



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Petition of Frederick J. Mahony, Jr.

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 8:35 p.m. on April 30, 1970, on the petition of Frederick J. Mahony, Jr., requesting a variance from the terms of Section II, of the Zoning By-law, which would permit the construction of five group houses consisting of fifty single-family units separated by party walls and a lodge, on the premises at 941 Worcester Street, located within a Single-residence District. Said petition is made under the provisions of Chapter 40A, Section 15, of the General Laws.

On April 10, 1970, the petitioner filed a 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. He summarized the history of petitioner's ownership of the property which commenced approximately five years ago and included unsuccessful efforts in 1967 to secure a Board of Appeal variance for a garden apartment project, early in 1970 to have the area rezoned to the Professional and Administrative District and a recent unsuccessful effort to develop 16 single-family houses in the area. He also described in some detail the physical plans for the project and stated petitioner's contention that the "hardship" required by Chapter 40A, Section 15, of the General Laws existed by virtue of the unique topography, including an appreciable amount of high ledge and a low pond area caused by surface water drainage, the proximity of a heavily travelled high speed highway and a number of business establishments and the location to the east of the Baird property which also was afflicted with a serious water problem. Jack Janis, Professional Engineer, explained in detail the water drainage situation on the property as well as the possible effect of the proposed construction on the water shed. He stated as his professional opinion that, as a result of the proposed construction, there would be little change in the low land and water shed. It is proposed to leave the low area which naturally collects the drainage water in its natural position so that the overall condition should be basically the same as it is now. He expressed his view that the ground coverage incident to the proposed construction would result in an increased accumulation of water in the property of only 1 to 2%.

A petition signed by 174 persons opposing the request was submitted at the hearing. Approximately 18 persons spoke in opposition to the granting of the request, citing generally the danger of aggravating an already serious ground water problem in the area, increased traffic, hazard to school children and overcrowding of the school.

The Planning Board in its report stated that the records maintained at its office did not disclose special conditions affecting this particular parcel of land but not affecting generally the zoning district in which it is located, nor any evidence that a literal enforcement of the Zoning By-law would impose a special hardship, financial or otherwise, on the petitioner. It further stated that it was its unanimous view that the change in use being sought should more properly be accomplished, if at all, by the Town Meeting and that

granting of the instant petition would substantially derogate from the intent and purpose of the Zoning By-law.

#### Statement of Facts

The land involved, which contains 209,621 square feet, is located on the northerly side of Worcester Street (Route 9) within a Single-residence District requiring a minimum lot area of 10,000 square feet for dwellings.

The petitioner, who has owned the property involved for the past five years, has tried to have the Zoning changed through the Town Meeting and has made a previous request to the Board of Appeal for permission to construct eighty-three apartments. The requests were denied. The owner is said to have recently had a plan made subdividing the property into sixteen house lots for single-family dwellings, but was not able to interest any one in the development of these. Two builders allegedly made a study of the layout, but neither of them found it to be economically feasible to develop it. However, no qualified builder or real estate expert appeared before the Board and, therefore, no truly cogent evidence was adduced in respect of the alleged economic impracticability of development for single-family residence. There was abundant evidence of a water problem characteristic not only of this particular property but also of a substantial area in the vicinity.

The petitioner is now requesting permission to build five group houses containing contiguous single-family living units, 30 with two bedrooms and 20 with three bedrooms. The plans call for 61 parking spaces. A gatehouse would also be constructed at the entrance to control those entering and leaving the complex.

It was alleged that the property is not suitable for conventional single-family development, with each house on a separate lot conforming to the Zoning By-law, because of its location and physical character, conditions allegedly not generally applicable to the zoning district in which it is located. To the west is a buffer strip (the aqueduct) and a business establishment (Mr. Donat); and immediately beyond that is another business establishment. Across Route 9 is Jarvis Appliance Company in a Business District, and to the east there is land zoned for residential purposes. Developed house lots abut the rear and a small portion of the easterly boundary of the property, but it is proposed to locate the buildings approximately 52' from the rear boundary line and to screen off the buildings. Parking areas would be about 20 feet from the northerly and westerly boundaries.

There is a substantial amount of water on the adjoining property to the east and some of it extends onto the property involved. It is proposed to construct the buildings on the high land and not to encroach upon the water area which will be left in its natural location. Studies have been made of the water table by a competent engineer who gave his opinion based on those studies that the proposed construction would have little, if any, affect on the water table. It is the feeling of the petitioner that the increased amount of traffic resulting from the proposed complex would not prove dangerous to the safety of the public.

A plot plan was submitted, drawn by Robert S. Booth, Jr., Land Surveyor, dated March 27, 1970, which showed the location of the proposed buildings on the lot, as well as the parking area to be provided.

Architectural plans were also submitted, drawn by Freeman/Hardenbergh, Architects, which showed the front and side elevations and typical floor layout.

Petitioner's plans showed a difference of six feet between the

minimum floor elevation of the housing units and the estimated normal level of the pond and one foot between said minimum floor level and the estimated maximum flood level of the pond.

Decision

The Board has examined the plans submitted and the locus and has carefully considered the evidence introduced in petitioner's presentation as well as the arguments.

The Board is unanimously of the opinion that petitioner has not sustained the burden imposed upon him of showing "hardship" within the meaning of Section 15 of Chapter 40A of the General Laws. The law is well settled in Massachusetts that mere operation of a zoning by-law to deprive a person of financial advantage is not such a hardship. Nor does the fact that single family residential development is economically impracticable for petitioner constitute such hardship unless petitioner presents cogent evidence as to how and in what manner such impracticability arises and to the effect that this results from factors unique to this particular parcel. Virtually the only evidence on these points consisted of counsel's own assertions that there is ledge on the property and quite a bit of water and that there are several commercial properties in close proximity. No expert testimony was introduced as to the incidence of the ledge and water, their uniqueness to this particular property and the financial implications in respect of development. Moreover, the Board has heard evidence tending to show that excessive water is and has been a serious problem in the area generally, both on land developed with single family houses and on undeveloped land. Proximity of commercially developed land is not such a "condition"; it affects the area generally. No meaningful evidence with respect to allegedly unsuccessful attempts to develop for single family residence was presented. The bare assertion that such occurred is of no assistance to the Board.

The Board is similarly of the opinion that the requested relief would not be warranted here even if an adequate case of hardship had been established. What might be regarded as reasonable ground coverage with reference to the total area of the parcel is certainly less than desirable when considered in the light of the size of the area which is devoted to pond and is therefore unusable. In the Board's view 61 parking spaces is manifestly inadequate for a development of this type, and the plans indicate there would be little room for development of additional parking. Moreover, notwithstanding the sincerity and respectable credentials of the expert who testified that the drainage problem would not be significantly exacerbated, the Board is well aware that the expert's opinion is only an estimate, that the present situation is a frequent source of discomfort and inconvenience to the residents of the area, and the Board takes cognizance of the fact that a further deterioration of this problem of even one or two percent is not to be desired.

Under the circumstances, the Board cannot find that the requested variance can be granted without substantial detriment to the public good and without substantially derogating from the intent and purpose of the Zoning By-Law.

Accordingly, the petition is dismissed.

  
Richard O. Aldrich  
  
Dana T. Lowell  
  
T. Lester Fraser

John B. & Marion  
L. Learson

Massey

McQuaid

S.B.

267.65

64.0

52.0

48.0

192'-0"

45'-0"

45'-0"

264.75

30.0

264.75

45'-0"

84'-0"

24.0

84'-0"

24.0

45'-0"

45'-0"

Robert E. & Dorothy L.  
Singletory

N.

state of Martha S. Moffott  
ecutor ~ Kermit R. Stevens

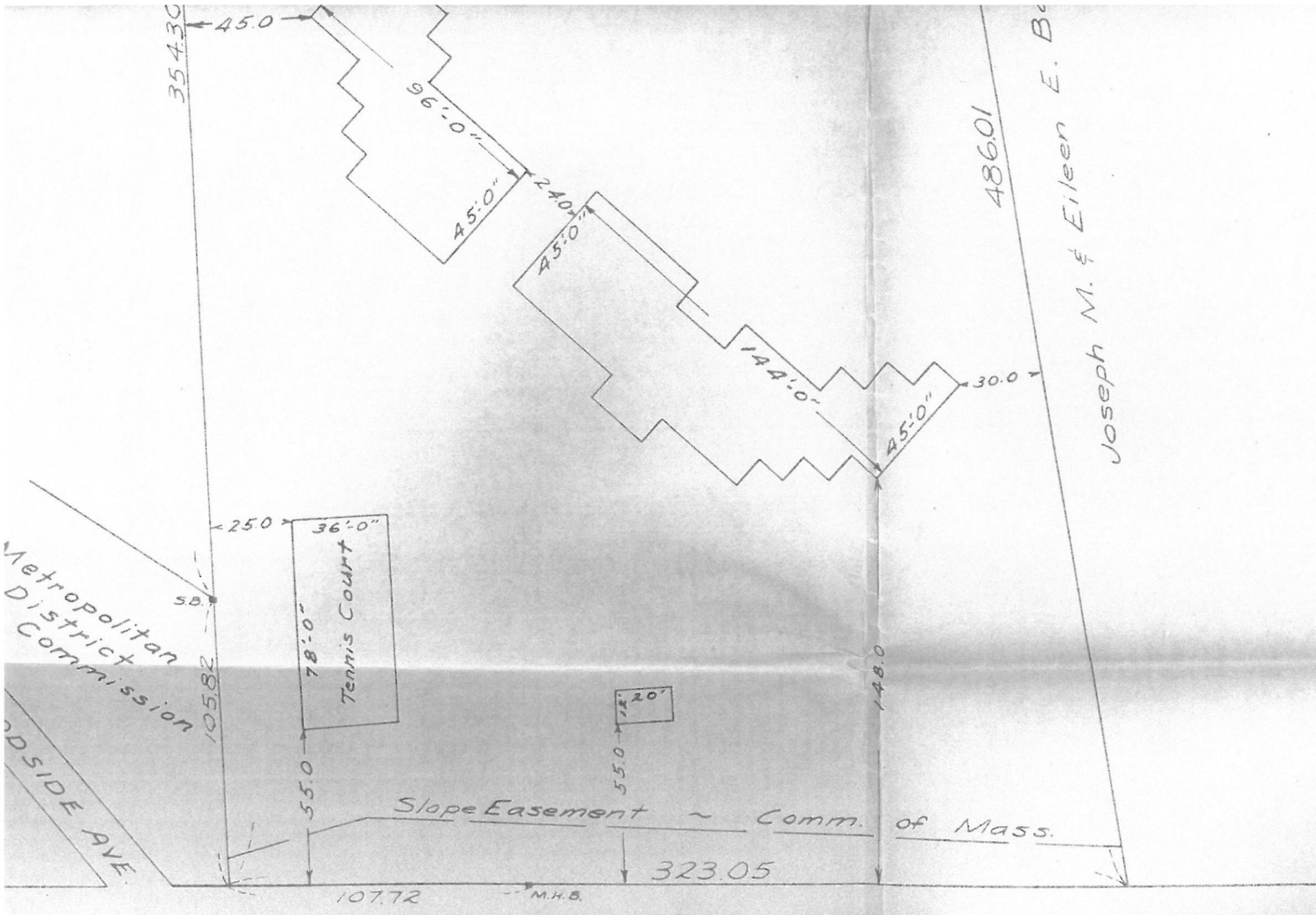
S.B.

724.87

Pt. Lot 1, Pt. Lot 2  
Pt. Lot 3  
209,621 SF.

S.B.

Plan of Land in Wellesley, Mass.  
Scale 40 feet to an inch  
March 27, 1970  
Ernest W. Branch Inc., Civil Engineers  
Adams Building, 1354 Hancock St, Quincy



WORCESTER ST RT 9

