



TOWN OF WELLESLEY

MASSACHUSETTS

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Appeal of Bruce G. Bean
(Ilse Lichtenstadter)

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 8:35 p.m. on November 19, 1970, on the appeal of Bruce G. Bean, being aggrieved by an order of the Inspector of Buildings to cease using the premises at 392 Wellesley Avenue, owned by Ilse Lichtenstadter, 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.

On October 2, 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 October 10, 1970, the appellant appealed from such order. Thereafter due notice of the hearing was given by mailing and publication.

Samuel B. Spencer, attorney, represented the appellant at the hearing.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 15,000 square feet. The house is a single-family dwelling, built in 1949, and contains a kitchen, dining room, living room, two bedrooms, breezeway and two-car garage on the first floor and two bedrooms on the second floor.

The house in question is a fairly conventional single-family type "Cape" with attached two-car garage situated on a 12,481 square foot lot and located approximately thirty feet from the street. It is owned by Mrs. Lichtenstadter who does not reside in the Town of Wellesley and is leased to four single men at a rental of \$400. per month. The four tenants own a total of five automobiles. Although counsel for the appellant contends that there is ample room in the garage and driveway for all these automobiles, the Board has some reservations about the realism of this contention and notes that automobiles have been observed from time to time parked in an unpaved off-street space across the street from the house on land owned by the Town of Wellesley.

At the hearing the attorney for the appellant stated that, in his opinion, Section II of the Zoning By-law is intended to refer to the physical properties and dimensions of the premises and does not state that a building has to be used by a single family. He disagreed with the Building Inspector's letter of October 2, 1970, in which he stated in part, "The use of the above-mentioned premises by several unrelated persons does not constitute a single family within the meaning and intent of the Zoning By-law."

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WELLESLEY, MASSACHUSETTS

He contended that the By-law in no area attempted to regulate how many people might live in any structure in any zoning district and in the absence of numerical restrictions, it seemed clear to him that the intent of the By-law is solely concerned with the physical considerations of buildings in the Town. Thus, in his opinion, a single family detached house is a physical entity only and not a function of how many families reside in it, as the by-laws do not state that a building has to be used by a single family as long as the building physically constitutes a single family detached house.

The attorney further pointed out that there are presently four unrelated persons occupying the premises involved, a number too few to have the house be designated as a boarding house. This again, he stated, leaves the notion that the premises must be a single family detached house. The house has a single front door, a single rear door and various other rooms which might commonly be found in a residential home. The number of cars varies from time to time, it was stated, at present there are five. No cars have ever been parked on Wellesley Avenue as there is adequate off-street parking facilities as well as a two-car garage.

Counsel stated that Massachusetts case law is very scarce in this area and it was cited that in 1897 the Supreme Judicial Court ruled in the case of Stone v. Pillsbury (167 Mass. 332) that if a building is maintained as a single dwelling-house, without structural change, either inside or outside, from its original construction, but is used for the boarding and lodging of persons, is not a violation of a restriction in the deed by which the land was conveyed, "that, no building other than one single dwelling-house...shall be...maintained on said lot."

Decision

We disagree with appellant's interpretation of the pertinent provisions of the Zoning By-law. That construction apparently disregards completely the plain words of the by-law and, if accepted literally, would lead to an absurd frustration of the plain purpose of the Zoning By-law. The Massachusetts case cited is not relevant.

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. Although the Board is of the opinion that the pertinent provisions prior to the amendment should be given the same construction as that given above, it should be noted that the appellant alleges that he entered into leases with the present occupants on September 1, 1970, subsequent to the effective date of the amendment.

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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 feel, 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 we believe defines "family" in its ordinary sense and according to the common and approved usages of the English language, without enlargement or restriction to suit any particular concept of expediency.

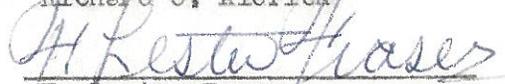
This case does not require any further refinement of the basic definition in respect of other possible special situations incidental to the primary single family occupancy of a single family residence which should perhaps under some circumstances come within the scope of permitted use under the Zoning 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 unusual activity, noise and disturbance to nearby neighbors. That such excessive activity, noise, and disturbance 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.

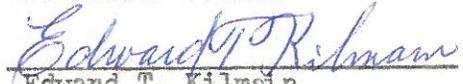
Accordingly, the appeal is dismissed.



Richard O. Aldrich



F. Lester Fraser



Edward T. Kilmain

Filed with Town Clerk _____

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

May 17, 1972

John P. Concannon, Clerk
Norfolk Superior Court
High Street
Dedham, Massachusetts 02026

Re: No. Eq. 105944 - Aldrich, et al. v.
Lichtenstadter, et al.

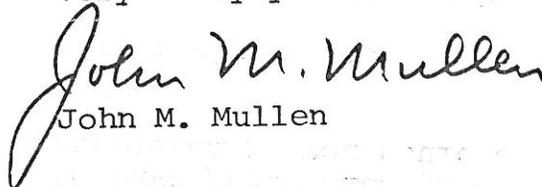
Dear Mr. Concannon:

Kindly place the above-entitled case on the list for hearing during the next jury-waived session which I understand will begin September 18, 1972.

In view of the provisions of G.L. c. 40A, Section 21, that the issues in this case shall have precedence over all other civil actions or proceedings, it is respectfully requested that this case be placed at the top of the next jury-waived list.

If it is the position of your office that a special motion is needed to have precedence given this case, it would be appreciated if you would so notify me.

Very truly yours,


John M. Mullen

cmj

cc: Miss Katherine E. Toy
Clerk, Board of Appeal
Town of Wellesley

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

September 8, 1972

Samuel Spencer, Esquire
807 Summer Street
Marshfield, Massachusetts 02050

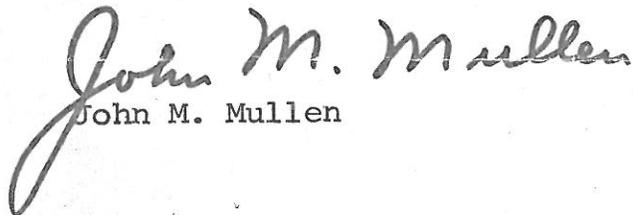
Re: Norfolk Eq. 105944
Richard O. Aldrich et als
vs.
Ilse Lichtenstadter et als

Dear Mr. Spencer:

This will confirm the understanding reached in our telephone conversation today that Dr. Lichtenstadter, the owner of the premises at 292 Wellesley Avenue, has placed the property for sale and has terminated the previous tenancy, which is the subject matter of the pending litigation.

I have today notified the clerk's office that the parties by agreement wish to have the case taken off the September list. Mrs. McCarthy at the clerk's office, to whom I spoke, informed me that telephone notification of this is all that is required.

Very truly yours,


John M. Mullen

JMM:kt
cc Leo J. Hession, Esquire
cc Building Department

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: Aldrich v. Lichtenstadter, et al -
Norfolk 105944

Dear Leo:

The defendant, Dr. Lichtenstadter, is still the owner of the property in question.

Under the Belle Terre decision, the case is not moot and was not dismissed at the call of the equity list on December 11, 1974.

Very truly yours,

John M. Mullen
John M. Mullen

JMM/lrp

cc: Harry E. Warren, Esquire
Miss Katherine Toy

*94 Hession
Cont 1536*
*Victims of
Bruce Bonacas et al*
6/19/1972
April 11, 1974

TOWN OF WELLESLEY



MASSACHUSETTS

LEO J. HESSION, TOWN COUNSEL

P. O. BOX 375
47 CHURCH STREET
WELLESLEY, MASS. 02181
235-1020

November 30, 1976

Joseph E. Scammon
Building Inspector
Wellesley Town Hall
Wellesley, Massachusetts 02181

Re: Richard O. Aldrich, et als
vs: Ilse Lichtenstadter, et als

Dear Joe:

Enclosed please find a copy of a recent notice from Norfolk Superior Court in the above captioned case. I do not as yet have a file on this since it is an old Harry Warren case and I assume that I will be hearing from him shortly. My purpose in writing to you is to inquire as to the status of this matter from your point of view. From my knowledge of this case it is my understanding that the Lichtenstadter property has been sold and that the entire issue in this case is now moot. If this is true then it would be my recommendation that we voluntarily stipulate that this matter may be dismissed in an effort to help clear up both the court docket as well as our own list of outstanding cases.

I would appreciate your contacting me when you have had an opportunity to review your file.

Sincerely,

Leo J. Hession

Leo J. Hession

LJH/dd
file: WB General
cc: Thomas E. Lee, Executive Secretary
Wellesley Board of Selectmen

*Given to
Board of
14/1/76
appeal
KT*

TOWN OF WELLESLEY



MASSACHUSETTS

ALBERT S. ROBINSON, TOWN COUNSEL

P. O. BOX 375
47 CHURCH STREET
WELLESLEY, MASS. 02181
(617) 235-1020

February 17, 1978

Miss Katherine E. Toy
Administrative Secretary
Wellesley Board of Appeal
Town Hall
Wellesley, Massachusetts 02181

Re: Richard O. Aldrich, et als
vs: Ilse Lichtenstadter, et als
Norfolk Superior Court
No. 105944

Dear Miss Toy:

I have received notice from the Superior Court that the referenced action has been dismissed without prejudice and without costs. You will recall that this case was tried in the District Court over the issue of "one family" dwellings. As the property has since been sold and the problem disposed of as a practical matter, I will consider the file closed unless I hear from you to the contrary that the Board wishes me to reactivate the case.

Very truly yours,

Albert S. Robinson

ASR/ss
File no. WJ 103