

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF APPEAL

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

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68-12

Petition of H. Ambrose Knights, Trustee
Knights Trust

The Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:15 p.m. on March 21, 1968, on the petition of H. Ambrose Knights, Trustee of the Knights Trust, requesting that the Board make a declaration that Lot 1-A, No. 1, Bacon Street contains more than the required 15,000 square feet, although part of said lot includes a right-of-way. If the Board, however, cannot make said finding, the petitioner then requests that the Board grant an exception under Section XVIII A (2) of the Zoning By-law or a variance under Chapter 40A, Section 15, of the General Laws.

The petitioner further requests a declaration by the Board that the above-mentioned lot has a frontage of forty feet as required by Section XIX of the Zoning By-law. If the Board, however, cannot make said finding, the petitioner then requests the Board to grant a variance under Chapter 40A, Section 15, of the General Laws.

On March 4, 1968, the petitioner filed a request with this Board for a hearing and thereafter due notice of the hearing was given by mailing and publication.

Henry D. White, attorney, represented the petitioner at the hearing.

Felix Juliani, 6 Sylvester Terrace, spoke in favor of the request. He stated that because of its location on Morses Pond and because this section of land is not contiguous to other land in the Town of Wellesley, it has special conditions which affect it which do not affect other land within the Town. The owner has paid taxes on the property for some years and unless he can utilize it as a house lot, undue hardship will result to him.

Statement of Facts

The lot involved is located within a Single-residence District requiring a minimum lot area of 15,000 square feet. The total area of the lot is 17,800 square feet, the area of the right-of-way over the lot is 3,950 square feet, with the area remaining 13,850 square feet.

The petitioner desires to sell the lot involved as a house lot, but the buyer will not take title to the property until the nature of the right-of-way has been cleared through the Board of Appeal.

There is an eight-foot wide right-of-way beginning at the Natick Town line and extending to and across the front of the lot involved. There is also a sixteen-foot wide right-of-way beginning at Bacon Street and extending northerly over the lot involved to the shore of Morses Pond. These ways were granted in a deed dated August 21, 1903, from the Waban Rose Conservatories to Henry S. Hunnewell.

It is the opinion of the petitioner that the area of these two right-of-ways can be included in the area to be provided under the requirement of Section XVIII of the Zoning By-law. However, a variance is requested, if in the opinion of the Board, the area within the rights-of-way cannot be included.

The lot involved is the only remaining undeveloped lot of a subdivision which was laid out in 1941. It is the belief of the petitioner that the right-of-way has been abandoned and there is little likelihood that any one having rights over it will or can ever exercise them, and for all practical purposes it can be used as part of the lot involved.

The petitioner further requests a determination by this Board that the lot involved has a legal forty-foot frontage and front yard as required by Section XIX of the Zoning By-law.

While the two lots involved were held under separate ownership in 1956, however, on October 24, 1957, both lots were conveyed back to the petitioner for a short period of time. It is for this reason and the question of the inclusion of the right-of-way within the Front Yard that the petitioner is requesting a variance from the requirements of Section XIX of the Zoning By-law.

Decision

The Board has made a careful study of all pertinent facts in this case and has reviewed the decision made by the Board of Appeal on a similar case see: Board of Appeal decision on Appeal of Philip M. and Evelyn R. Dodge, filed with Town Clerk, February 16, 1966.

As a result of this study, it is the opinion of this Board that the two rights-of-way involved in this case cannot be included as part of the area required by Section XVIII of the Zoning By-law for a house lot nor can they be included as part of the frontage and front yard required by Section XIX of the Zoning By-law. The Board is not satisfied that these ways have necessarily been abandoned and others may still have rights over them.

The Board, however, has considered the request for a variance under the provisions of Chapter 40A, Section 15, of the General Laws as it cannot make a finding under the provisions of Section XIX of the Zoning By-law, as the lot involved was part of a parcel of land on April 1, 1939, and not held under separate ownership. The Board has also taken cognizance of the unusual shape of the lot, the proximity of the railroad embankment abutting the lot and the sharp drop-off of the lot to Morses Pond.

It is the opinion of this Board that for all practical purposes the lot does have sufficient land for a frontage and front yard even though it is in part made up of two rights-of-way. It is the Board's further belief that it is unlikely that any of the parties who may possibly have rights over this property will ever exercise them.

For the foregoing reasons the Board feels that circumstances exist peculiar to this lot which do not affect the district generally, and a literal enforcement of Section XIX of the Zoning By-law, which would prohibit the construction of a dwelling on the lot, would cause a substantial hardship to the petitioner which can be avoided without substantial detriment to the

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public good and without nullifying or substantially derogating from the intent or purpose of said by-law.

The Board is of the further opinion that because of the above-mentioned physical conditions affecting the lot, but not affecting generally the zoning district in which the land lies, that the lot would not be readily salable or economically or advantageously used for building purposes.

Accordingly, the requested exception and variance are authorized under the provisions of Chapter 40A, Section 15, of the General Laws and Section XVIII of the Zoning By-law, and the lot may be used as a building lot subject to the following conditions:

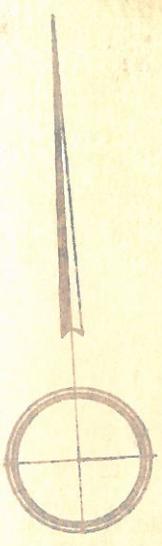
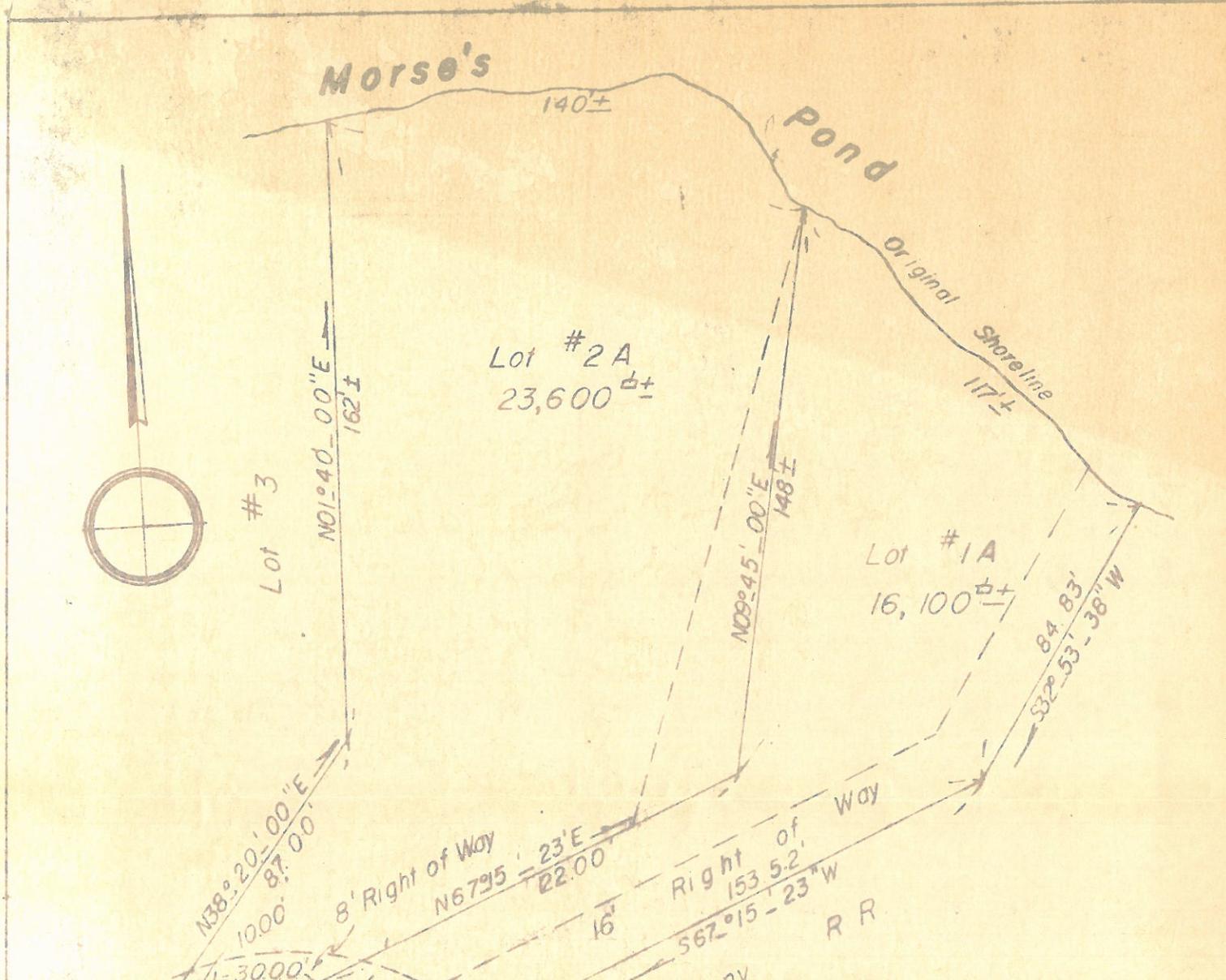
1. That all necessary permits are obtained from the Board of Health necessary for the construction and maintenance of a suitable sanitary system for any dwelling hereafter constructed on the lot.
2. That a certificate or letter from a registered professional engineer satisfactory to the Board be addressed to the Board prior to the issuance of any building permit stating that construction and use of a dwelling and sewage disposal system constructed in accordance with pertinent plans and specifications on file with the Board will not involve any risk of pollution of the waters of Moses Pond and a certificate of satisfactory completion in accordance with said plans and specifications shall be furnished to the Board by said engineer before occupancy of said dwelling.
3. That the rights-of-way involved shall be left open and unobstructed at all times.


Richard O. Aldrich


F. Lester Fraser


Dana T. Lowell

Filed with Town Clerk _____



Approval under the sub-division control law not required.
Wellesley Planning Board.

WELLESLEY PLANNING BOARD
 Rec'd **OCT 16 1957**
 Print to Town Clerk **OCT 18 1957**
 Certified **OCT 18 1957**
 Town Clerk Not'fd **OCT 19 1957**

(Signed) _____

 A MAJORITY OF THE PLANNING BOARD
 Date: **OCT 18 1957**

Plan of Land in Wellesley, Mass.

Showing Revised Lot Line

Scale: 1" = 40'



Sept. 24, 1957

P130-57-36

Rec'd	8-2-54
Print to Town Clerk	8-2-54
Certified	8-2-54
Town Clerk Not'fd	8-3-54

John J. ...
J.P.C.
A.S.P.

Property of the Board
 DATE: August 2 1954

