



BOARD OF APPEAL

GARRETT S. HOAG
JOHN L. HAYDEN
DANA T. LOWELL

KATHARINE E. TOY, CLERK
TELEPHONE
CE. 5-1664

Appeal of Alba A. Jameson, Arlene T. Vecchi
and Judith P. Schlager

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 8:00 p.m. on July 31, 1963 on the refusal of the Inspector of Buildings to issue a permit to them for the construction of a Post Office Building on a lot of land owned by them on Grove Street, Wellesley. The reason for such refusal was that the proposed building would violate (a) Chapter IV, Section 1 (a) of the Building Code which requires that every building shall be placed at least thirty feet from the side line of the street, (b) Section XIX of the Zoning By-law which requires that there shall be provided for every building a front yard at least thirty feet in depth and at least forty feet in width, and (c) Chapter IV, Section 1 (c) of the Building Code which requires that openings in a wall within five feet of a party line shall be filled with metal or metal covered frames and doors or windows wherein the glass shall be wire glass.

At the hearing the appellants were represented by Henry D. White.

Paul Kelleher, Chief of the Real Estate Office of the Post Office Department, explained that the proposed site for the Post Office had been chosen after a careful study had been made of the Town's needs and the possible sites. In his opinion the proposed location will provide the required area for the building as well as a location convenient to the public and will also lessen the traffic congestion now in the center of Wellesley.

Harold A. Mock, member of the Planning Board, opposed the granting of the request.

The Planning Board opposed the granting of the variance in its report.

On June 14, 1963, the Inspector of Buildings notified the appellants in writing that a permit for the proposed Post Office Building could not be granted for the above-mentioned reasons and on June 24, 1963, the appellants took an appeal from such refusal. Thereafter due notice of the hearing was given by mailing and publication.

Statement of Facts

The parcel involved containing 21,845 square feet included the site of the former Boston & Albany Railroad Wellesley station and its northern boundary abuts the railroad tracks for a distance of 385.03 feet. It is approximately 77 feet deep for a distance of 110.05 feet at its deepest part and narrows at both ends. It is bounded on the north by the Boston & Albany Railroad right-of-way, on the south, on its westerly end, by land of the Town of Wellesley, in the middle by the end of Grove Street and on its easterly end by land of the Town of Wellesley. It is proposed to build a building 64' x 78' and a loading platform 15' x 38' on the deepest portion of the parcel

approximately equal distance from its two ends and set back ten feet from the end of Grove Street and less than five feet from the Railroad right-of-way. The parcel was assembled by the appellants by three acquisitions: 13,957 square feet of formerly Railroad land on March 30, 1961, 2,508 square feet formerly a part of Grove Street on December 29, 1961, and 5,380 square feet formerly Railroad land in 1963. Until 1959 the entire parcel was unzoned. At the Town Meeting held March 31, 1959, most of it was made a Business "A" District and the rear of the parcel was similarly zoned by the Town Meeting held on April 2, 1962.

The appellants have entered into an agreement with the Post Office Department of the United States Government to build the proposed building to that Department's specifications and to lease it to the Government upon completion for use as a United States post office.

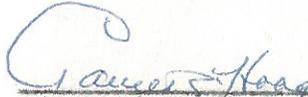
Decision

At the hearing the appellants waived their appeal in so far as it pertained to their theretofore proposed violations of paragraph (c) of Section 1 of Chapter IV of the Building Code. They now propose to comply with that section. Thus their appeal is in effect under Chapter 1, Section 10 of the Code reduced to a request for a variance from the set back provisions of paragraph 1 (a) of Chapter IV, and a variance under G. L. Chapter 40A, Section 15 (3) from the thirty-foot set back provisions of Section XIX of the Zoning By-law. Both such variances are conditions precedent to the granting of a building permit. We shall consider first the requested variance from the Zoning By-law. Our power to grant such a variance is conferred by Section 15 (3) of G. L. Chap. 40A and is very severely restricted. We may vary a Zoning By-law only if we find among other things that a literal enforcement of the by-law would involve a substantial hardship to the appellant and that such hardship would be owing to conditions especially affecting the parcel or building in question which do not affect generally the zoning district in which the parcel or building is located. There can be no doubt that there are conditions here which affect both the parcel and the building which do not affect the zoning district generally. The parcel is unique in that it is surrounded by a railroad right-of-way, Town of Wellesley land and the dead end of a public way, circumstances which lead us to believe that if the desired relief were granted it would not be a substantial detriment to the public good nor would it nullify or substantially derogate from the intent or purpose of the by-law. We believe this to be so because the unique location and surroundings of the parcel involved assure the preservation of health, safety, convenience and welfare of the public which the set back provision is intended to promote. Moreover, the building is unique. It is to be a Post Office. But the key provisions of the statute as applied to this case seem to us to be the provision that the unique conditions affecting the parcel or building must be the cause of the hardship, and the provision that the hardship must be to the appellants. We cannot find any hardship to the appellants within the meaning of the statute. They acquired the land very recently presumably with full knowledge of the set back provision of Section XIX as well as the dimensions of the parcel they were acquiring. To say that the fact that it is too shallow to accommodate a Post Office or indeed any practical commercial building placed as required by the by-law is a hardship to the appellants within the meaning of Section 15 (3) is, we think, reasoning in a circle. It is no more so than is the limitation of the size of this parcel a hardship to every owner who wishes to develop his land and finds that the zoning law restricts the size of the building he may erect. If a prospective owner is not satisfied with the

use the law will permit him to make of his proposed purchase, he had better either not purchase or be sure the price he pays is justified by the use he may legally make of the land. The hardship in this case falls not on the appellants but on the public.

Since we have not the power to grant the requested variance from the provisions of Section XIX of the Zoning By-law, it would be futile to consider a variance from Chapter IV, Section 1 (a) of the Building Code or the effect of Section 3 of Chapter I of said Code.

Accordingly, the appeal is denied.



Garrett S. Hoag



F. Lester Fraser



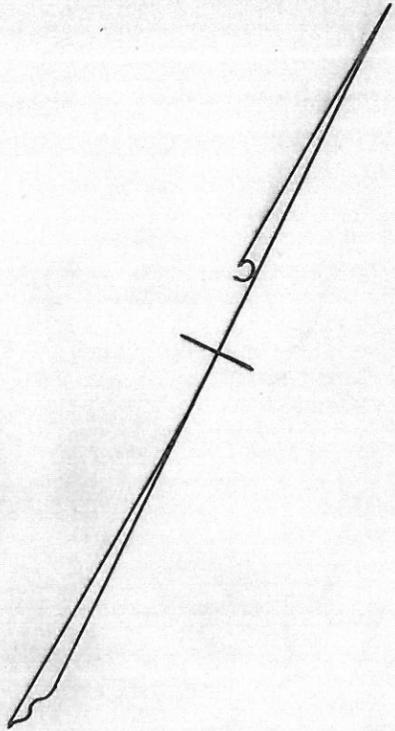
Dana T. Lowell

Filed with Town Clerk _____

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JEFFERSON
TOWN CLERK'S OFFICE
RECEIVED

PLAN OF LAND
IN
WELLESLEY, MASS.
OWNED BY
JUDITH RUTH SCHLAGER ET AL
SCALE 30 FEET TO AN INCH
APRIL 17, 1963.
GLEASON ENGINEERING COMPANY



BOSTON & ALBANY RAILROAD

