



## BOARD OF APPEAL

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STANLEY J. GLOD  
WILLIAM O. HEWETT  
FRANKLIN P. PARKER  
FRANCIS L. SWIFT  
HENRY H. THAYER

KATHARINE E. TOY  
Administrative Secretary  
Telephone  
235-1664

Petition of Charles E. Flint

Pursuant to due notice the Board of Appeal held a public hearing at 8:25 p.m. on Thursday, November 20, 1975, in the hearing room on the second floor of the Town Hall, concerning the appeal of Charles E. Flint from the refusal of the Inspector of Buildings to issue a permit for the construction of a dwelling at 250 Cedar Street. The reason given for such refusal was that the location of the dwelling would violate Section XIX of the Zoning By-law which requires that there shall be provided a side yard of not less than twenty feet in width on each side of every building placed upon any lot in a Single Residence District.

Charles E. Flint of 87 Oak Street, Ashland, Massachusetts, the petitioner, spoke on behalf of his appeal.

No persons appeared in opposition thereto.

STATEMENT OF FACTS

A plan filed with the appeal, which plan is dated September 19, 1975, and was drawn by Everett M. Brooks Co., indicates that the lot of land in question is located on the north-easterly side of Cedar Street astride the Needham-Wellesley town line. It has a frontage of 110 feet on Cedar Street. The lot's northwesterly sideline runs northeasterly from Cedar Street a distance of 600 feet to its intersection with the town line. The property line then runs southwesterly back towards Cedar Street on a line coincident with the town line a distance of 182.75 feet and then turns and runs southeasterly into Needham 60 feet on a line approximately parallel with and about 413 feet northeasterly of Cedar Street. Then the boundary (being the Needham sideline of the lot) runs southwesterly 413.5 feet to Cedar Street.

These lines describe a lot of 39,716 square feet of area of which 14,906 square feet are in Wellesley and 24,810 square feet are in Needham.

The plan shows the location of a proposed house astride the town line which would have a 77 foot setback from Cedar Street, a 20 foot Wellesley side yard, a 19 foot Needham side yard and a back yard depth to the Needham 60 foot rear lot line of about 275 feet.

There is also shown an existing house, which, according to the plan is to be removed.

In Needham the lot is in a single residence Zone "C". If the lot were located entirely within Needham, the location of the proposed house would conform to the Needham Zoning By-law.

In Wellesley the lot is in a single residence - Ten Thousand Foot District. If the lot were located entirely within Wellesley, the location of the proposed house would conform to the Wellesley Zoning By-law.

#### DECISION

The question presented is whether or not the Needham-Wellesley Town Line must be considered to be the limit of petitioner's "side yard" either as defined in the Wellesley Zoning By-law or as determined by the decisions of the Massachusetts Superior Judicial Court.

The Wellesley Zoning By-law (Section XIX) defines side yard as:

"An open space on the same lot with the building, between the building and the side line of the lot, extending the full width or depth of the building and unoccupied above the ground level except by uncovered steps and projecting eaves."

In the case of Tambone v. Board of Appeal of Stoneham 348 Mass. 359 (1965), the Stoneham Board had ruled that a minimum yard requirement must be measured from a zoning district boundary line rather than from a lot line. The Court found that such a ruling required a novel construction of the word "yard". The Court stated that absent a different definition in the Stoneham By-law, it would assume that the word "yard" carries "its ordinary meaning" in the context presented.

The Court cited "Black's Law Dictionary" (4th ed.) p. 1790, for the definition of "[a] piece of land inclosed for the use and accommodation of the inhabitants of a house" and "Webster's New International Dictionary (3d ed.) p. 2647, for the definition of "the grounds immediately surrounding a house."

This Board cites "The American Heritage Dictionary of the English Language," New York, 1969 for the statement that "yard" means (inter alia): "1. a tract of ground adjacent to, surrounding, or surrounded by a building or group of buildings."

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Our Supreme Judicial Court in the Tambone case has held that a zoning district boundary line does not define the limits of a yard. This Board feels that, if the facts were fairly presented, the Court would also hold that a town boundary line does not define the limits of a yard.

We find that the limits of a yard are determined by property boundary lines. It is ownership that governs. The fact that a town line runs through a parcel of land held in one ownership has no bearing on the ownership of the parcel.

Accordingly, this Board hereby overrules the Inspector of Buildings' refusal to grant the building permit sought by the petitioner in so far as the Inspector's refusal was based upon his holding that the Needham-Wellesley town line was a measuring line for the width of the petitioner's side yard on the Needham side, this decision of the Board being SUBJECT, however, to the following provisions:

1. that the Inspector's permit require the removal of the existing house on the property prior to the issuance of an occupancy permit for the new house,
2. that the Inspector be furnished with a copy of the permit issued by the Town of Needham, and
3. that no more than one house be built upon the lot.

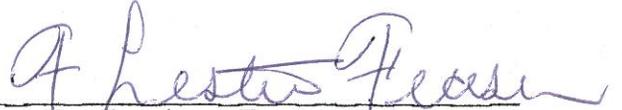
The Board notes with approval the ruling in the matter of the petition of Reddan decided by this Board in 1959 (File No. 59-58). In that case the Board held that a town line was not a party line for the purposes of Chapter IV, Section 1(b) of the then existing building code.

The Board further notes that prior cases involving a lot split by a town line were treated as variance cases. The present Board does not believe that these cases should involve variances, because in this Board's view no violations of zoning exist.

The Board cautions that its finding might be different in cases where the zoning district in which is situated that portion of the lot located in the other town is markedly different from the Wellesley zoning district.

The members of the Board sitting for this hearing were F. Lester Fraser, Stanley J. Glod, and Henry H. Thayer, all of

whom voted in accordance with this decision.

  
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F. Lester Fraser

Filed with Town Clerk

  
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Stanley J. Glod

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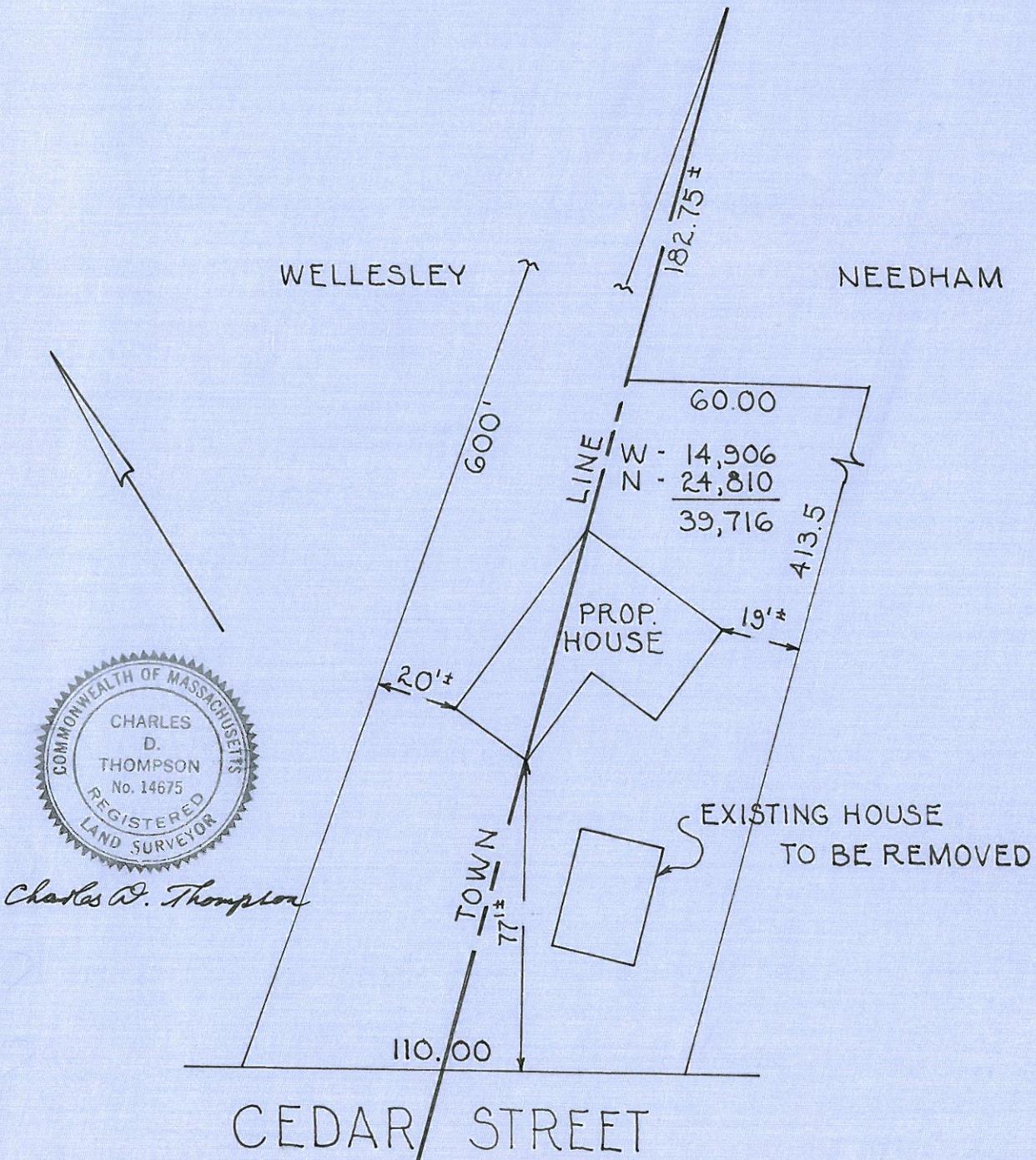
  
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Henry H. Thayer

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TOWN CLERK'S OFFICE  
AND

PLAN OF LAND  
 IN  
 NEEDHAM & WELLESLEY ~ MASS.  
 TO ACCOMPANY THE PETITION OF  
 CHARLES E. FLINT  
 87 OAK ST.  
 ASHLAND, MASS.

EVERETT M. BROOKS CO. ~ C.E.'S  
 NEWTONVILLE MASS.

SEPTEMBER 19, 1975  
 SCALE: 1 IN = 40 FT



*Charles D. Thompson*