

TOWN OF WELLESLEY



MASSACHUSETTS

69-74

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Petition of William J. and  
Jacqueline M. McPhee

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 8:20 p.m. on December 4, 1969, on the petition of William J. and Jacqueline M. McPhee, requesting a variance from the Front Yard requirements of Section XIX of the Zoning By-law which will allow the construction of a dwelling house on the property owned by them on Lot 6, Sheridan Circle. Said request was made under the provisions of Chapter 40A, Section 15, of the General Laws.

On November 6, 1969, the petitioners filed their request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

John A. Cunniff, attorney, represented the petitioners at the hearing.

Warren R. Bolton, attorney for Samuel P. and Dorothy A. Strickland, 6 Sheridan Circle and Robert E. and Jane D. Wheatley, 10 Sheridan Circle, stated that he would like to be recorded as opposed to the request unless certain conditions are imposed in the variance. (1) That no access or egress to Lot 6, or the buildings to be erected thereon, shall be permitted from Sheridan Circle for any reason. (2) That the present stand of trees located on the strip of Lot 6, between Lot 3 and Lot 5, form a natural esthetic landscape consistent with the area and shall not be removed without just cause. (3) That said Lot 6, shall be used exclusively for a single-family residence.

Richard F. McCarthy, 22 Jefferson Road, Marilyn J. Cattanach, 36 Sheridan Road and Marguerite P. Russell, 7 Sheridan Circle, also spoke in opposition to the granting of the request. Mr. McCarthy felt that the proposed access-way which would run adjacent to his driveway without any intervening grass, would, in his opinion, seriously depreciate the value of his property. The access-way would require the removal of several attractive trees and would endanger the roots of the trees which are on the Lind property; also because of the location of the proposed access-way along the side of his driveway, poor visibility would result and automobiles passing on it would endanger the lives of small children who play on his driveway. Mrs. Cattanach stated that the children in the neighborhood use the lot as a short cut to school. If this is closed off, they will have to walk on Oakland Street which will be extremely dangerous.

Marguerite P. Russell, 7 Sheridan Circle, stated that in her opinion, if a house is built on the lot involved, added congestion will result.

Statement of Facts

The lot involved, which contains 18,530 square feet, is located within a Single-residence District requiring a minimum lot area of 15,000 square feet.

The petitioners desire to sell the lot involved as a house lot, and seek a variance under Chapter 40A, Section 15, of the General Laws, from Section XIX of the Zoning By-law, Front Yard width requirement initially of 40' (presently 60'). The lot involved is the only remaining undeveloped lot of a subdivision laid out in 1951. It was redivided subsequently on a plan dated December 12, 1956, signed by the Planning Board, as, "Approval under the subdivision Control Law not required," and recorded in the Registry of Deeds on December 1, 1958, Book 3688, Page 75.

The lot has access to Sheridan Circle by a corridor of land approximately 115 feet long and 20 feet wide for most of its length but widening to 40 feet at Sheridan Circle. Its other access to a public way is by a 20 foot wide corridor running out to Jefferson Road adjacent to Mr. McCarthy's property. The 40 foot width requirement does not apply to lots having a minimum width of front yard of less than 40' if such lot on March 25, 1957, did not adjoin other land of the same owner. The lot involved, however, did adjoin other land of the same owner on that date. It was stated by the petitioners' attorney that the petitioners purchased the lot as a house lot and had received assurance from the then Building Inspector that a house could be built upon it. They paid the going price for a valid house lot and have paid taxes for ten years based on the belief that it was a buildable lot.

It was alleged, and there is clear evidence that conditions exist for this lot which do not exist for any other lot in the area including in particular its unusual contour. If it were not owned by the same owner of an adjacent lot in 1957, it would be a buildable lot. Substantial hardship, therefore, will result to the petitioner if this lot cannot be utilized as a house lot.

The petitioners expressed a willingness, if a variance is granted, to be bound by a condition that the Jefferson Road strip should be used for access purposes and no access should be had from Sheridan Circle.

A copy of the plan was submitted which was endorsed by the Planning Board on December 12, 1956, and recorded on December 1, 1958. Said plan was drawn by MacCarthy Engineering Service, Inc., Natick, Mass., dated December 12, 1956.

Decision

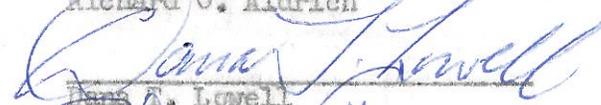
The Board has made a careful study of the facts submitted and has viewed the locus. In its opinion, a dwelling constructed on the lot with a front yard less than the required width, will not in any way prove detrimental to the character of the immediate neighborhood. While the facts do not satisfy the conditions set forth in Section XIX of the Zoning By-law, as the lot was not held under a separate and distinct ownership from adjacent lots on March 25, 1957, this Board, however, considered the petition under the provisions of the General Laws, Chapter 40A, Section 15. In its opinion, the amendment to Section XIX of the Zoning By-law adopted in 1957, which deprived the petitioners the right to ever build on the lot or use it as a house lot, destroyed the value of the lot. However, they purchased it in good faith as a house lot, at the going rate of a house lot and have paid taxes for the past

ten or twelve years. The lot contains substantially in excess of the required 15,000 square feet, and was laid out on a valid plan which was endorsed by the Planning Board and recorded in the Registry of Deeds.

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 petitioners which can be avoided without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of said by-law.

In the opinion of the Board imposition of conditions as to access to the lot is not warranted in this case. The arguments of those opposed to access to Sheridan Road are largely without merit. The Board sees no reason why such access need be objectionable for esthetic reasons or otherwise adversely affect the legitimate interests of the residents of Sheridan Circle. The Board is of the view that the objections of those opposed to access on Jefferson Road are susceptible of reasonable accommodation. We are duly mindful of the sincerity of the concern expressed by many neighbors for the safety of children, but we are also aware that potential danger exists wherever motor vehicles in motion and young children are in close proximity. There are ways to minimize these risks. In Mr. McCarthy's case it might be by the judicious use of a fence. In short, it is the Board's view that the legitimate interests of petitioners and the neighbors here should be accommodated by the process of give and take in a context of common sense and a decent regard for the rights and feelings of others.

Accordingly, the requested variance in respect of the front yard requirement of the Zoning By-law only is granted under the provisions of Chapter 40A, Section 15, of the General Laws, and the Inspector of Buildings is authorized to issue a permit for the construction of a dwelling on the lot involved as shown on the plan submitted and on file with this Board.

  
Richard J. Aldrich  
  
Dana J. Lowell  
  
F. Lester Fraser

Filed with Town Clerk \_\_\_\_\_

1010 026 504 011  
MAY 19 1968  
TOWN OFFICE  
RECEIVED

69-74

JOHN M. MULLEN  
COUNSELLOR AT LAW  
100 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110  
TELEPHONE 617 - 357-9680

December 12, 1974

Leo J. Hession, Esquire  
47 Church Street  
Wellesley, Massachusetts 02181

Re: McCarthy v. William J. McPhee, et als -  
Norfolk 101316

Dear Leo:

The above-entitled case was dismissed at the call  
of the equity list on December 11, 1974.

Very truly yours,

*John M. Mullen*  
John M. Mullen

JMM/lrp

cc: Harry E. Warren, Esquire  
Miss Katherine Toy

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT

Eq. No. 101316

Eq. 101330

RICHARD F. MCCARTHY

SAMUEL P. STRICKLAND, ET ALS

vs.

vs.

WILLIAM J. MCPHEE, ET ALS

RICHARD O. ALDRICH, ET ALS

FINDINGS, RULINGS AND ORDER

These are cases involving two appeals from a decision by the Board of Appeals of the Town of Wellesley. Both cases involve the same parcel of land.

After proper notice to all parties and a public hearing, the Board of Appeals granted a variance on a petition of William J. and Jacqueline M. McPhee for Lot No. 6 shown on a plan which is Exhibit 1. The variance granted was with respect to the street frontage and front yard requirement of the zoning by-laws of the Town of Wellesley.

The Board found, for reasons listed in its decision, 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 petitioners which can be avoided without substantial detriment to

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

The locus consists of the lot numbered 6 on Exhibit 1. It contains approximately 18,530 square feet, and has two means of egress and ingress, one on Jefferson Road and the other on Sheridan Circle. These are narrow 20-foot "corridors" as shown on the plan. The one on Sheridan Circle flares out to 40 feet in width immediately adjacent to the circle, but to all intents and purposes the access to the lot is through these two narrow 20-foot corridors.

The by-laws of the Town of Wellesley in effect at the time the variance was applied for, required a minimum lot area of 15,000 square feet (with which the locus complies) but also required a front yard at least 30 feet in depth and at least 60 feet in width for the entire depth of the front yard before any building or structure may be erected thereon. With this requirement the locus does not comply, and it was from this requirement that the Board granted the variance.

The previous front yard requirements in the zoning by-laws of the Town of Wellesley excluded any lot which did not adjoin other land of the same owner on March 25, 1957. I find, however, that on March 25, 1957 Lot 6 as well as the adjoining lots were all owned by the Hodges Realty Trust, so that this lot cannot

qualify under that exemption.

I find that when the present owners, William J. McPhee and his wife, purchased this lot in 1959 they intended to erect a house thereon and had been assured in writing by the then Building Inspector of the Town of Wellesley that the lot was a buildable lot and complied with the zoning requirements. Since that time, due to economic reasons and a change in Mr. McPhee's job which necessitated his moving to Pennsylvania, they have not gone forward with any building plans but have continued to pay taxes on this lot which has been assessed as if it were a buildable lot. It was not until 1969 when they decided to sell the lot that an attorney for the prospective purchasers noted the non-compliance with the zoning by-law.

The lot had been laid out on the plan, Exhibit 1, in 1956 which had been endorsed "Approval under the subdivision control law not required" by the then Wellesley Planning Board.

The case was heard by me on a view of the premises, a statement of agreed facts, and testimony and exhibits. The locus is in a part of Wellesley which has been substantially built up, and in fact this lot is one of the few remaining empty lots in the vicinity. I find, as did the Board of Appeals, that there are conditions especially affecting the locus but not affecting generally the zoning district in which it is located. These are

the obvious unusual shape and location of the lot and the nature and location of the narrow corridors which provide the only ingress and egress. The enactments in the Wellesley zoning by-law requiring front yard setback make the lot unusable for any purpose unless a variance is granted. Had the lot been owned in separate ownership in 1957, no variance would be required and it has, therefore, been "sterilized" by reason of this by-law.

The lot is in a single family residential zone and cannot be used for any other purpose. It is, therefore, apparent that a literal enforcement of the provisions of the by-law would have substantial hardship to the owner, as well as to the lot itself.

I also find as did the Board that desirable relief might be granted in the form of a variance without substantial detriment to the public good and without nullifying or substantially derogating from the intention or purpose of the by-law.

The use to which the land is going to be put is not in derogation of the by-law as it is going to be used for the erection of a single family house. The Town of Wellesley has many lots access to which is through corridors of similar width which adjoin the property of others. I find that the existence of such a narrow corridor as means of ingress or egress will not substantially detract from the value of neighboring property. As previously pointed out, the surrounding area is almost

entirely, if not entirely, built up and the addition of one more house will not increase the necessity for police or fire protection.

I, therefore, find and rule that the Board of Appeals was warranted on the evidence in granting the variance pursuant to Chapter 40A, Section 15, and I find and rule that the Board did not exceed its authority. It is ordered that the decision of such Board be and is hereby confirmed, and that an attested copy of the final decree be sent to the Board of Appeals within thirty days of the entry thereof.

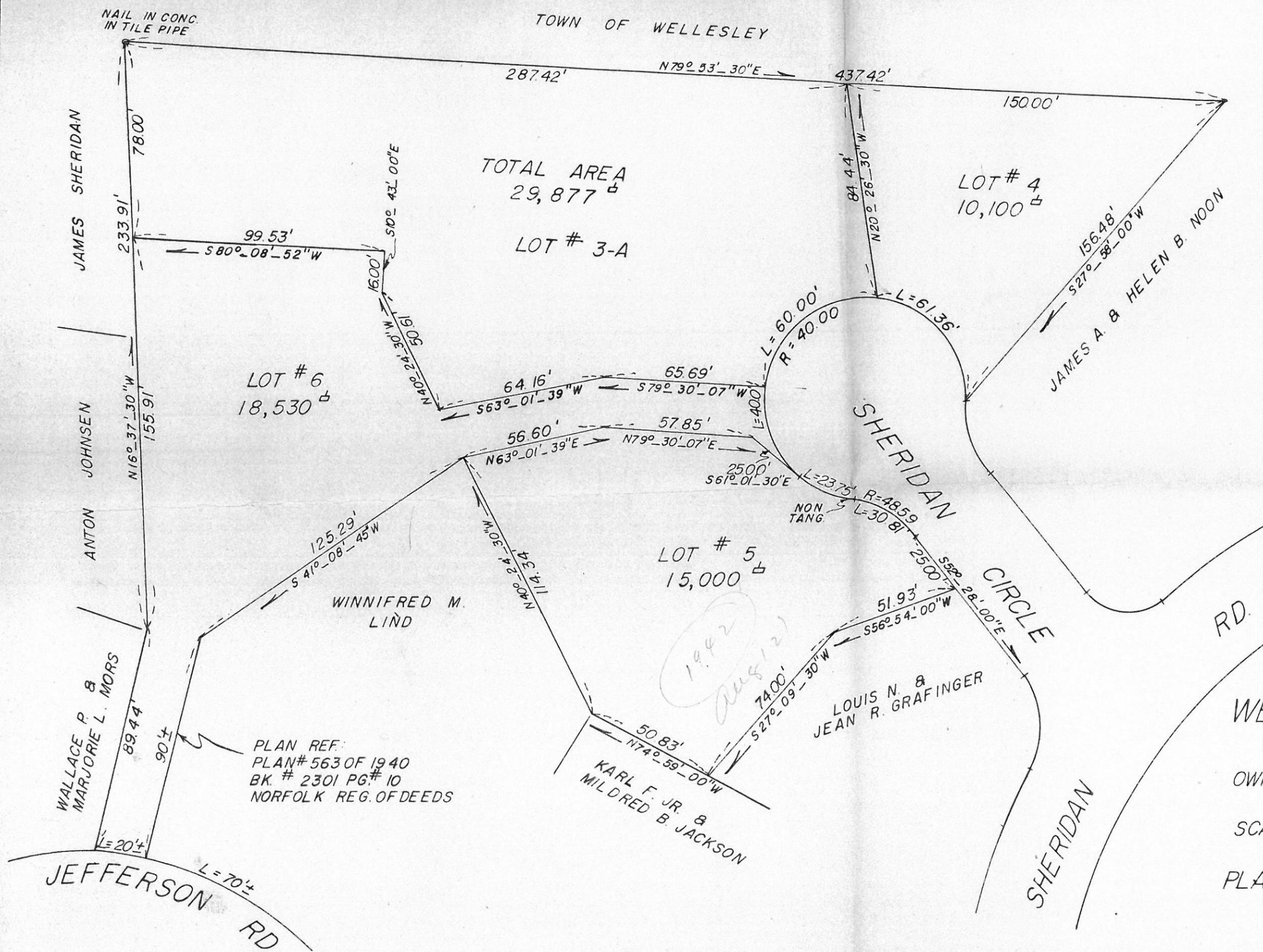
Vincent R. Brogna,

SJC

Entered:

Sept. 28, 1973

A TRUE COPY  
Attest: *Maya Parker*  
DEPUTY ASSISTANT CLERK



APPROVAL UNDER THE SUB-DIVISION CONTROL LAW NOT REQUIRED  
WELLESLEY PLANNING BOARD

*John P. ...*  
*Angus ...*  
*John ...*

DATE: *August 12, 1952*

Recorded Dec. 11, 1958  
Dedham.

PLAN OF LAND  
IN  
WELLESLEY, MA  
(SHOWING REVISED LOT LINES)

OWNED BY: HODGES REALTY TR

SCALE: 1" = 40' DEC. 12,

PLAN BY: MAC CARTHY ENGINEERING SERVICE  
NATICK, MASS.

PLAN REF:  
PLAN BY: MAC CARTHY ENGINEERING SERVICE, INC.  
DATED: MARCH 25, 1952