



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
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Appeal of Josephine M. and Francis M. Harvey

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 8:15 p.m. on February 5, 1970, on the appeal of Josephine M. and Francis M. Harvey from the refusal of the Inspector of Buildings to issue a permit to them to raise the roof and extend the side walls of the dwelling at 49 Russell Road. The reason for such refusal was that said roof and side walls would violate Chapter IV, Section 1 (b) of the Building Code which requires that the exterior walls of a Type V building shall be at least ten feet from any party line, and Section XIX of the Zoning By-law which requires that there shall be provided for each such building a side yard at least twenty feet in width.

On January 14, 1970, the Inspector of Buildings notified the appellants in writing that their application for a permit had been refused for the above-mentioned reasons, and on January 16, 1970, the appellants took an appeal therefrom. Thereafter due notice of the hearing was given by mailing and publication.

Josephine M. Harvey spoke in support of the appeal at the hearing.

Leo J. Hession, attorney for Alfred Fisher, abutting property owner, stated that Mr. Fisher had no opposition if the house is not extended beyond its existing side lines.

Statement of Facts

The house involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet.

The appellants seek permission to raise the roof approximately two feet and extend the side walls of the existing sun room at the rear of the dwelling. The house now has only one entrance door and if the requested permission is granted, a second outside door can be installed and the existing living room enlarged. The sun room floor is lower than the living room floor and in order to level the two floors and install a 6'6" door, it is necessary to raise the roof two feet. The dwelling is located four feet from the lot line on the northerly side which abuts Town of Wellesley owned property, formerly Cochituate Acqueduct. There is to be no further encroachment into the side yards.

A plot plan was submitted, drawn by Gleason Engineering Company, dated January 7, 1970, which showed the location of the dwelling on the lot.

Decision

The facts in this case satisfy the conditions set forth in Section XIX of the Zoning By-law and Chapter IV, Section 1, of the Building Code on which the Board's authority depends to grant a special exception

from the application of the side yard restrictions of the Zoning By-law and a variance from the Building Code.

The house was built prior to the enactment of the side yard requirement and was held of record on April 1, 1940, under a separate and distinct ownership from adjacent lots. The lot is small, containing only 3,950 square feet and the house is so situated on it that the proposed roof alteration cannot be made without encroaching into the side yard. Compliance, therefore, with the side yard requirement of twenty feet is impracticable because of the width and shape of the lot.

It is the opinion of this Board that manifest injustice would result to the appellants if the requested variance is not granted, and that the provisions of the Building Code did not contemplate the circumstances of this specific case which involves only raising the roof two feet with no increase in the encroachment to the side yard. The Board further feels that the proposed alteration to the roof will not prove detrimental to the neighborhood nor derogate from the intent and purpose of the by-law. It will, however, provide a second exit from the house and enlarge the living room so that it will be a more practical size.

It is, therefore, the unanimous opinion of this Board that permission may be granted to raise the roof and extend the side walls as shown on the plan submitted and on file with this Board and the Building Inspector is hereby authorized to issue a permit for such construction.

Richard S. Aldrich
Richard S. Aldrich

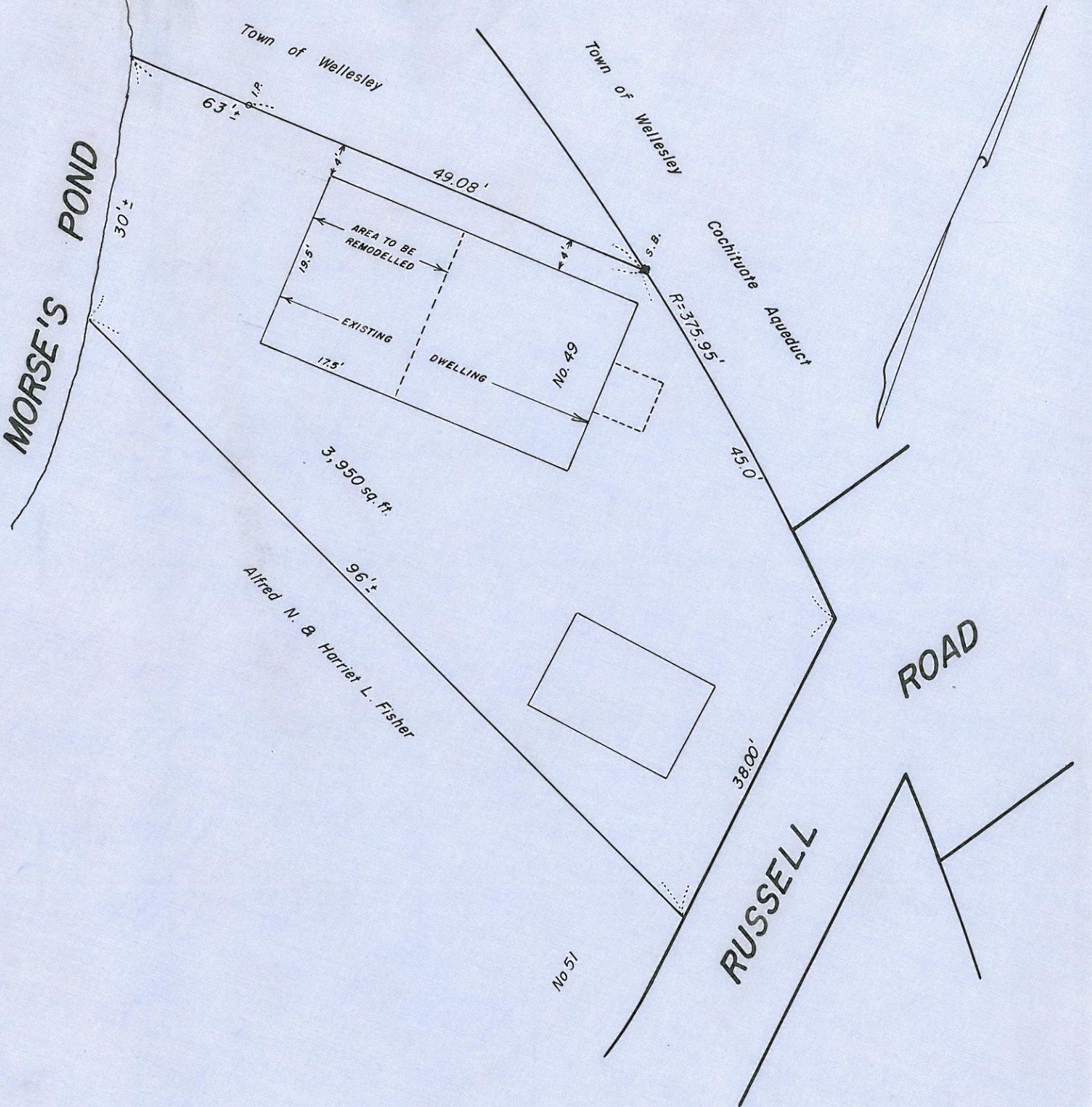
Dana T. Lowell
Dana T. Lowell

F. Kester Fraser
F. Kester Fraser

Filed with Town Clerk 3/2/70

1970 MAR 5 PM 10:04

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PLAN OF LAND
 IN
WELLESLEY, MASS.
 OWNED BY
JOSEPHINE M. HARVEY & FRANCIS M. HARVEY
 Scale 15 feet to an inch
 January 7, 1970
 Gleason Engineering Company