

TOWN OF WELLESLEY



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66-42

BOARD OF APPEAL

1966 DEC 28 PM 4:54

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Appeal of Grant H. MacGillivray and Marie G. MacGillivray

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 8:10 p.m. on September 29, 1966, on the appeal of Grant H. MacGillivray and Marie G. MacGillivray from the refusal of the Inspector of Buildings to issue a plumbing permit for the alterations to be performed at the house located at #24 Hampden Street and #1 Middlesex Street. The reason for such refusal was that the Inspector of Buildings contends that said building is not a legal two-family dwelling under Section II-8 (a) of the Zoning By-law.

On September 9, 1966, the appellants filed their appeal with this Board and thereafter due notice of the hearing was given by mailing and publication.

Henry D. White, Attorney, represented the appellants at the hearing.

Herbert S. Augtin, 21 Leighton Road, spoke in favor of the appeal.

The following persons spoke in opposition to the request: Richard Flaherty, 7 Middlesex Street, Thomas Frothingham, 45 Brook Street, Robert Reid, 31 Brook Street, V. W. Ringer, 10 Solon Street and Raymond C. Wheeler, 14 Hampden Street. All felt they would like to have the character of the neighborhood single-family as it is zoned. In their opinion, the house is not too large to be used as a single-family dwelling and although it has been used for some years by Dana Hall Schools for educational purposes, they feel it should be converted to a single-family use.

Statement of Facts

The house involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet. It was built over fifty years ago and has been used for many years as a two-family dwelling. It was stated at the hearing that the owners purchased the property in 1927, and at that time it was occupied by two families, that it continued to be used exclusively as a two-family house until approximately eight years ago when Dana Hall School leased the property and obtained a permit from this Board to use it for educational purposes. Appellants contend, and the Board received evidence, that the house continued during the period of Dana Hall's occupancy to be used as a two-family house, being sometimes occupied on the first floor by a family unit and on the second and third floors by Dana Hall maids. The lease to Dana Hall and the permit to use for educational purposes have expired and appellants contend that they are entitled to the plumbing permit in connection with a legal continuation of the two-family use. Appellants contend that the house has never been occupied as a single-family house since it was built.

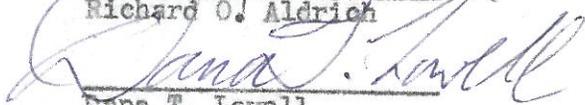
The house was apparently built as a two-family house. It has separate kitchen facilities for two separate apartments, one of four rooms and a bath on the first floor and another of four rooms and two baths on the second floor and two rooms and a bath on the third floor. There is a detached two-car garage with the house. The house is located in an area where there

are a number of two-family houses as well as single-family residences.

Decision

It has been urged upon the Board that the two-family use was in effect discontinued within the meaning of Section XVII-C of the Zoning By-law, that the occupancy by Dana Hall under an educational permit worked such discontinuance. Although the Board has received persuasive evidence that no such discontinuance occurred, the facts are not entirely clear on this point. A determination of this issue is not necessary, however, since the Board is of the opinion that the alternative relief requested by Appellants may appropriately be granted under Section II 8 (a) of the Zoning By law. The building clearly was in existence when the by-law took effect and the Board is of the opinion and finds that it can no longer be used or adapted at a reasonable expense and with a fair financial return for a use regularly permitted in the district in which it is located. The building could be converted to a single residence only at a very considerable expense. Because of the size of the house and the incidence of multi-family occupancy in the neighborhood the Board feels that such expense would be unreasonable and would not yield a fair financial return. The Board, therefore, grants permission to Appellants to use the building for residence for not more than two families.


Richard O. Aldrich


Dana T. Lowell


F. Lester Fraser

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