



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Appeal of Guyton J. Nicolai, Jr.

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 June 15, 1972, on the appeal of Guyton J. Nicolai, Jr., from the refusal of the Inspector of Buildings to issue a permit for the construction of a dwelling at 15 Manor Avenue. The reason for such refusal was that the construction of the dwelling 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 on lots bounded by more than one street, the yards next to the streets shall be at least thirty feet in width. Said appeal was taken under the provisions of Section 127.2 of the BOCA Basic Building Code and Chapter 40A, Section 13 and 15 of the General Laws.

On May 25, 1972, the Inspector of Buildings notified the appellant in writing that his application for a permit had been refused for the above-mentioned reasons, and on May 26, 1972, the appellant took an appeal therefrom. Thereafter due notice of the hearing was given by mailing and publication.

Guyton J. Nicolai, Jr. spoke in support of the appeal at the hearing.

Bentley H. Seaver, 21 Manor Avenue, stated that he did not want to see Rose Street constructed and the existing trees removed. He favored the granting of the request.

Robert W. Galvin, 11 Manor Avenue, stated that he had no objection providing the proposed dwelling is placed at least twenty feet from his property line.

Ralph Ramirez, Dell Street, stated that he had no objections to the granting of the request.

Statement of Facts

The lot involved is located within a single-residence district requiring a minimum lot area of 10,000 square feet, and contains 16,000 square feet.

The appellant seeks permission to construct a dwelling approximately 28' x 58' on the lot involved thirty-one feet back from Manor Avenue, twenty-one feet from the easterly lot line and twenty-one feet from the westerly lot line abutting Rose Street, so called, as shown on the plot plan submitted. Although shown on the plan submitted, Rose Street has never been built and it is the belief of the petitioner that it will never be constructed because its original purpose of providing access to Manor Avenue is no longer necessary. It is laid out as a thirty-foot way with no turn-around provided, and, therefore, could not be accepted as a public way.

MAILED  
MAY 10 1972  
TOWN OF WELLESLEY  
CLERK'S OFFICE

The appellant explained that he tried to design a house which would meet the Zoning and Building Code requirements, but because of the requirement that all Type IV buildings shall be placed at least fifty feet from the center line of any public or private street, it was found to be impractical. He further explained that he considered facing the house on Rose Street, but to keep a house the required distance of thirty-five feet from a non-existent street, which would then have to be built, in his opinion, would be unfair to the abutting neighbor on the Rose Street side. There are now several large and beautiful trees separating the two properties which would have to be removed if a street were to be constructed. The large pine trees just behind the house as proposed would also have to be removed if the house were to be moved back on the lot, thus exposing a view of black-top and the Weston swamp land in place of the natural beauty which now exists.

A plot plan was submitted, drawn by MacCarthy Engineering Service, Inc. Natick, Mass., dated May 11, 1972.

Decision

The Board has made a careful study of the plans submitted and has taken a view of the locus. The lot involved adjoined other land of the same owner on April 1, 1940; 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 April 1, 1940 the lot was owned of record under a separate and distinct ownership from adjacent lots, in case of side yards. The Board, however, has considered the appeal under the provisions of the General Laws, Chapter 40A, Section 15.

The lot involved is located at the corner of Manor Avenue and Rose Street, a so-called paper street, which has not been constructed and in all probability will not be in the foreseeable future. The Board is of the opinion in light of the higher restrictions placed upon the appellant's 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 by the width of the lot, the construction of a dwelling of adequate size, would be extremely difficult and that the situation with respect to the appellant's lot may be regarded as unique and not frequently encountered in the zoning district in which the property is located.

It is, therefore, the opinion of the Board 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 appellant.

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.

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

APPROVED  
RICHARD O. ALDRICH  
MAY 15 1972

*Richard O. Aldrich*  
Richard O. Aldrich

*Edward P. Pulman*  
Edward P. Pulman

*Kester Fraser*  
Kester Fraser

Filed with Town Clerk

BENTLEY H. &  
MARILYN P.  
BEAVER

**ROSE** (PRIVATE - NOT CONSTRUCTED) **ST.**

WESTON  
WELLESLEY

TOWN LINE

100.00'

RAFAEL  
RAMIREZ

16,000 <sup>sq</sup>  
LOTS 19 → 25

160.00'

160.00'

ROBERT W. &  
RITA GLAVIN

21'

28'-0"

PROPOSED

HOUSE

28'-0"

21'

58'-0"

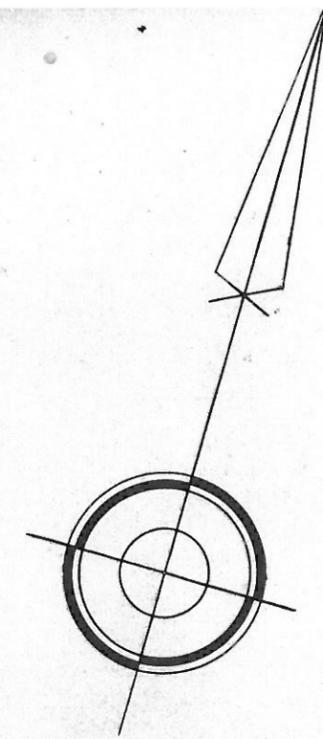
31'

100.00'

MANOR

(40' WIDE PUBLIC)

AVE



APPROVED BY:  
WELLESLEY BOARD OF  
APPEALS.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DATE: \_\_\_\_\_

WOODFIELD  
R.D.

PLAN OF LAND IN WELLESLEY, MASS.

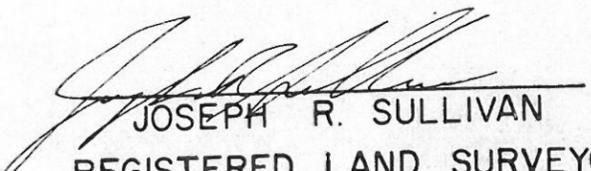
OWNED BY:



GUYTON J. NICOLAI JR.

SCALE: 1"=20'

MAY 11, 1972

PLAN BY:  JOSEPH R. SULLIVAN  
REGISTERED LAND SURVEYOR  
MAC CARTHY ENGINEERING SERVICE INC.