

TOWN OF WELLESLEY
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BOARD OF APPEAL
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RICHARD O. ALDRICH
DANA T. LOWELL
F. LESTER FRASER

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235-1664

Appeal of Brian G. and Marie Louise Wanless

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 August 11, 1970, on the appeal of Brian G. and Marie Louise Wanless, from the refusal of the Inspector of Buildings to issue a permit for the construction of a swimming pool on their premises at 37 Cornell Road.

The reason for such refusal was that said pool would violate Section XIX of the Zoning By-law which requires that there shall be provided a side yard not less than twenty feet in width on each side of every building or structure within the Town of Wellesley. The appellants' appeal was based upon the contention that the Inspector of Buildings made an erroneous interpretation of Section XIX of the Zoning By-law. However, in the alternative, the appellants requested a variance under the provisions of Chapter 40A, Section 15, of the General Laws as amended.

On June 22, 1970, the Inspector of Buildings notified the appellants in writing that a permit could not be issued for a swimming pool in the desired location for the above-mentioned reasons, and on June 26, 1970, the appellants took an appeal therefrom. Thereafter, due notice of the hearing was given by mailing and publication.

No objections were made at the hearing to the granting of the request.

Paul Jameson, attorney, represented the appellants at the hearing.

Statement of Facts

The lot involved is located within a Single-residence District requiring a minimum lot area of 20,000 square feet and is bisected by the Town of Needham boundary line. The portion of the lot within the Town of Wellesley contains 21,698 square feet and is one of the lots within a subdivision approved by the Planning Board on March 10, 1959.

A plot plan was submitted at the hearing which was drawn by Gleason Engineering Company, dated August 10, 1970, which differed slightly from the plan submitted to the Building Inspector for his refusal. Said plan showed the existing dwelling on the lot as well as the proposed pool.

The appellants seek permission to erect a swimming pool 20' x 40', which under the August 10, 1970 plan is to be located 10' from the southeasterly

corner of the house, 7' from the Town of Needham boundary line and 23' from the lot line within the Town of Needham.

It was stated at the hearing by the appellants' attorney that, in his opinion, the side yard requirement of Section XIX of the Zoning By-law does not apply in this case. He could find no other case, such as this one, which had been decided by the Board of Appeal upon a determination or interpretation of a side yard with respect to a Town boundary line. In each case, it was conceded that the Board considered the situation as one requiring the grant of a variance. In the event that the Board was unable to view the situation as one where the requirements of Section XIX could be regarded as complied with, or where an exception could be made as provided in said Section XIX, it was requested on behalf of appellants that a variance be granted under the terms of Chapter 40A, Section 15, of the General Laws. It was alleged that a hardship exists because the Town of Needham boundary line bisects the lot and the proposed swimming pool cannot be located in a practical or suitable location on the lot unless a variance is granted. Appellants' attorney stated that his clients do not intend to build on that portion of the lot within the Town of Needham and that it will be maintained as part of the lot involved.

Decision

The Board is unable to find that the requirements of Section XIX are met in the instant situation, or to make the findings prescribed as conditions under which an exception may be granted under Section XIX of the Zoning By-law, but it has considered the request under the provisions of Chapter 40A, Section 15, of the General Laws, and unanimously finds that owing to conditions especially affecting this parcel but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the by-law would involve substantial hardship to the appellants.

Neither this Board nor the Building Department of the Town of Wellesley have any jurisdiction over lands located in the Town of Needham, nor over what might be authorized with respect to such lands by either the Zoning By-laws of the Town of Needham or that town's Board of Appeal. Insofar as the matter is one over which this Board has jurisdiction, the only means of insuring that an adequate side yard will be maintained with respect to the entire parcel is through the medium of conditions attached to the grant of a variance.

The Board is of the further opinion that the construction of the proposed swimming pool as shown on the plan submitted will not change the character and appearance of the immediate neighborhood and that the requested variance may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-law.

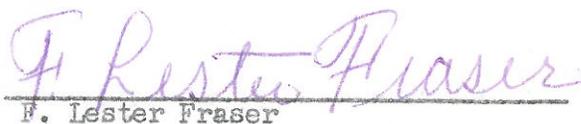
The Board, therefore, (1) affirms the action of the Inspector of Buildings in refusing the permit applied for by the appellants as the side

yard requirement of Section XIX of the Zoning By-law does apply in this case, and the conditions necessary for the grant of an exception cannot be met and the appeal from the Inspector's action is hereby dismissed, and the Board (2) grants the variance petitioned for and authorizes the issuance of a permit for the proposed swimming pool as shown on the plan submitted and on file with this Board, subject to the following conditions:

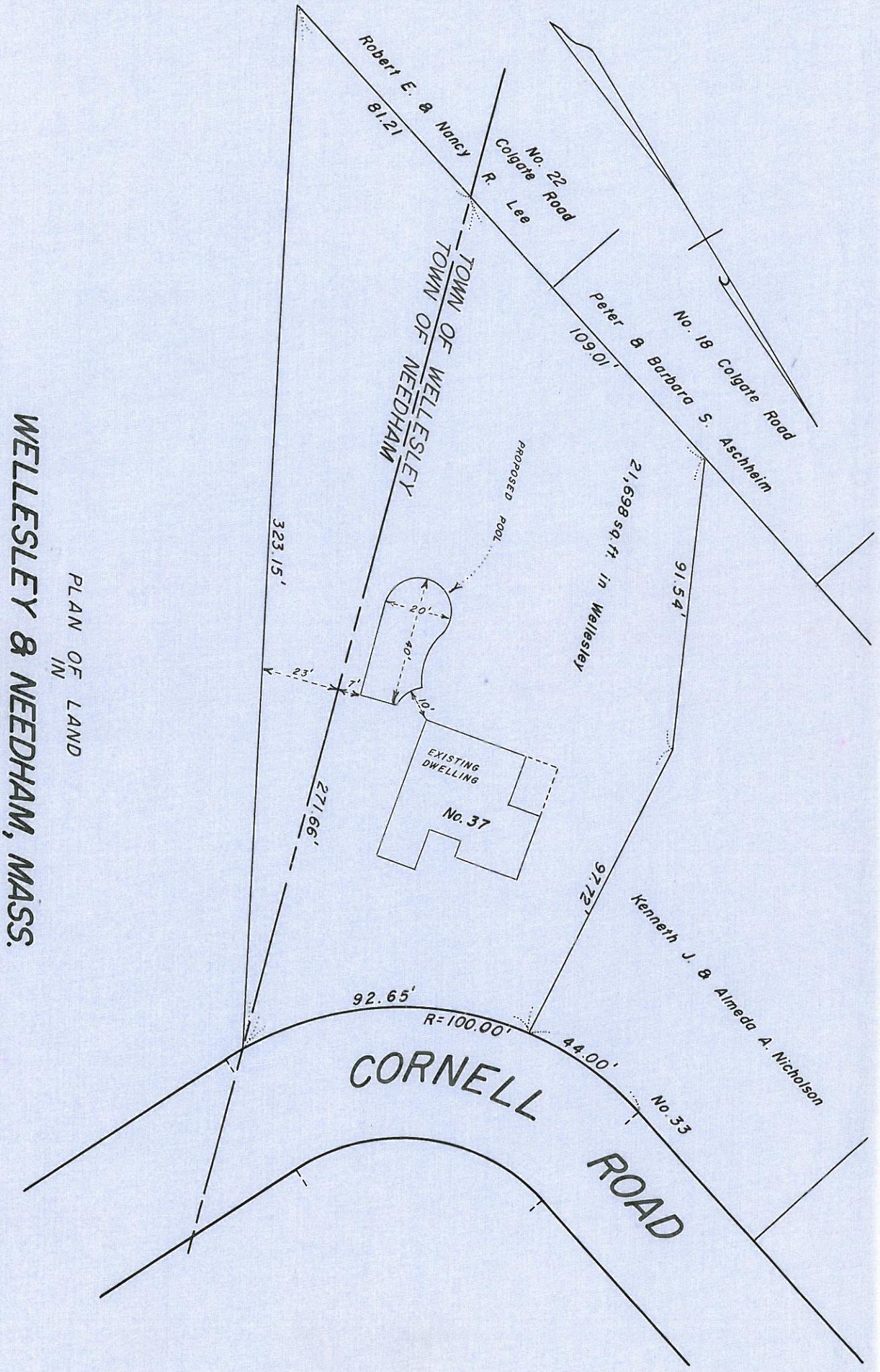
1. That the portion of the lot in Needham shall remain under common ownership with the portion in Wellesley, all as parts of one undivided parcel of land, and shall not have any building or other structure erected thereon.
2. That said pool shall comply with all Board of Health regulations and Town ordinances with the exception of a variance of the side yard requirement of Section XIX of the Zoning By-law, as granted in this decision.


Philip H. R. Cahill


Dana T. Lowell


F. Lester Fraser

Filed with Town Clerk _____



WELLESLEY & NEEDHAM, MASS.

PLAN OF LAND
OWNED BY

BRIAN G. & MARIE LOUISE WANLESS

Scale 40 feet to an inch
August 10, 1970

Gleason Engineering Company