75-58

TOWN OF WELLESLEY MASSACHUSETTS

BOARD OF APPEAL

F. LESTER FRASER
STANLEY J. GLOD
WILLIAM O. HEWETT
FRANKLIN P. PARKER
FRANCIS L. SWIFT
HENRY H. THAYER

KATHARINE E. TOY
Administrative Secretary
Telephone
235-1664

Petition of William S. and Mabel Lewis Sahakian

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 8:40 p.m. on November 20, 1975, concerning the petition of William S. and Mabel Lewis Sahakian requesting a variance for the property at 49 Eisenhower Circle which would allow the reduction of the frontage of the property to 53.80 feet rather than the 60 feet required by Section XIX of the Zoning By-law.

The Sahakians' lawyer, Antonio A. Matarese, Jr., 129 Concord Street, Framingham, Massachusetts, spoke in favor of the petition.

No one appeared in opposition to the petition.

STATEMENT OF FACTS

The petitioners' premises are shown as Lots 5B and 5C on a plan filed with the Board dated August 29, 1975, by MacCarthy & Sullivan Engineering Inc.

Lot 5B is a 149 square foot triangle on which, it was stated, there had been built a portion of the driveway that services the house of Edward M. Vicenzi, whose premises are shown as Lots 6B and 6C on the plan. In order to establish Mr. Vicenzi's right to use that portion of his driveway that lies over the Sahakians' land, the Sahakians wish to convey to Mr. Vicenzi the 149 square foot lot shown as Lot 5B on the plan. Such a conveyance would reduce the Sahakians' frontage on Eisenhower Circle from 65.68 feet to 53.80 feet.

To the Board's suggestion that a grant of easement would produce the desired result, Mr. Matarese replied that a grant of easement would so encumber the property as to reduce its market value and saleability.

DECISION

The Board denies the requested variance and the petition is dismissed.

Under General Laws, Chapter 40A, Section 15, Clause 3, there are four prerequisites that must be satisfied before a Board of Appeal may grant a variance. They are (paraphrased) as follows:

> First, there must be conditions especially affecting the parcel or building but not affecting generally the zoning district in which it is located.
>
> Second, because of these conditions, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise.
>
> Third, desirable relief may be granted without substantial detriment to the public good.
>
> Fourth, such relief may be granted without nullifying or substantially derogating from the interest or purpose of such ordinance or by-law.

As to these four prerequisites, "a failure to establish any one of them is fatal". Blackman vs. Board of Appeals of Barnstable, 334 Mass. 446, 450 (1956).

We do not find the hardship contemplated by the statute.

The problem of the driveway encroachment can be solved by a grant of easement, thereby leaving the Sahakians' parcel with a conforming frontage. This Board will permit variances only when it can be shown that no other solution is reasonably feasible.

The petitioners' counsel presented their case well, even to the extent of furnishing the Board with an aerial photograph of Eisenhower Circle and the offending driveway. However, the Board does not agree that a grant of easement over a 149 square foot corner of the Sahakians' land would materially affect its value. The driveway will remain where it is on the ground. Its visual and esthetic impact will not be changed by the change in ownership of 149 square feet of its pavement.

The members of the Board sitting at this hearing were F. Lester Fraser, Stanley J. Glod, and Henry H. Thayer, all of whom voted in accordance with this decision.

F. Lester Fraser

F. Lester Fraser

Filed with Town Clerk

Stanley J. Glod

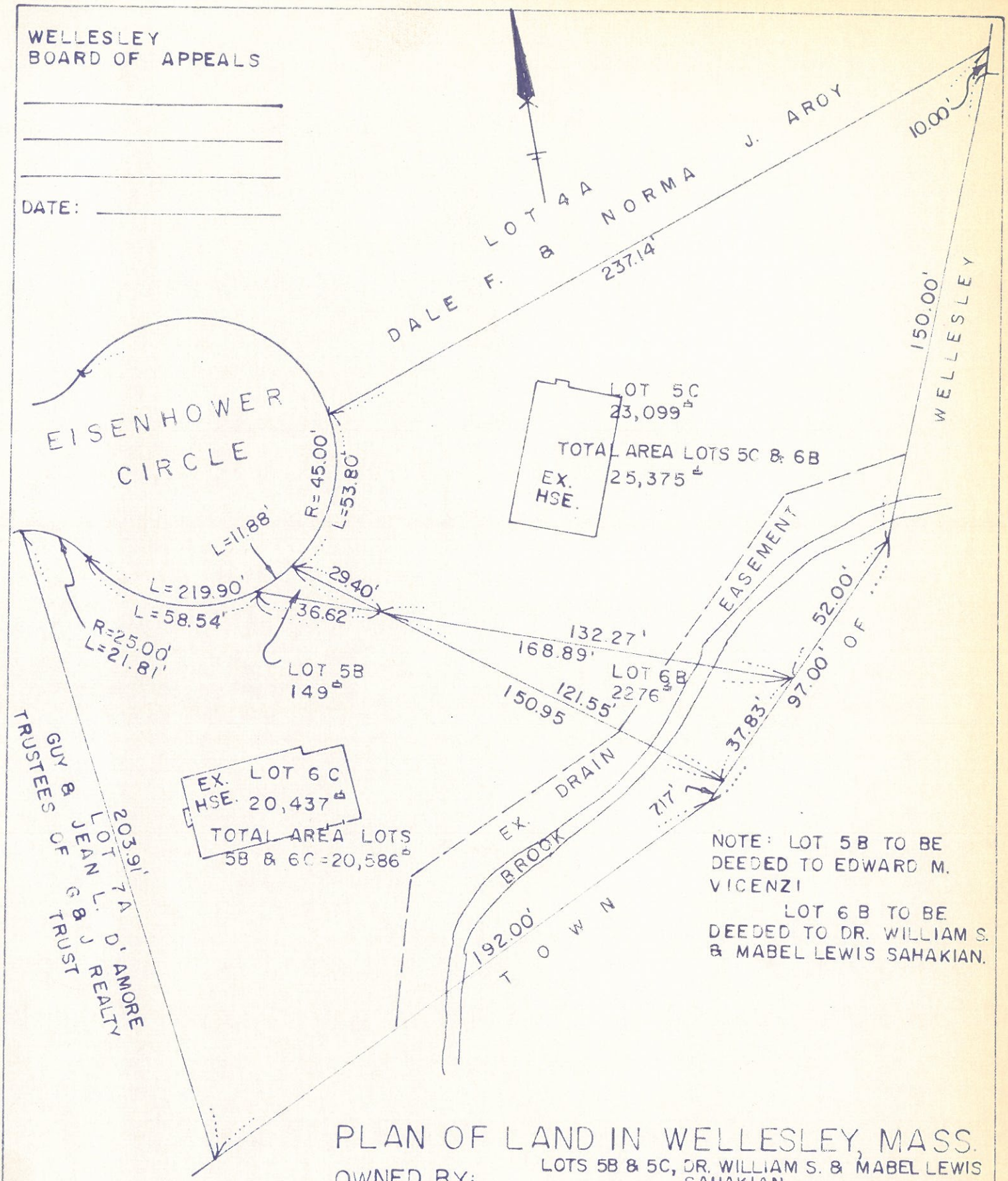
Stanley J. Glod

Henry H. Thayer

Henry H. Thayer

WELLESLEY
BOARD OF APPEALS

DATE:



NOTE: LOT 5B TO BE DEEDED TO EDWARD M. VICENZI

LOT 6B TO BE DEEDED TO DR. WILLIAM S. & MABEL LEWIS SAHAKIAN.

PLAN OF LAND IN WELLESLEY, MASS.

OWNED BY: LOTS 5B & 5C, DR. WILLIAM S. & MABEL LEWIS SAHAKIAN.
LOTS 6B & 6C, EDWARD M. VICENZI

SCALE: 1"= 40'

AUG. 29, 1975

PLAN BY: MAC CARTHY & SULLIVAN ENGINEERING INC.
NATICK, MASS.

JOSEPH R. SULLIVAN
REG. LAND SURVEYOR

5833 ✓