



ZONING BOARD OF APPEALS

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 Administrative Secretary
 Telephone
 235-1664

John A. Donovan, Jr.

Appeal of Elynn G. Carlson

Pursuant to due notice the Permit Granting Authority held a public hearing in the hearing room on the second floor of the Town Hall at 8:45 p.m. on June 8, 1978, on the appeal of Elynn G. Carlson, from the refusal of the Inspector of Buildings to issue a permit for the construction of a dwelling on Lot 4 and Lot 5, numbered 23 Gilson Road. The reason for such refusal was that said parcel of land contained less than the required sixty-foot frontage as specified in Section XIX of the Zoning By-law.

On May 22, 1978, the Inspector of Buildings notified the appellant in writing that a permit could not be issued for the construction of a dwelling on the lot involved as said parcel of land contained less than the required sixty-foot frontage as required in Section XIX of the Zoning By-law.

On May 22, 1978, the appellant took an appeal from such refusal and thereafter due notice of the hearing was given by mailing and publication.

Nicholas Soutter, attorney for the appellant, explained in detail the reasons for the appeal.

Mark D. Shuman, attorney representing Mr. and Mrs. Rolf M. Augustin, Jr., 19 Bradford Road and Mr. and Mrs. Jon L. Plexico, 15 Gilson Road, stated that an examination of the Norfolk Registry of Deeds revealed that as of the critical date, March 23, 1964, the front parcel of the petitioner's land which contains 50.28 feet of frontage on Gilson Road, was owned by a person who also owned an adjacent parcel which could have been used together with the under-sized lot to make a lot conforming with the 60 foot frontage requirement of the by-laws. Therefore, the condition set forth in the Zoning By-law providing a basis on which an exception could be founded not having been met, the lot cannot be built upon. He felt that the same information was available to the appellant whose responsibility it was to conduct a similarly thorough examination of the Registry records and not rely on the records of the Town. He further stated that Mr. and Mrs. Augustin and Mr. and Mrs. Plexico both purchased their abutting properties and further developed them with the knowledge from recorded documentation at the Registry of Deeds, that the non-developed land abutting theirs and which is the subject of the appeal could not be built upon because it was a non-conforming lot. He also submitted a brief to become part of the record, which covered completely his opposition to the granting of the variance.

Letters opposing the granting of the variance were received from the following: Mary A. Taylor and Margaret H. Magnuson, 15 Bradford Road, Peter B. Sholley, 31 Bradford Road, Amelia S. Archibald and R. Gordon

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Archibald, 1 Gilson Road and Joycelyn C. Austen, 34 Bradford Road.

Statement of Facts

The property involved is located within a Single Residence District requiring a minimum lot area of 20,000 square feet. The parcel involved is made up of two lots, namely, Lot 4 and Lot 5, which together contain 21,000 square feet. Lot 5 which abuts Gilson Road, a culdesac, has a frontage of 50.28' rather than sixty feet as required by the Zoning By-law.

The appellant seeks a variance which will allow the construction of a dwelling on the parcel involved with a frontage less than the required sixty feet. Section XIX of the Zoning By-law provides that:

"There shall be provided for each lot upon which a building or structure is hereafter erected or placed a frontage of not less than sixty (60) feet. This requirement shall not apply to any lot having a frontage of less than forty (40) feet if such lot on June 21, 1951 did not adjoin other land of the same owner available for use in connection with said lot, nor to any lot having a frontage of forty (40) feet or more and less than sixty (60) feet, if such lot on March 23, 1964 did not adjoin other land of the same owner available for use in connection with said lot, nor shall it apply to lots in Business Districts, Business Districts A, Industrial Districts or Industrial Districts A."

It was explained by the appellant's attorney that an investigation had been made through the Town records to determine whether the subject parcel was a buildable lot for a single family dwelling. Those records showed that the parcel involved was held under a separate ownership from adjacent properties on the critical date, March 23, 1964, and, therefore, met the criteria necessary for an exception to the by-law. Based on this information, the appellant purchased the property and now owns title to said lots. An application was filed for a building permit and it was at that time that it was discovered that the Town records were incorrect. The records in the Dedham Registry of Deeds revealed only one deed recorded to the former owner of the property and that covered Lot 4 only. Lot 5 was unregistered land in the Land Court and was owned in common ownership with the adjacent house lot.

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The attorney urged the Board to grant the variance as he felt that a dwelling on the parcel involved would not prove detrimental to the public good and could be granted without nullifying or substantially derogating from the intent or purpose of the Zoning By-law. In his opinion, a literal enforcement of the by-law would result in undue hardship to the appellant who has incurred expense in excess of \$22,000.00 for a lot which will be virtually worthless.

It was also stated that the appellant endeavored to purchase a small piece of land from the adjoining neighbor which would provide a sixty-foot frontage as required, but was unable to do so.

Decision

On June 15, 1954, a parcel of land lying on the west side of Cliff Road, with a frontage on said public road measuring 306.63 feet and a frontage on Gilson Road, a private culdesac, measuring 121.76 feet, was subdivided as shown on a plan drawn by William J. Ford, Jr., a civil engineer. This subdivision consisted of six lots, two of which lots are on Cliff Road, two of which have no frontage on any roadway, and the remaining two lots divide the frontage on Gilson Road.

Lots 4 and 5, the subject matter of this appeal, are the ones located on the western end of the subdivision, lot four lying to the south of lot five, having no frontage on any way, lot five being contiguous to and lying to the north of lot four, having a frontage on Gilson Road, measuring 50.28 feet.

In 1958, one Withers and his wife, became the owners of lots four and five. Lot four is a registered lot of land, and lot five is unregistered. The status of title to both lots remained in the name of Withers and his wife until 1964. On February 29, 1964, Walter C. Withers and his wife Shirley executed a deed, for consideration, with quitclaim covenants to one Wilder, conveying to Wilder lot number 4 as shown on the Ford plan dated June 15, 1954. This deed was registered at Norfolk Registry of Deeds Land Court Division on March 2, 1964, as Document No. 251938, certificate No. 74796 in Book 374 at page 196.

Evidence of title to Lot 4 for the period of time between the conveyance to Wilder and April 1967 was not offered, but the Norfolk Deed Records indicate Wilder reconveyed said lot to Withers in 1966.

Prior to 1964 and on March 23, 1964, Withers was the record title holder of Lots 6 and 3, shown on the Ford Plan. Lot 6 has frontage on Gilson Road measuring 71.48 feet and adjoins Lot 5, also fronting on Gilson Road.

On April 28, 1967, Withers, whose wife Shirley had deceased, and whose next wife Celia joined in the deed of conveyance of said date, conveyed Lots 4 and 5 to one Gooley and wife. In 1968, the Gooleys conveyed the same Lots 4 and 5 to one Boyden and wife.

The petitioners became the legal title holders of Lots 4 and 5 in 1978 and applied for a permit to erect a structure on said lots. On May 22, 1978, the Inspector of Buildings refused to issue the permit on the grounds that the Lots did not conform to the requirements of the Zoning By-law relative to the sixty-foot frontage, and it is from this refusal that this appeal is taken.

The appellants make this appeal under the provisions of Section XXIV C of the Zoning By-law which provides for an appeal to be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative office under this Zoning By-law and the Zoning Act. The appeal was timely taken and within the thirty days from the decision of the Inspector of Buildings.

The appellants, in presenting their grievance, suggest that they are also seeking a variance from the terms of Section XIX of the Zoning By-law. Although there appears nothing in the appeal, as filed, concerning a petition for a variance under Section XXIV D, the public notice contains

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no reference to such a request, and those opposed to the grant of relief base their opposition on the terms of Section XXIV D, the Permit Granting Authority makes its decision relative to both an appeal and a petition for a variance.

As to variances: in order to grant a variance from the terms of this Zoning By-law, the Permit Granting Authority must specifically find that literal enforcement of the provisions of the Zoning By-law would involve substantial hardship financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, especially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning By-law.

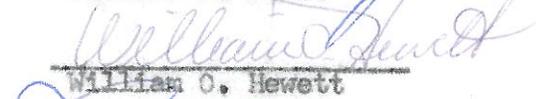
The Permit Granting Authority is unable to make this required finding because there is a void of evidence to support such a finding.

As to the refusal of the Inspector of Buildings to issue a permit: The Inspector is charged with the enforcement of the Zoning By-law. On the state of the recorded title to the land on which they sought a permit to build, the Inspector acted in accordance with the terms of Section XIX of the By-law. On the evidence presented at the public hearing, and on our own investigation, the criteria necessary to make an exception to the terms of the By-law is not met. On the date, March 23, 1964, Lot 5, one of the two lots now owned by the appellant, stood in the name of the persons who owned adjoining land available for use in connection with Lot 5.

Therefore, it is the unanimous decision of this Board, that it cannot grant a variance, and the appeal from the action of the Inspector of Buildings is dismissed.

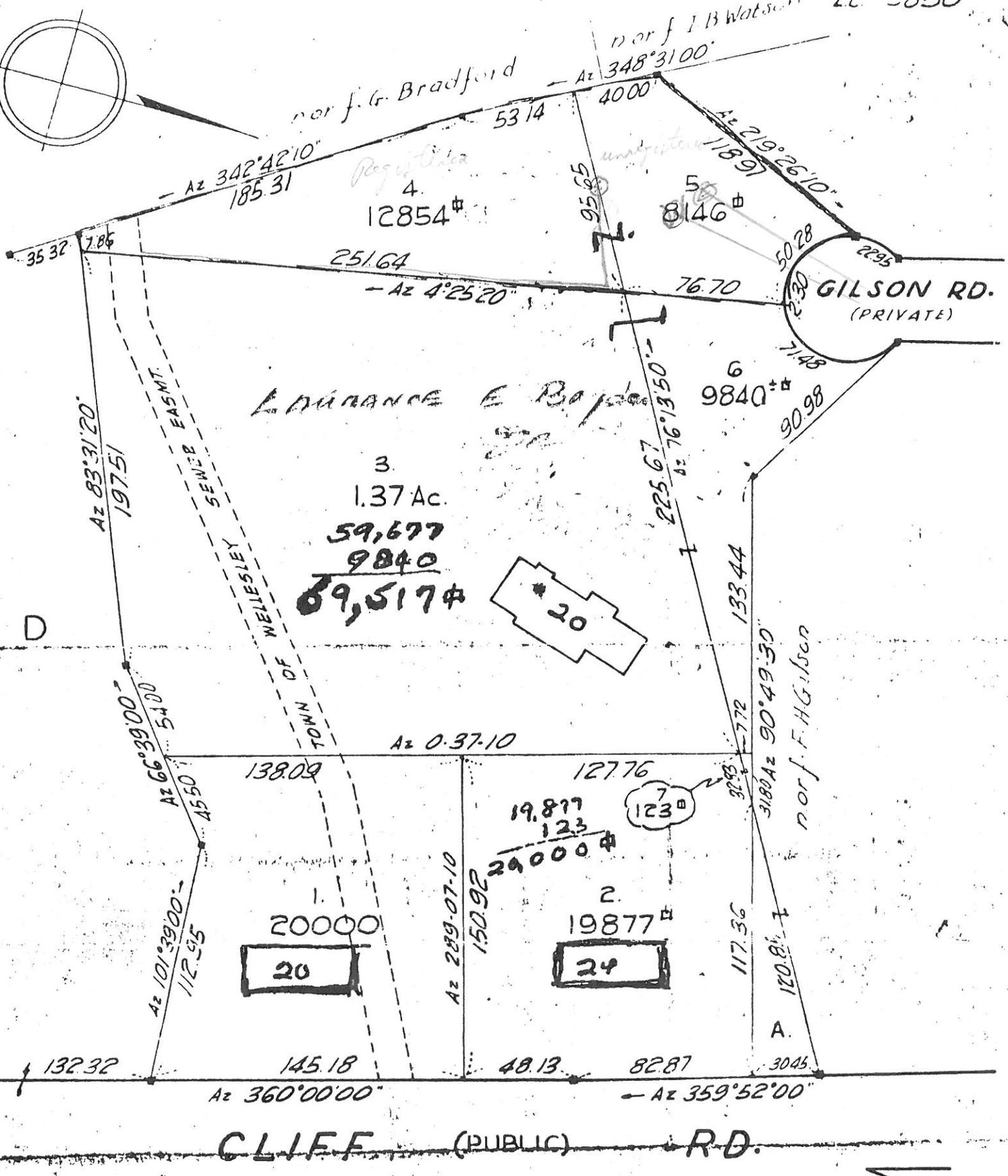
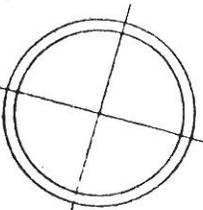
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Francis L. Swift


William O. Hewett


Franklin P. Parker

Filed with Town Clerk _____



ROBERT M. AIKEN, INC.
 Realtor
 356 Washington Street
 Wellesley Hills, Massachusetts 02181
 235-2800

True copy of Subdivision of Land
 in
 Wellesley, Massachusetts
 Scale 1" = 60 ft Jun 15, 1954
 William J. Ford Jr C E
 302 Walnut Street, Newtonville
 Massachusetts