFFICE
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Appeal of Irving and Madlaine L. Smith

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 8:30 p.m. on March 23, 1972, on the appeal of Irving and Madlaine L. Smith, from the refusal of the Inspector of Buildings to issue a permit to them to construct an attached garage on the rear of their dwelling at 142 Oakland Street. The reason for such refusal was that said addition would violate Section 311.6, Location of Buildings, of the BOCA Basic Building Code of Wellesley, which requires that all such buildings shall be placed at least thirty feet from the side line of any public or private street and all Type IV buildings shall be placed at least fifty feet from the center line of any public or private street, and Section XIX of the Zoning By-law, which requires that there shall be provided for all such buildings and additions a side yard not less than twenty feet in width and a front yard not less than thirty feet in depth. Said appeal was made under the provisions of Section 127.2 of the BOCA Basic Building Code of Wellesley and Chapter 40A, Section 13 and 15 of the General Laws.

On February 22, 1972, the Inspector of Buildings notified the appellants in writing that their application for a permit had been refused for the above-mentioned reasons, and on February 24, 1972, the appellants took an appeal therefrom. Thereafter due notice of the hearing was given by mailing and publication.

Irving Smith spoke in support of the appeal at the hearing.

Letters favoring the request were received from the following: Joseph H. Anthony, 130 Oakland Street, Sarah F. and Theodore Kapala, 132 Oakland Street, and Frank and Georgiana Kinlin, 144 Oakland Street.

Rudolf B. Penndorf, 148 Oakland Street, opposed the request being granted as he felt that others in the neighborhood may make similar requests and a precedent would be established.

Statement of Facts

The dwelling involved, which was built in 1938, on a lot of land containing 8,563 square feet, is located within a single-residence district requiring a minimum lot area of 15,000 square feet. It was built prior to the effective date of the area requirement.

The appellants seek permission to construct an attached two-car garage 22' x 22.8' on the easterly side of their dwelling. It was stated that at present there is a one-car garage under the house which is inadequate in size to accommodate a car and it is proposed to convert it into storage space if the requested permission is granted. It was further pointed out that due to the peculiar shape of the lot, it is not possible to design an attached garage which will conform with the Zoning By-law and Building Code. The proposed garage, it was felt, will be an attractive addition to the property as

well as the neighborhood, and will be of great convenience to the appellants who now have to park their car in the driveway throughout the year.

In the opinion of the appellants the proposed garage would be in keeping with the intent of the by-law, would preserve the esthetic value of the property and due to the particular set of circumstances involved, feel that hardship would result if the requested variance is not granted.

A plot plan was submitted, drawn by Everett M. Brooks Co., dated February 9, 1972, which showed the existing dwelling as well as the proposed garage. A detailed plan showing the design of the proposed garage was also submitted, drawn by C. Joseph Grignaffini, dated January 24, 1972.

Decision

The Board has made a careful study of the plans submitted and has taken a view of the locus. The house was built in 1938, but adjoined other land of the same owner on April 1, 1939. The Board, therefore, is not authorized to make a special exception under Section XIX of the Zoning By-law, as said section authorizes the Board to grant such exceptions only if on or before April 1, 1939, the lot was owned of record under a separate and distinct ownership from adjacent lots, in the case of a front yard and April 1, 1940 in case of a side yard. The Board, however, has considered the appeal under the provisions of General Laws, Chapter 40A, Section 15.

The Board is of the opinion that in light of the higher restrictions placed upon the appellants' lot by both the Zoning By-law and the Building Code by virtue of its corner location, and, in light of the construction difficulties presented, not only by the shape of the lot but by the contours of the land especially at the boundary between the appellants' lot and the adjoining Kinlin property at 14 1/2 Oakland Street, the construction of any other adequate type of garage than that proposed by the appellants would be extremely difficult and that the situation with respect to the appellants' parcel may be regarded as unique and not frequently encountered in the zoning district in which the property is located.

The Board also notes as a condition especially affecting this parcel, that the dwelling house was constructed in 1938 and that the intent of the by-law in limiting the Board to granting exemptions from set-back requirements only where lots were "held of record, under a separate and distinct ownership from adjacent lots, on April 1, 1939 in the case of front yard depths, or on April 1, 1940 in the case of side yards for dwellings" was apparently intended to exclude from eligibility for an exemption a case where several adjoining lots had been laid out and recorded as separate parcels, but not developed, by the same owner, and not to penalize situations like the instant one, where a dwelling had actually been constructed, and a relocation of lot lines by the owner was no longer a practical possibility.

It is the opinion of the Board that the desired garage is needed and that owing to conditions especially affecting this parcel but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the by-law would involve substantial hardship to the appellants.

The Board, therefore, feels that the requested variance may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-law, and that manifest injustice may result if the request is denied.

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POLICE
TOWN RECORDS

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

Philip H. Cahill

Philip H. R. Cahill

Dana T. Lowell

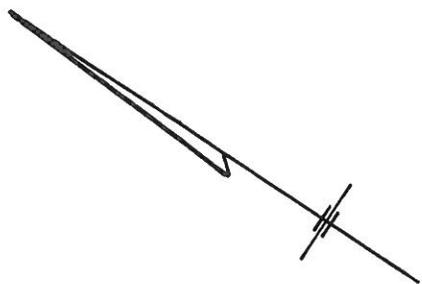
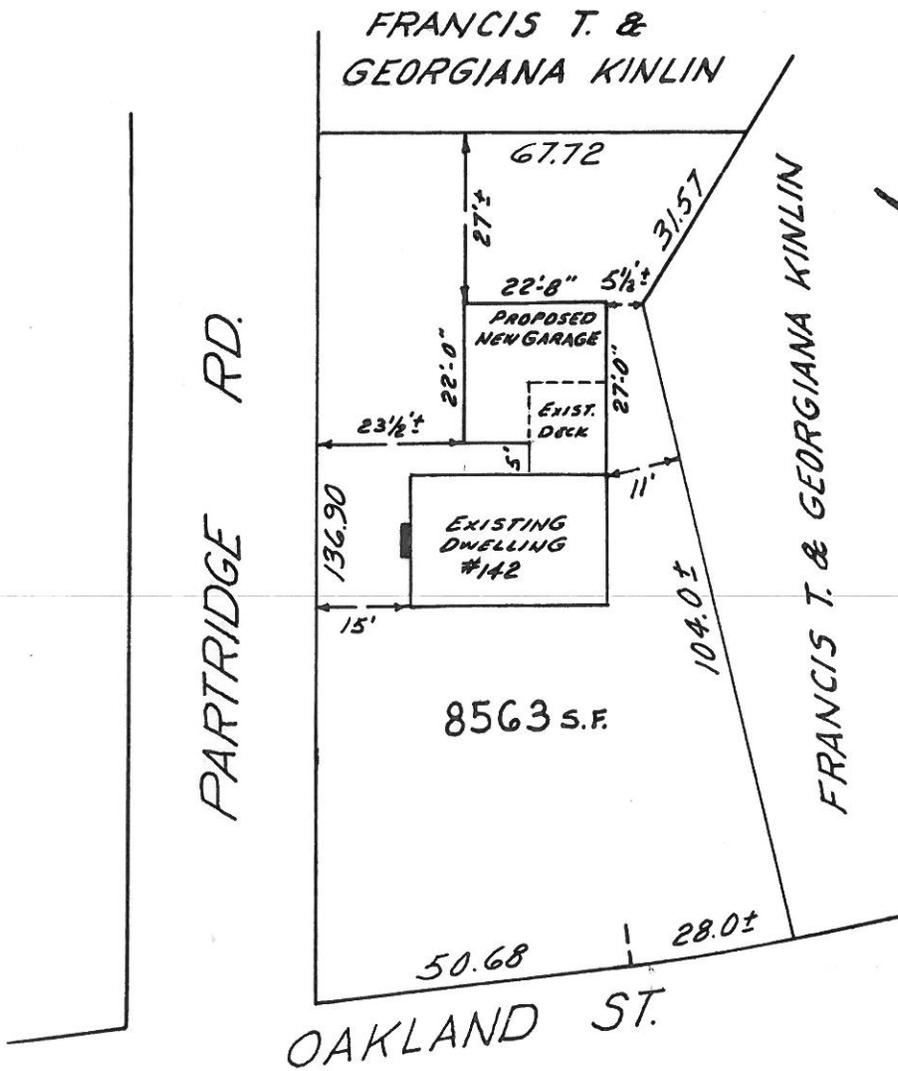
Dana T. Lowell

F. Lester Fraser

F. Lester Fraser

Filed with Town Clerk _____

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Charles D. Thompson

PLAN OF LAND
IN
WELLESLEY, MASS.

TO ACCOMPANY THE PETITION OF
MR. IRVING SMITH
142 OAKLAND ST.
WELLESLEY, MASS.

SCALE: 1 IN. = 30 FT.

FEB. 9, 1972

EVERETT M. BROOKS CO.
NEWTONVILLE & WAYLAND

CIVIL ENGR'S.
MASS.