



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Petition of Susan Leonard

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 6, 1968, on the petition of Susan Leonard requesting an exception and variance from the terms of Section XVIII and Section XIX of the Zoning By-law which will permit the division of the premises numbered 202 Cedar Street into two lots, namely Lot 5B and 5C. Said lots will each have less than the required 15,000 square feet, and said lot 5B will have less than the required sixty-foot frontage and front yard. Said request was made under the provisions of Section XVIII and Section XIX of the Zoning By-law and Chapter 40A, Section 15, of the General Laws.

On May 20, 1968, the petitioner filed her request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

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

The following persons spoke in opposition to the granting of the request: Eleanor M. Payne, 200 Cedar Street, Kenneth Sweeney, 206 Cedar Street, Howard W. Boyd, 15 McLean Street and Dorothy Keefe, 196 Cedar Street. Those opposed felt that as the petitioner purchased the property as one lot with the minimum lot requirement of 15,000 square feet, no variance should be allowed; the lot adjoining on McLean Street is approximately forty feet lower than the property involved and it was contended that to allow another house to be built on the lot involved would further aggravate the serious sewerage problem which now exists by the overflow of an existing cesspool.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 15,000 square feet.

At the hearing a plot plan was submitted, drawn by Gleason Engineering Company, dated May 20, 1968, which showed the property involved divided into two lots, namely, Lot 5-C with a dwelling house thereon, containing 11,300 square feet and Lot 5-B as a vacant lot, containing 14,900 square feet with a frontage of 52' on a Right-of-Way, 25' in width.

The petitioner now seeks a variance which will allow a house to be constructed on Lot 5-B with less than the required area and less than the required front yard and frontage; also a variance which will allow Lot 5-C to remain as a house lot with less than the required area.

It was pointed out by the petitioner's attorney at the hearing that when the petitioner purchased the property, it was her understanding that the area of the Right-of-Way abutting the lots could be included to

make up the required area. However, the petitioner at a later date was informed by the Building Inspector that the Town Counsel had ruled that the area of the Right-of-Way could not be included. Also the frontage of 52' was large enough when the petitioner purchased the property, but that it is not the case now, due to the change in the Zoning By-law. It is felt that the neighborhood has been generally developed by lots less than the required area and it seems unreasonable to require the petitioner to provide 15,000 square feet which would result in undue hardship.

At the request of this Board additional information was submitted by the petitioner's attorney relative to the rights of others in the private way leading past the premises from Cedar Street to Fife Road.

Deed references were given of the three properties abutting the Right-of-Way. All three properties have rights of way over the private way; two for its entire length and one for a distance of 120 feet from Cedar Street.

Decision

The Board concurs with the opinion of the Town Counsel that the by-law cannot be construed to include the area of a Right-of-Way. The Right-of-Way serves as a means of access not only to the petitioner's property but also to at least one other property on the Right-of-Way. The Board, therefore, considers that the inclusion of a strip of land so subject to rights of way would be inconsistent with the purpose of the provisions requiring that house lots in the area contain 15,000 square feet. The Board finds support for its interpretation of this provision of the By-law in the decision of the Board of Appeal on the Appeal of Phillip M. and Evelyn R. Dodge, filed with the Wellesley Town Clerk on February 16, 1966.

The Board has also considered the request that the Board make an exception under the provisions of Section XVIII of the Zoning By-law or grant a variance under Chapter 40A, Section 15, of the General Laws. Although it appears from a plan of the neighborhood that a number of houses in the immediate area have been built on lots smaller than the present required area, it appears that these houses were all built before the area was restricted to 15,000 square-foot lots. There are several lots which contain considerably more than the required area. To permit the construction of a dwelling on the lot involved would, in the opinion of this Board, be detrimental to the neighborhood and defeat the intent and purpose of the Zoning By-law.

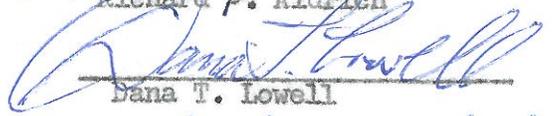
The Board cannot find that a denial of the variance would involve undue hardship to the petitioner as the property was purchased by her in 1962 when the present area requirement was in effect so that she should have been aware that an additional house could not be built upon the premises.

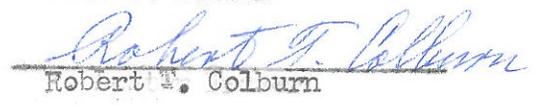
It is, therefore, the unanimous opinion of this Board that the lots do not under these circumstances include the area of the private way and that a special exception under the provisions of Section XVIII and Section XIX of the Zoning By-law nor a variance under Chapter 40A, Section 15, of the General Laws is warranted in this case.

Accordingly, the appeal from the decision of the Inspector of Buildings is dismissed and the request for a variance or special exception

is denied.


Richard J. Aldrich


Dana T. Lowell


Robert T. Colburn

Filed with Town Clerk _____

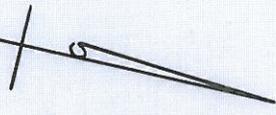
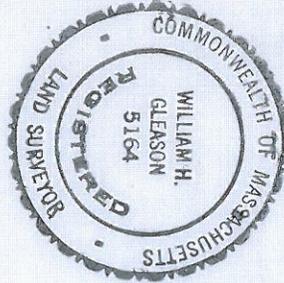
1890 SEP 13 AM 11:52
RECEIVED
TOWN OFFICE
METHUEN, MASS.

PLAN OF LAND
IN

WELLESLEY, MASS.

SCALE 40 FEET TO AN INCH
MAY 20, 1968.

GLEASON ENGINEERING COMPANY



CEDAR STREET

KENNETH E. & K. DIANA
SWEENEY

RIGHT OF WAY

VICTOR & ELEANOR
M. PAYNE

DOROTHY L.
KEEFE

HOWARD W. & JANE G. BOYD

140'

18,900 SQ. FT.
5B

115.8'

52'

11,300 SQ. FT.
5C

112'

DEROY L. &
RITA M. WEAVER

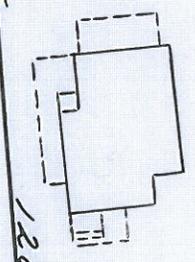
52'

70'

40'

75'

50'



120'

25'

JOHN J. DERANGELIS

ELIZABETH M.
JENKINS

FIFE ROAD