



BOARD OF APPEAL

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

70-8
 TOWN CLERK'S OFFICE
 WELLESLEY, MASS.
 KATHARINE E. TOY, CLERK
 TELEPHONE
 235-1664

Appeal of William J. Johnston

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 February 5, 1970, on the appeal of William J. Johnston from the refusal of the Inspector of Buildings to issue a permit for the construction of a dwelling on Lot B, also known as Lot 2, #21 Harris Avenue. The reason for such refusal was the Inspector of Building's uncertainty as to whether the proposed adjustment of lot boundary lines constituted a "Subdivision" within the meaning of said term in Chapter 41 of General Laws so as to preclude his issuance of the requested permit under the terms of Section 81Y of said Chapter. Said appeal was made under the provisions of Section XXIV of the Zoning By-law, Chapter 41, Section 81Y and Chapter 40A, Section 13 and 15 of the General Laws.

On January 14, 1970, the Inspector of Buildings notified the appellant in writing that a permit could not be issued for the construction of a dwelling on said lot for the above-mentioned reasons, and on January 19, 1970, the appellant took an appeal from such refusal. Thereafter, due notice of the hearing was given by mailing and publication.

Henry D. White, attorney for the appellant, spoke in support of the appeal at the hearing and later submitted a brief.

Donald P. Babson, Chairman of the Planning Board, stated that he felt that only one house could be built on the tract, and if divided into two lots, a way would have to be provided in accordance with the Subdivision Law.

The Planning Board in its written report stated that it was unable to recommend approval of the request and urged the improvement of Harris Avenue as a condition precedent to any approval of subject appeal.

Statement of Facts

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

On January 6, 1969, the Planning Board voted to refuse to endorse the plan involved as, "Approval Under the Subdivision Control Law Not Required." In a letter to the appellant, the Planning Board stated that it believed the plan submitted was such a division of a tract of land as to constitute a subdivision within the meaning of the statute (Chapter 41, Section 81L) and it was not in a position to endorse the plan as not requiring approval because the way (Harris Avenue) on which Lot B fronts was not, and is not, deemed adequate for the needs of vehicular traffic in relation to the proposed use of the land and lands, abutting Harris Avenue. It further stated that with respect to the "adequacy" of Harris Avenue, while the street has been "paved", Harris Avenue is currently without adequate stable foundation, without adequate sidelines, without curbing, without walks, without drainage and is surfaced

for less than the standard 24-foot width.

It is the contention of the appellant that since Harris Avenue has public water and sewer and the Town plows it and maintains its street lights, it is a private way and not within a "Subdivision." One, therefore, should not have to obtain approval from the Planning Board under the requirements of Chapter 41, Section 81L of the General Laws governing Subdivisions.

The parcel of land involved which was laid out originally in 1898, is made up of six lots 25' x 106' and one lot 40' x 106'. The appellant desires to divide the seven lots into two uniform lots and proposes to move the lot line of one lot five feet which will result in each lot having a frontage of 95' and containing 10,070 square feet. Both lots would then comply with the frontage and area requirements of the Zoning By-law. However, because of the lot line change, the Building Inspector refused to issue a permit. Had the lines remained unchanged, in the appellant's view, a permit could have been obtained for the construction of a dwelling on the lot involved. It appears that other houses have been constructed on Harris Avenue where no change was made to the lot lines, and the appellant feels that the proposed two houses will not substantially reduce the value of any property within the district and will not be injurious to the neighborhood or harmful to the public good.

A plot plan was submitted drawn by Everett M. Brooks Co., Newtonville, Wayland and W. Acton, dated December 13, 1968, which showed the land divided into two lots namely, Lot A, with a frontage of 95' and containing 10,070 square feet and Lot B with a frontage of 95', also containing 10,070 square feet.

Decision

The Board of Appeal has reservations with respect to the correctness of the Planning Board's decision that the adjustment of lot lines here involved constitutes a "Subdivision" within the meaning of the statute, Chapter 41, Section 81L of the General Laws, but does not feel that a definitive resolution of this issue need be made at this time. It will instead consider the merits of appellant's request for an issuance of a permit under the provisions of Section 81Y.

Harris Avenue was laid out originally in 1898, and has been used for a number of years by the public. There have been five houses erected on the street since the enactment of the Subdivision Control Law, and all parties involved have used Harris Avenue for access to and from their homes as well as others visiting the premises. The street is paved and is maintained by the Town of Wellesley to the extent of plowing snow and supplying and servicing public utilities to those living on the street.

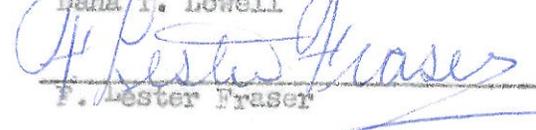
Because of these facts, it is the opinion of this Board that the lot involved has frontage on a private way (Harris Avenue), and although the way is not built to specifications of the Planning Board, it is adequate for vehicular traffic in relation to the proposed use of the property. It appears that it has been used by those residing on the street for a number of years, and therefore should be adequate for the appellant who desires to construct two houses on the proposed lots. It is impractical and inequitable in these circumstances to preclude indefinitely the best use of this land by requiring this owner to improve the entire street to Town standards as a prerequisite to securing permission for such use.

It is the feeling of this Board that the enforcement of the provisions of Chapter 41, by denial of appellant's building permit would entail practical difficulty and unnecessary hardship, and that these

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MASS.
JAN 20 1969

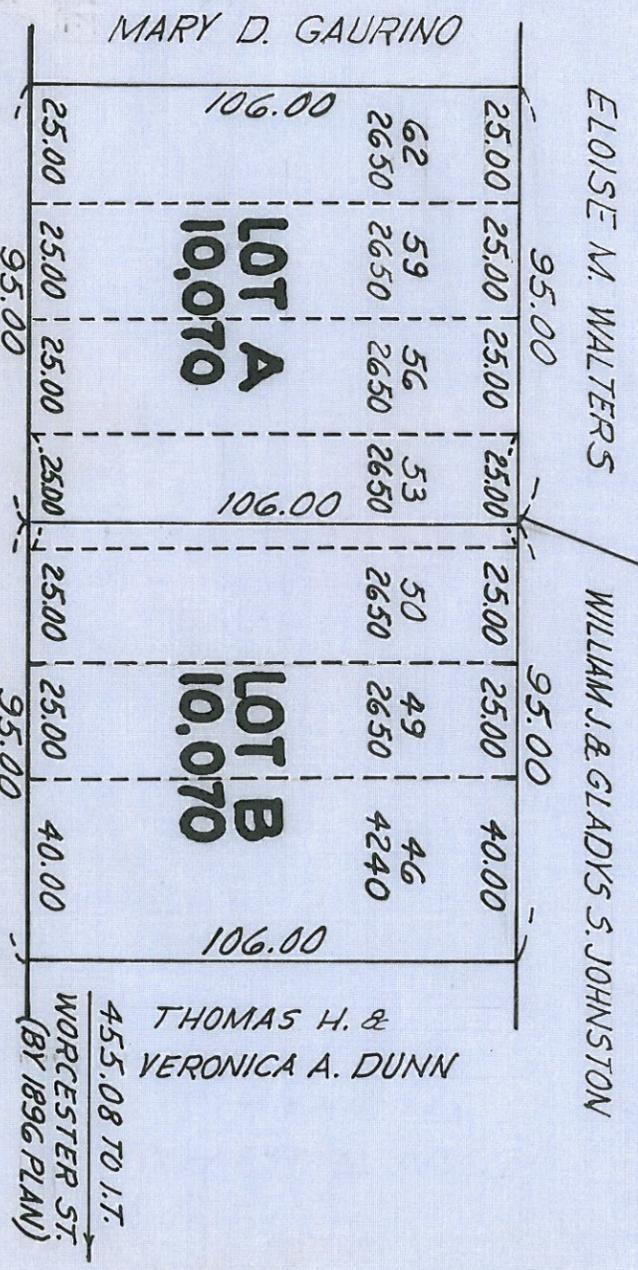
circumstances do not require that the proposed building be related to a way on an approved plan since it will in fact be related to a private way currently furnishing adequate access to and from Worcester Street; therefore, the requested variance is granted under the provisions of Section 81Y of Chapter 41 of the General Laws and the Building Inspector is directed to issue a permit for the construction of a dwelling on the lot as shown on the plan submitted and on file with this Board, provided the requirements of applicable laws other than those which are the subject of this proceeding are complied with.


Richard O. Aldrich

Dana T. Lowell

F. Lester Fraser

Filed with Town Clerk _____

1610 VTC 15 VII 10:20
TOWN ENGINEER
TOWN OF WORCESTER
1915



WELLESLEY PLANNING BOARD
 APPROVAL UNDER THE SUBDIVISION
 CONTROL LAW NOT REQUIRED.
 DATE: _____

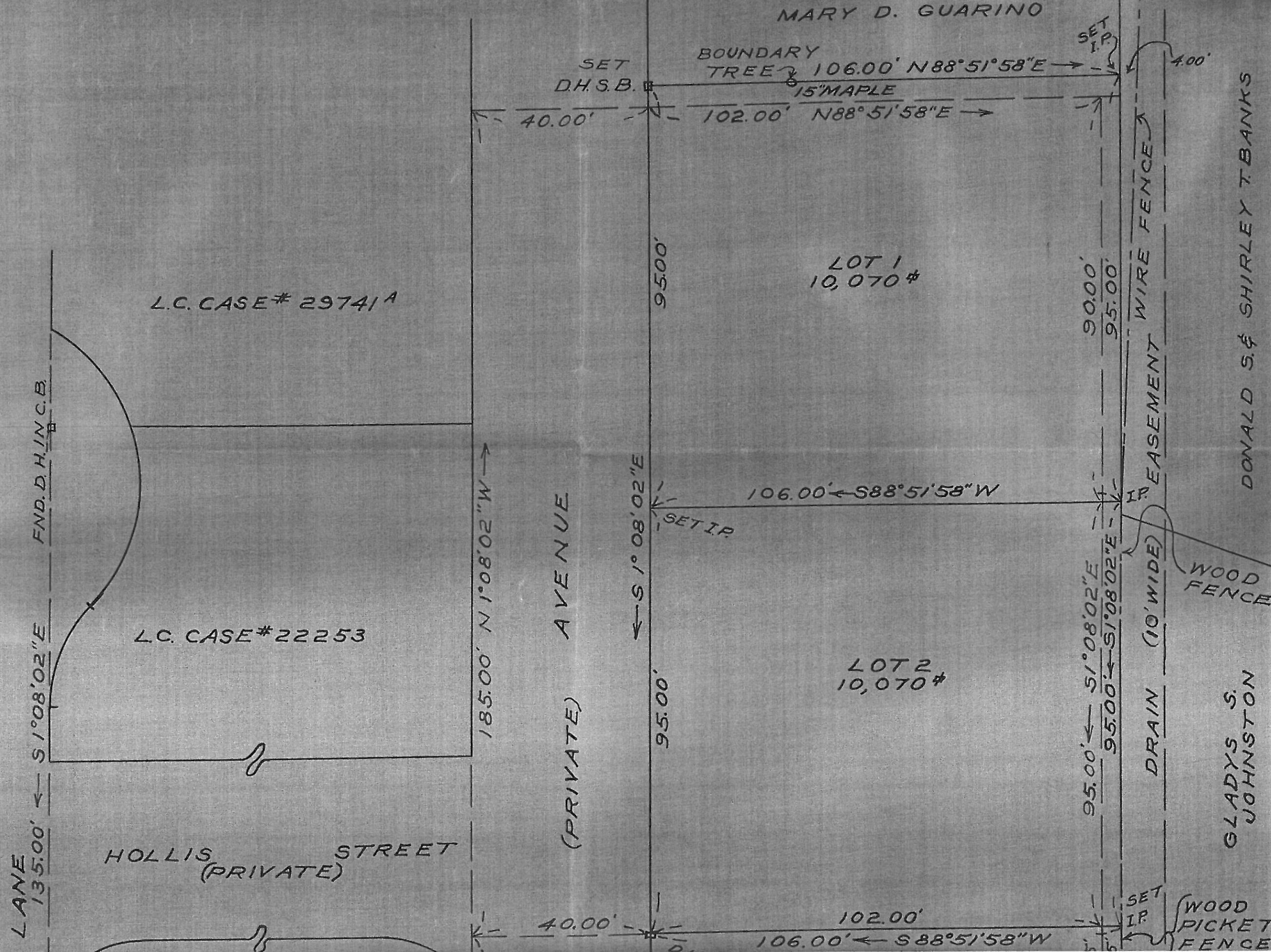
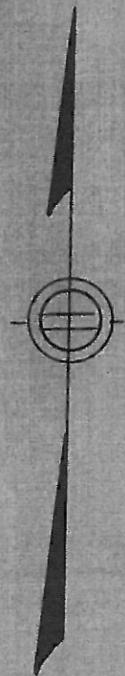
NOTE:
 THIS IS A RELOTTING OF LOTS
 SHOWN ON A PLAN BY G. SLEEPER, ENGR.,
 DATED MARCH 1896 AND FILED AT
 NORFOLK REG. OF DEEDS AS PLAN
 NO. 888 OF 1896 IN PLAN BOOK 19.

PLAN OF LAND
 IN
WELLESLEY • MASS.

OWNED BY: WILLIAM J. JOHNSTON
 18 MAPLE RD, WELLESLEY HILLS



SCALE: 1 IN. = 40 FT. DEC. 13, 1968
 EVERETT M. BROOKS CO. CIVIL ENGRS.
 NEWTONVILLE • WAYLAND • W. ACTON ~ MASS.



L.C. CASE # 29741 A

L.C. CASE # 22253

LOT 1
10,070 #

LOT 2
10,070 #

FND. D.H. IN C.B.

LANE
135.00' ← S1°08'02"E

HOLLIS STREET
(PRIVATE)

AVENUE
(PRIVATE)

MARY D. GUARINO

GLADYS S.
JOHNSTON

DONALD S. & SHIRLEY T. BANKS

SET
D.H.S.B.

BOUNDARY
TREE 106.00' N88°51'58"E

15" MAPLE

SET
I.P.

40.00'

102.00' N88°51'58"E

4.00'

95.00'

90.00'

95.00'

EASEMENT
WIRE FENCE

106.00' ← S88°51'58" W

SET I.P.

← S1°08'02"E

WOOD
FENCE

DRAIN (10' WIDE)

95.00' ← S1°08'02"E

95.00' ← S1°08'02"E

SET
I.P.

40.00'

102.00'

106.00' ← S88°51'58" W

WOOD
PICKET
FENCE

MINUTEMAN (PUBLIC)

FND. L.C. DISK IN C.B.

210.00' N88° 51' 58" E → (PLAN)
209.93' (MEAS.)

LAND COURT CASE
22253

FND. L.C. DISK IN C.B.

HARRIS

D.H.S.B.
(SET)

THOMAS H. & VERONICA DUNN

4.00'

N88° 51' 58" E →

15.15'

15.15'

1 P

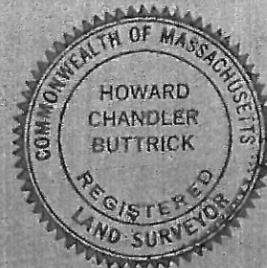
APPROVAL UNDER THE
SUBDIVISION CONTROL
LAW NOT REQUIRED.
WELLESLEY PLANNING BOARD

DATE:

LAND IN WELLESLEY

SCALE: 20 FEET TO AN INCH
JULY 19, 1969

HOWARD C. BUTTRICK, REGISTERED
LAND SURVEYOR - 520 FRANKLIN ST.
READING, MASS.



I CERTIFY THAT THIS ACTUAL
SURVEY WAS MADE ON THE GROUND
IN ACCORDANCE WITH THE LAND COURT