



## BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
 TELEPHONE  
 235-1664

Appeal of John S. W. and Elizabeth C. Otto

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 8:05 p.m. on October 1, 1970, on the appeal of John S. W. and Elizabeth C. Otto, being aggrieved by an order of the Inspector of Buildings to cease using the premises owned by them at 20-22 Ledyard Street in violation of Section II of the Zoning By-law which limits the use of property within a Single-residence District. Said appeal was made under the provisions of Section XXIV-B of the Zoning By-law.

If the Board finds that the present use of the premises is in violation of the Zoning By-law, the appellants further appealed under the provisions of Section II 8 (a) and Section XXIV-E of the Zoning By-law, for permission which would allow the premises to continue to be occupied by unrelated persons.

On August 19, 1970, the Inspector of Buildings notified the appellants in writing that the use of the above-mentioned premises by several unrelated persons did not constitute single family occupancy within the meaning and intent of the Zoning By-law and further ordered that the unlawful use of such premises cease immediately.

On August 24, 1970, the appellants appealed such order and, thereafter due notice of the hearing was given by mailing and publication.

The appellants were represented at the hearing by Owen P. Maher, Attorney.

Agnes Ahern, 21 Pine Ridge Road, and Richard Landers, 20 Ledyard Street spoke in favor of the request.

The following persons spoke in opposition: John Rogers, 13 Pine Ridge Road, Mary Nugent, 31 Ledyard Street, Harry Nugent, 31 Ledyard Street, Mary Capobianco, 18 Columbia Street, Mr. and Mrs. Davis, 15 Ledyard Street and Doris Oldfield, 16 Ledyard Street. All felt that the present use of the property is detrimental to surrounding properties, citing an inordinate amount of activity, cars coming and going at all hours and generally, a pattern of activity and social habits disruptive to an otherwise quiet single-family neighborhood.

Mr. Rogers also observed that in his opinion, multiple occupancy use of dwellings in single-family residence districts appeared to be spreading like "wildfire" and opined that this was a very unfortunate trend.

A letter opposing the request was received from Monsignor Louis I. Cunney, P. P.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet. There is a paved driveway on one side of the house but no garage. It is a twin-center entrance colonial duplex house; #20 containing ten rooms, is occupied by a two-member family composed of Prudence B. Landers and Richard K. Landers, and two elderly people unrelated to the Landers, Joseph C. Kelley and a Mr. Dolan. #22 containing eight rooms, is occupied by Robert LaPlume and Roger Kelsy, who are unrelated and both of whom are employed by Honeywell and another young man staying with them while he attends a Honeywell company school.

Decision

The members of the Board have viewed the premises and have studied the neighborhood carefully. The neighborhood is a fairly typical single family residence district containing for the most part older type houses, but attractive and well-kept.

The property in question is a non-conforming two-family duplex house and permissible occupancy is governed by Section II of the Zoning By-law applicable to Single Residence Districts and Section XVII covering Non-conforming Buildings, Structures and Uses.

Under Section XVII-A, "two-family" occupancy of this duplex is permissible as a continuing non-conforming use in this Single Residence District since no evidence was introduced showing a terminating cessation of said use. However, said non-conforming use could not and cannot under paragraph B be changed, moved, or extended, .....unless.....2. It can be shown to the satisfaction of the Board of Appeal that a literal enforcement of the provisions of this paragraph B, would involve substantial hardship, financial or otherwise to the applicant, and where desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning By-law,...." No such showing has been made to the Board in this case and no relief may appropriately be given to legitimize or authorize any extension of the non-conforming use to a more intensive lodging house type of use.

Section II of the Zoning By-law, both before and after the August 24, 1970 amendment, therefore prohibits use of this two-family duplex for habitation by more than two families. A "family" is variously defined for different purposes by the lexicographers and the courts. We have accepted as a basic definition most in keeping with the intent which we ascribe to those who drafted and adopted the Zoning By-law that definition which is numbered "5" in Webster's New International Unabridged Dictionary (Second Edition, 1961) which reads: "A group comprising immediate kindred, especially the group formed of parents and children constituting the fundamental social unit in civilized societies." Black's Law Dictionary (Fourth Edition, 1951) states at page 728: "In most common use, the word (family) implies father, mother, and children, immediate blood relatives." We believe, however, that common usage and understanding support expansion of the foregoing definitions to include for purposes of the Zoning By-law those bona fide servants, if any, engaged on the premises in the domestic service of the basic family unit.

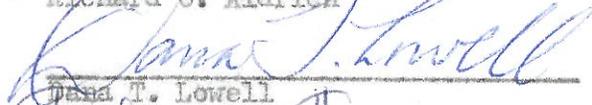
This case does not require any further refinement or definition in respect of other possible special situations incidental to the primary

two family occupancy which might perhaps under some circumstances come within the scope of permitted use under the Zoning By-law. In the instant case the predominant, if not sole reason for the multiple occupancy is the desire for economic gain.

That the excessive activity, noise, and disturbance complained of by neighbors could under some circumstances eventuate even with legitimate two family occupancy is not relevant. The Board realizes that the increasing incidence of unlawful multiple occupancy use in single residence districts can only exacerbate those evils which the Zoning By-law is intended to control. The Board is unanimously of the view that the use presently being made of the premises at No. 20 and 22 Ledyard Street is unlawful.

Accordingly, the appeal is dismissed.

Since no relief under Section II 8 (a), XXIV-E or XVII is warranted by the facts adduced, appellants' alternative request is unanimously denied.

  
Richard O. Aldrich  
  
Dana T. Lowell  
  
F. Lester Fraser

Filed with Town Clerk \_\_\_\_\_

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TOWN OF WELLESLEY



MASSACHUSETTS

HARRY E. WARREN, TOWN COUNSEL

December 30, 1970

OFFICE:  
28 STATE STREET  
BOSTON, MASS. 02109  
523-1425

John P. Concannon, Clerk,  
Norfolk Superior Court  
Court House,  
Dedham, Massachusetts.

Re: John S. W. Otto and Elizabeth C. Otto vs. Richard O. Aldrich,  
et als, as they are members of the Board of Appeal of the Town of  
Wellesley - Norfolk Superior Court in Equity No. 101,987

Dear Mr. Concannon:

Would you be kind enough to enter my appearance in the above-entitled matter on behalf of the Town of Wellesley, Richard O. Aldrich, Dana T. Lowell and F. Lester Fraser, as they are the members of the Board of Appeal of said Town.

Very truly yours,

cc: Owen P. Maher, Esquire  
Board of Selectmen  
Board of Appeal  
Town Clerk

December 29, 1970

Miss Katharine E. Toy, Clerk  
Board of Appeal

Dear Miss Toy:

I am enclosing herewith copy of Bill of Complaint filed with me today by Owen P. Maher, Attorney for John S.W. Otto and Elizabeth C. Otto of 25 Ashville Road, Newton. This Bill of Complaint was filed in Norfolk County Superior Court by Mr. Maher today.

Very truly yours,

*Henry C. Clark*  
Town Clerk

H  
enc.

PARKS & HESSION  
COUNSELLORS AT LAW  
28 STATE STREET  
BOSTON, MASSACHUSETTS 02109

TELEPHONE  
617/523-5500

December 29, 1970

Mrs. Mary C. Clark  
Town Clerk  
Town of Wellesley  
Town Hall  
Wellesley, MA 02181

Re: Otto, et al vs.  
Aldrich, et al, Board of Appeal of  
Town of Wellesley

Dear Mrs. Clark:

I deliver to you herewith a copy of the Bill of Complaint of my clients, Mr. and Mrs. John S. W. Otto of 25 Ashville Road, Newton, whereby they appeal from a decision of the Board of Appeals of the Town of Wellesley affecting their use of the property at 20-22 Ledyard Street, Wellesley. The original of this Bill of Complaint was filed with the Clerk of Courts, Norfolk County Superior Court, on this date.

Kindly acknowledge receipt of this copy of the Bill of Complaint by return mail.



Owen P. Maher  
Attorney for John S. W. Otto and  
Elizabeth C. Otto

OPM:dm  
enclosure

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

Superior Court  
In Equity No.

John S. W. Otto and Elizabeth C. Otto,  
Complainants

vs.

Richard O. Aldrich, Dana T. Lowell and  
F. Lester Fraser, as they are the members  
of the Board of Appeal of the Town of  
Wellesley,

Respondents

BILL OF COMPLAINT

Now come your complainants, acting pursuant to General Laws

(Ter. Ed.) Chapter 40A Section 21 as amended and respectfully represent:

1. That the complainants reside at 25 Ashville Road, Newton, Massachusetts, and are the owners of the property at 20 - 22 Ledyard Street, Wellesley, Massachusetts, which Wellesley property is located in a Single Family Residence District established by the Zoning By-Law of the Town of Wellesley.

2. That the respondents are residents of the Town of Wellesley and constitute the entire membership of the Board of Appeal of that Town.

3. That on August 19, 1970, the Building Inspector of the Town of Wellesley, acting pursuant to Section XXIII of the Zoning By-Law of the Town of Wellesley, notified the complainants in writing that the property of the complainants at 20 - 22 Ledyard Street, Wellesley, was being used in violation of Section II of the Zoning By-Law of the Town of Wellesley, a copy of which Section is attached hereto and made part hereof and marked, "Exhibit A" and which section enumerates the permitted uses in a Single Residence District. Said written notice ordered that the violation cease immediately.

4. That the complainants seasonably appealed the said order to the Board of Appeal on August 24, 1970, and obtained a public hearing before the Board of Appeals on October 1, 1970.

5. That on December 10, 1970, the Board of Appeal filed its decision on said appeal with the Wellesley Town Clerk, a true copy of which decision is attached hereto and made part hereof and marked, "Exhibit B" which decision upheld the Building Inspector and dismissed the appeal of the complainants herein.

6. That the decision of the Board of Appeal exceeds its authority and is contrary to the facts and the law and is, therefore, invalid for the following reasons:

(A) The property of the complainants is a double-entrance structure constructed for occupancy by more than single family and was in existence and used as such prior to and at the time of adoption of the Zoning By-Law of the Town of Wellesley and as such constitutes a nonconforming use within the meaning of Section XVII of Zoning By-Law and is not restricted to use by two families as the decision of the Board of Appeal defines that term.

(B) If it be found that use by two families is required by the Zoning By-Law, the By-Law does not define the limits of this use and is, therefore, unenforceable.

(C) If it be found that the present use of the complainants' property constitutes a violation of the Zoning By-Law, a literal enforcement of the provisions of said By-Law will in this case involve substantial financial hardship to complainants when continuation of the present use would not involve substantial detriment to the public good.

WHEREFORE YOUR COMPLAINANTS PRAY

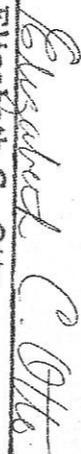
1. That this Honorable Court enter a decree annulling the decision of

the Board of Appeal.

2. That the Building Inspector's order to complainants of August 19, 1970 be set aside.
3. That a decree be entered authorizing the continued present use of the property at 20 - 22 Ledyard Street, Wellesley, by complainants.
4. For such other relief as this Honorable Court deems meet and just in the premises.

Signed under the pains and penalty of perjury the twenty-ninth day of December, 1970.

  
\_\_\_\_\_  
John S. W. Otto

  
\_\_\_\_\_  
Elizabeth C. Otto

"EXHIBIT A"

SECTION II. SINGLE RESIDENCE DISTRICTS.

In Single Residence Districts, no new building or structure shall be constructed or used in whole or in part, and no building or structure or part thereof shall be altered, enlarged, reconstructed or used, and no land shall be used, for any purpose except one or more of the following specified uses:

1. One-family dwelling;

2. Church;

3. Public school, municipally owned or operated public parking lot or other public use;

4. Club, except a club the chief activity of which is a service customarily carried on as a business;

5(a) Farm, but not a farm devoted principally to the raising of poultry, horses, domestic animals or other livestock for sale,

(b) Market garden,

(c) Nursery,

(d) Greenhouse,

including the use of premises for the sale of natural products raised thereon, but not including the use of premises for the sale of loam;

The office of a professional man in his own residence;

Such accessory uses as are customary in connection with the uses enumerated in clauses 1, 2, 3, 4, 5, or 6, and are incidental thereto, including a private garage and a private stable;

Any of the following additional uses, if permission is, in each case, obtained from the Board of Appeal, as hereinafter provided in Section XXIV:

(a) Residence for not more than two families, or boarding or lodging house, but not a restaurant; provided, however, that the building so used was in existence when this by-law took effect, and provided further that the Board of Appeal make a written finding that the original building 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.

(b) Private school, college, academy, institute, or other use, of an educational character.

(c) Public or semi-public institution of a philanthropic, charitable, or religious character.

(d) Hospital, sanitarium, or other medical institution (not including veterinary hospitals or other medical institutions for the care of animals); provided, however, that any corporation which at the time of the adoption of this by-law is conducting upon land in the town owned or leased by it, a hospital for the sick or convalescent or a sanitarium for the care of the mentally sick, or the successors or assigns of such corporation conducting a substantially similar institution, or the owner of such leased land may, without such permission, make such alterations in or additions to buildings now existing as may from time to time prove necessary or expedient for carrying on such business.

(e) Telephone exchange provided there is no service yard or garage.

(f) Removal of sand, gravel, rock, clay, loam or sod therefrom, except that no such permission shall be required for the removal of such materials incidental to excavation necessary for the construction of a building in accordance with a permit which has been issued by the Building Inspector or for the construction of a private way in accordance with a subdivision plan which has been approved by the Planning Board and recorded with Norfolk Deeds or filed in the Land Court if the land is registered.

(g) Such accessory uses as are customary in connection with any of the uses enumerated in subclauses (a), (b), (c), (d), (e) and (f) and are incidental thereto.

9. Any of the following additional uses, if permission is, in each

case, obtained by a two-thirds vote at a town meeting duly called for the purpose.

(a) Airport or aviation field established and conducted in accordance with regulations from time to time prescribed by the Selectmen.

(b) Such accessory uses as are customary in connection with the use in subclause (a) and are incidental thereto.

9.A. Any of the following additional uses, if the location of the lands intended for such use has been approved in writing by the Board of Health and if permission in each case is obtained by a majority vote at a Town Meeting:

- a. Cemetery (burial use), provided, however, that where a cemetery is hereafter approved and permitted under this section and is contiguous to land used or zoned for residential use, the use of the land for a distance of not less than twenty (20) feet into such cemetery land from the border line with such contiguous residential property shall be subject to the following conditions:
- (1) Structures or buildings or portions thereof shall not be erected within said twenty (20) foot area;
  - (2) Burials shall not be made therein;
  - (3) Natural growth of trees and shrubs shall be maintained within said twenty (20) feet.

10. Use by the Town of a building, structure or land for its municipal light plant or its water works plant if, upon application by the Board of Public Works, the Board of Appeal shall, after public notice and hearing, decide that the present or proposed situation of the building, structure or land in question is reasonably necessary for the convenience or welfare of the public and shall issue a special permit for an exception from the operation of this by-law.

JOHN M. MULLEN  
COUNSELLOR AT LAW  
100 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110  
TELEPHONE 617 - 357-9680

December 12, 1974

Leo J. Hession, Esquire  
47 Church Street  
Wellesley, Massachusetts 02181

Re: Otto v. Aldrich, et al - Norfolk 101987

Dear Leo:

Peter Wittenborg, Esquire of Parks & Hession appeared at the call of the equity list on December 11, 1974.

The appeal was dismissed without costs.

Very truly yours,

*John M. Mullen*  
John M. Mullen

JMM/lrp

cc: Harry E. Warren, Esquire  
Miss Katherine Toy