



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Appeal of Howard R. Whitman

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 8:15 p.m. on October 1, 1970, on the appeal of Howard R. Whitman, being aggrieved by an order of the Inspector of Buildings to cease using the premises at 15 Beechwood Road 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 appellant further appeals under the provisions of Section II 8 (a) and Section XXIV-E of the Zoning By-law for permission which will allow the premises to continue to be occupied by unrelated persons.

On August 19, 1970, the Inspector of Buildings notified the appellant 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 said premises cease immediately. On August 28, 1970, the appellant appealed to the Building Inspector by letter and on September 4, 1970, an appeal was taken by the appellant from such order of the Inspector. Thereafter due notice of the hearing was given by mailing and publication.

The appellant spoke in support of the appeal at the hearing.

Ralph M. Sawyer, Jr., 19 Beechwood Terrace submitted a petition, signed by 21 nearby neighbors, opposing the appeal. It stated that the premises are currently occupied by a number of unrelated persons and they felt that the situation is a departure from the intent and purpose of the Single-residence Zoning By-law, and that the continued use of the premises in this way will substantially reduce the value of property within the neighborhood.

Also speaking in opposition to the appeal were the following: Walter Caunt, 27 Beechwood Terrace, who pointed out that there is a swimming pool on the premises and that there have been very noisy parties and an excessive number of cars are parked on the street and around the house. He also stated that the property has not been well maintained and, in his opinion, the values of surrounding properties will be adversely affected to a serious degree.

Also opposing the appeal were George C. Sline, 395 Weston Road, Ferdinand Becker, 15 Garrison Road and Knute Hansen, 111 Pilgrim Road who stated vigorous opposition to continued multiple occupancy use of the property.

Statement of Facts

The property involved is located within a Single-residence District

requiring a minimum lot area of 10,000 square feet. The house is a single-family dwelling, built approximately forty years ago, and contains eight rooms, two full baths and two half baths.

At the hearing the appellant stated that he acquired the property involved in January 1968; he does not live there, but resides elsewhere in the Town. He leased the property in June 1970, to four college graduates for an eleven month period for a rental of \$460.00 per month. The lease also placed the responsibility for maintaining the property on the tenants. He stated that prior to leasing the property he interviewed the men and that excellent recommendations were received. In his opinion, they are good tenants; he said that he has had no complaints from the neighbors and that while they each have a car, there is ample off-street parking space on the premises for four cars. He urged the Board to allow the men to remain in the dwelling until the expiration of their lease in June 1970.

#### Decision

Section II of the Zoning By-law provides that, "In Single-residence Districts, no new building or structure shall be constructed or used in whole or in part....for any purpose except one or more of the following specified uses: 1. One-family dwelling..."unless permission is granted by this Board for one of several other uses specified in clause 8 of said Section II. Section IA. defines a "one-family dwelling" as "A detached dwelling containing not more than one dwelling unit," and a Dwelling Unit as, "A room, group of rooms, or dwelling forming a habitable unit for one family with facilities for living, sleeping, cooking and eating, and which is directly accessible from the outside or through a common hall without passing through any other dwelling unit."

Prior to the most recent amendment of the Zoning By-law, which became effective August 24, 1970, Clause 1 of Section II read, "Single family detached house;" and the other terms which are defined since the amendment were not then defined. The Board is of the opinion that the pertinent provisions prior to the amendment should be given the same construction as that given above. Therefore, the fact that the appellant alleges that he entered into leases with the present occupants on June 1, 1970, is not in the Board's view of any relevance, legally or equitably, to the issue before us.

The By-law therefore prohibits use of a dwelling in a Single-residence District for habitation by more than one family. A "family" is variously defined for different purposes by the lexicographers and courts. We prefer and accept as a basic definition most in keeping with the intent which we ascribe to those who drafted and adopted the Zoning By-law as amended 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 bonafide 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 single family occupancy of a single family residence which should perhaps under some circumstances come within the scope of permitted use under the Zoning By-law. We feel that there can be no doubt in the instant case that the sole reason for the multiple occupancy is commercial and the non-resident landlord's desire for economic gain.

The relative attractiveness of the tenants, their excellent references and their apparent good intentions are not proper mitigating considerations for this Board. We are aware that occupancy by a number of young single adults all having one or more cars and friends can more often than not involve a great deal of activity, noise and disturbance to nearby neighbors. That these factors are real and not merely theoretical in the instant case was vigorously attested by the large number of neighbors who protested this commercial use of a single-family house in a single-residence district.

That the excessive activity, noise, and disturbance complained of by neighbors could under some circumstances eventuate even with legitimate single-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 continued non-conforming use of the property is unlawful and will substantially reduce the value of surrounding properties in the district and otherwise injure the neighborhood.

Accordingly, the appeal is dismissed.

The appellant has requested alternative relief under Section II 8 (a) and Section XXIV-E of the Zoning By-law. The Board is unanimously of the opinion that the facts in this case do not furnish a proper basis for relief under either provision.

Accordingly, the requested permission is denied.

*Received  
Town Clerk's Office  
March 11 - 1971*

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

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

JAN 22 2 00 PM '71  
COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

RECEIVED

SUPERIOR COURT  
IN EQUITY  
NO: 102220

HOWARD R. WHITMAN

VS

RICHARD O. ALDRICH

DANA T. LOWELL

F. LESTER FRASER

As they are members of the Zoning Board of Appeals of the Town of Wellesley, County of Norfolk, Commonwealth of Massachusetts.

---

BILL IN EQUITY BY WAY OF APPEAL FROM A DECISION OF THE  
ZONING BOARD OF APPEALS OF WELLESLEY

---

The Petitioner respectfully represents as follows:

1. That the Petitioner is a resident of Wellesley, living at 44 Elm Street;
2. That the Respondents, Richard O. Aldrich, 26 Lathrop Road, Wellesley; Dana T. Lowell, 101 Brooks Road, Wellesley; and F. Lester Fraser, 5 Richland Road, Wellesley; are members of the Zoning Board of Appeals of said town;
3. That the Petitioner is the owner of a certain piece of property located at 15 Beechwood Road, Wellesley;
4. That the Petitioner being aggrieved by an order of the Inspector of Buildings to cease using the premises at 15 Beechwood Road in violation of Section II of the Zoning By-Law which limits the use of property within a single-residence district appealed the order of the

Inspector of Buildings to the Respondents and 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 un-related persons and that the Petitioner be allowed to rent said property to such persons.

5. That by the decision entered 4 January 1971 and filed with the Town Clerk of said Town of Wellesley, on 11:30 A.M., 4 January 1971, the Respondents voted to dismiss the Petitioner's appeal from the decision of the Inspector of Buildings and further voted to deny the Petitioner's appeal under the provisions of Section II 8(a) and Section XXIV-E of the Zoning By-Laws;
6. That attached hereto and marked "A" is a true copy of said decision, bearing the date of the filing thereof and certified by Mary C. Clark, Town Clerk of said town;
7. That the Petitioner is aggrieved by the decision of and denial of his appeal by the Respondents and says that it exceeds their authority and, as ground therefore, says that said decision and denial is arbitrary and capricious, and completely disregards all facts and evidence presented at the hearing in support of the Petitioner's request and further that said decision and denial is erroneous as a matter of law;
8. That this Bill in Equity is brought under the provisions of General Laws, Chapter 40A, Section 21, but without intending to waive the Petitioner's right to a determination that he is entitled as a right to use the premises for the proposed purpose.

WHEREFORE, your Petitioner prays:

1. That said decision be annulled;
2. For such other and further relief as justice and equity may require.

DATED: JAN. 22, 1971

BY: Howard R. Whitman  
Howard R. Whitman

TOWN OF WELLESLEY



MASSACHUSETTS

HARRY E. WARREN, TOWN COUNSEL

July 6, 1971

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

Board of Selectmen  
Town Hall  
Wellesley, Mass. 02181

Re: Howard R. Whitman vs. Richard O. Aldrich et al - Norfolk Superior Court, Eq. No. 102220

Gentlemen:

The above action was duly dismissed by agreement on June 25,  
1971.

Very truly yours,

HEW/g

COPIED