



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
 TELEPHONE
 235-1664

Petition of Regan & Stapleton, Inc.

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 8:25 p.m. on January 30, 1969, on the petition of Regan & Stapleton, Inc., requesting permission to extend the business use of the premises located on the north side of Worcester Street between 951 and 971, to the northeasterly line of the property, bordering on the Cochituate Aqueduct and to the westerly line of the property, for the purpose of storing new automobiles, to be sold in the course of the retail automobile sales and service business conducted on the southerly portion of these premises. Said extension was requested under the provisions of Chapter 40A, Section 15, of the General Laws.

On December 16, 1968, the petitioner filed its request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Timothy H. Donohue, attorney for the petitioner, outlined in detail the reasons for the request at the hearing.

John Stapleton, an employee of Regan & Stapleton, Inc., spoke in favor of the request stating that there is a real need for the proposed use of the property, that the business is growing and in order to keep the business going, the additional space for parking cars is essential.

Joseph S. Harkins, 26 Overbrook Drive, opposed the granting of the request, stating as his opinion that the land involved can be used for residential purposes and that there is nothing especially affecting this parcel which does not affect the district generally. It was his further contention that the Board of Appeal does not have the power to grant the request and that the petitioner has not complied with the conditions imposed in a prior decision of the Board of Appeal.

The following persons also spoke in opposition to the request: Jay Nolan, 30 Overbrook Drive and Frieda S. Thompson, 35 Overbrook Drive.

A petition signed by approximately sixty-three persons, was submitted. Said petition requested the Board of Appeal to reject the request and further requested that the Board rescind the variance granted to the petitioner on June 15, 1965 because the requirements stipulated by the Board have not been complied with.

George Sherman, representative of the Metropolitan District Commission, stated that on occasion he had had to notify the petitioner to remove cars from the Metropolitan District Commission property.

Statement of Facts

The property involved, which contains approximately 15,700 square feet, is located at the rear of the petitioner's business property on Worcester Street and is within a Single-residence District.

At the request of the petitioner in 1965, this Board granted permission for the extension of fifty feet for a business use across the boundary of the Business District into the Single-residence District, in order to provide facilities adequate in size for the petitioner to construct a building and conduct a retail automobile sales and service business on the adjoining premises. Subsequently, the petitioner constructed a building, approximately 15,600 square feet in area, fifty feet back from Worcester Street and three feet from the land involved, and since then has been operating a Lincoln-Mercury Dealership Agency on the premises.

The petitioner now seeks permission to use the land involved for the purpose of storing new automobiles to be sold in connection with its business on the adjoining premises. Until now it has been storing its new cars on the southerly side of Worcester Street in an open area as a tenant at will of Lee Chevrolet, Inc., but it has been notified that the owner plans to develop the area and the petitioner must vacate the parking lot by April 1, 1969.

It was alleged at the hearing that conditions especially affect the parcel involved which do not affect generally the zoning district in which it is located, and that a literal enforcement of the provisions of the Zoning By-law would involve substantial hardship to the petitioner.

Petitioner's property, including the parcel in question, is bounded on the West by Chin's Village (a Chinese restaurant), on the North and East by the Cochituate Aqueduct (owned by the Commonwealth of Massachusetts) and Mr. Donut (a doughnut and coffee shop) and on the South by Route 9 (the Worcester Turnpike), a heavily travelled, and in this area a commercially developed thoroughfare. The parcel in question lying to the rear of and contiguous to the petitioner's business establishment adjoins the Cochituate Aqueduct which separates it from the rest of the Single-residence District and has no access to Route 9 and no frontage on a public or private way. There are no single residences on any premises immediately adjoining this parcel.

A plot plan was submitted, drawn by Gleason Engineering Company, dated October 21, 1968, which showed the parcel involved as well as the location of the petitioner's building on the adjoining parcel.

Decision

The Board has taken a view of the locus and has carefully considered the evidence introduced.

The parcel involved is not suitable for development with single-family dwellings because of its physical location and characteristics and failure to meet the requirements of the Zoning By-law. It would not be possible to obtain a building permit because of its lack of frontage on a public or private way. While it is zoned for single-residence purposes, it abuts the Aqueduct on the northeasterly side, the petitioner's business property on the southerly side and land owned by Chin's Village, Inc. on the westerly side which is used in part for business purposes. For these reasons, the Board feels that conditions do affect this parcel which do not affect generally the zoning district in which it is located. Moreover, to deny any relief will in effect preclude any economic or reasonable use of the parcel by petitioner or by any other person.

Therefore, a literal enforcement of the provisions of the By-law so as to prevent the desired use of the property will involve substantial hardship, financial or otherwise to the petitioner and relief may

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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.

While the Board does not condone the obvious failure of petitioner to comply with the terms of the earlier decision of this Board which made possible the existing business use of the premises, it is convinced that the best interest of the Town and the area will be served by granting the relief requested subject to appropriate conditions.

For these reasons, the Board feels that permission should be granted for the extension of the business use of the premises shown on the plan submitted and on file with this Board, to be used for the sole purpose of storing new automobiles to be sold in connection with the petitioner's retail automobile sales and service business conducted on the southerly portion of the premises.

Accordingly, a variance is granted under the provisions of Chapter 40A, Section 15, of the General Laws to permit the requested extension of business use subject to the following conditions:

1. That the business use hereby extended be solely for parking of new automobiles to be sold in connection with the petitioner's retail automobile sales and service business conducted on the southerly portion of the premises.
2. That said area shall be blacktopped and completely screened.
3. That a seven-foot stockade type split sapling or other fence, satisfactory to this Board, shall be erected along the entire northeasterly line abutting the Cochituate Aqueduct up to the Business District line. Said fence shall continue along the westerly and southwesterly boundary abutting property owned by Chin's Village, Inc. to the Business District line. That a solid hedge of evergreens at least seven feet tall shall be planted along the abutters' side of the fence, and that such fence and evergreen hedge shall be maintained to the satisfaction of the Building Inspector and this Board for the life of the extension hereby granted.
4. Petitioner shall comply with such regulations as the Board shall from time to time make or amend.
5. That a performance bond running to the Town shall be provided in the amount of \$20,000., with surety and in form satisfactory to Town Counsel and this Board which shall be posted with the Treasurer of the Town of Wellesley before commencement of the work. Said bond shall be conditioned on the completion of the work in accordance herewith within three (3) months following the filing hereof with the Town Clerk and maintenance thereof for the life of the variance.

6. That in the event of the breach of any condition hereof, the extension of use granted may be terminated by this Board. It shall automatically terminate if the work prescribed by condition No. 2 and 3 above is not completed to the satisfaction of the Building Inspector and this Board within three (3) months following the later of the filing hereof with the Town Clerk or the final determination of any Court proceedings duly commenced pursuant to G. L. (Ter. Ed.) Chapter 40A, Section 21.

Richard P. Aldrich
 Richard P. Aldrich

Dana T. Lowell
 Dana T. Lowell

F. Lester Fraser
 F. Lester Fraser

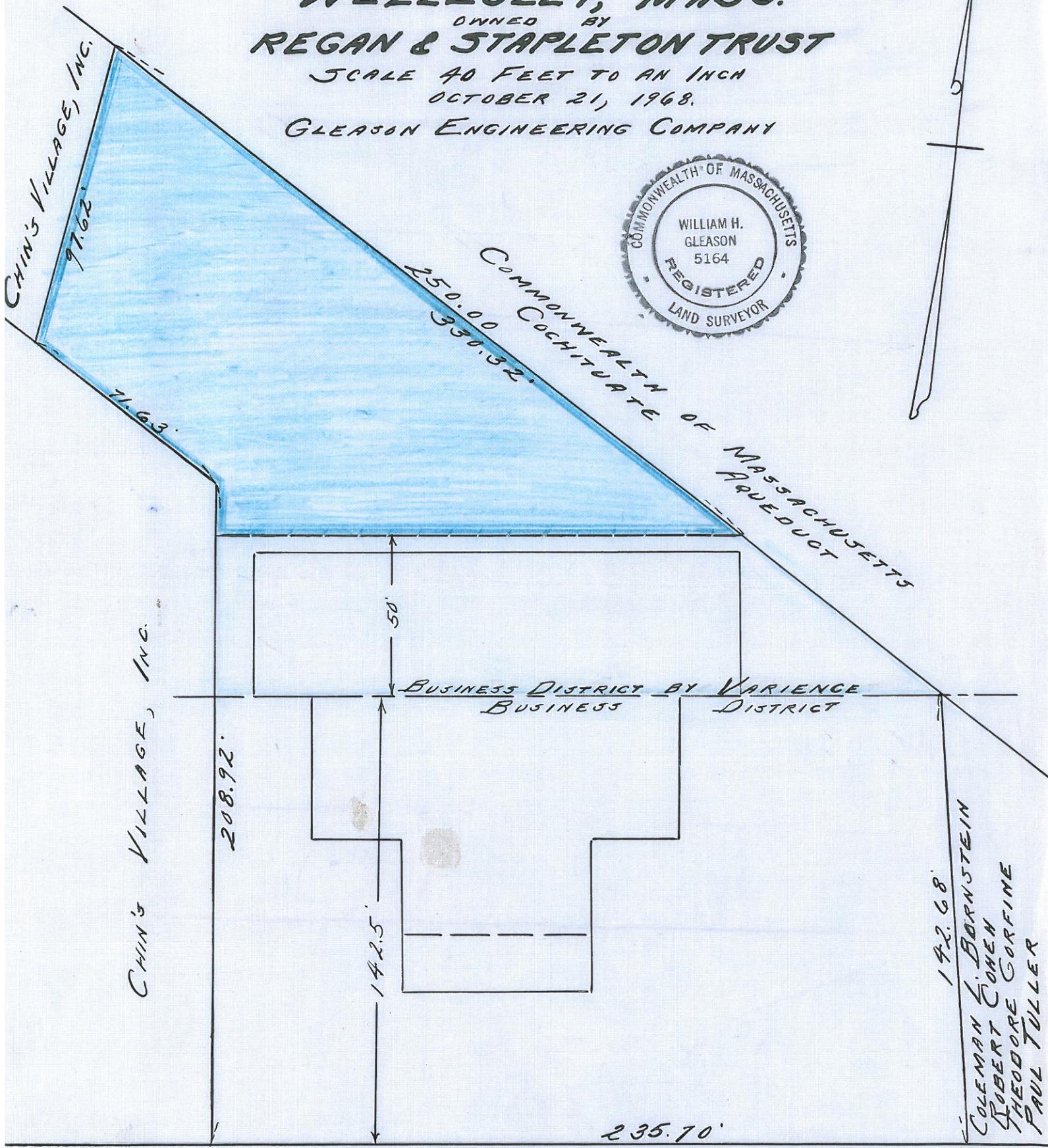
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PLAN OF LAND
IN
WELLESLEY, MASS.
OWNED BY
REGAN & STAPLETON TRUST

SCALE 40 FEET TO AN INCH
OCTOBER 21, 1968.

GLEASON ENGINEERING COMPANY



WORCESTER STREET

COLEMAN L. BORNSTEIN
ROBERT COHEN
THEODORE GORFINE
PAUL TULLER