72-24

TOWN OF WELLESLEY MASSACHUSETTS

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Petition of Edward M. Levitt

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 8:20 p.m. on April 27, 1972, on the petition of Edward M. Levitt, requesting permission to construct a multi-family dwelling on the premises located at 609-611 and 617 Washington Street, the Webb House and adjacent property. The petitioner further requested an exception from the terms of Section XX (Heights of Buildings and Structures) of the Zoning By-law, which would allow the proposed building to have five stories within the height restriction of forty-five feet, rather than the limitation of three stories. Said petition was brought under the provisions of Chapter 40A, Section 15, of the General Laws, and Section XX of the Zoning By-law.

On April 7, 1972, the petitioner filed his request for a hearing before this Board, and thereafter due notice of the hearing was given by mailing and publication.

Edward M. Levitt spoke in support of the petition at the hearing.

Lewis Parks, attorney for Margaret Bancroft, owner of the apartment house at 604-606 Washington Street, stated that, in his opinion, the request is for a major change in the Zoning By-law and not something for the Board of Appeal to act upon. He further stated that the proposal involves too high a density for the Town of Wellesley and that the proposed building will not blend into the small town environment of two and three story buildings in the area.

A number of persons spoke in opposition to the request. All contended that the proposed building would be excessive in height and out of character with the neighborhood.

A letter was received from Barry and Patricia Spacks, 16 Abbott Street, opposing the granting of the request. In their opinion, the proposed building, if constructed, would materially damage the quality of residential life in this part of Wellesley and would transform a residential district into a commercial area.

The Planning Board in its report stated that the request, in effect, is for a change in zoning district designation and should, therefore, more properly be directed to the Town Meeting. In addition, it expressed the view that the number of stories within the proposed dwelling represents a deviation from the provisions of the Zoning By-law of such magnitude that the request should more properly be directed to the Town Meeting.

A copy of the report made by the Division of Fire Prevention, Department of Public Safety for the Commonwealth, was submitted. The report outlined the Inspector's findings and probable cause of the fire.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet. The combined area of the two parcels is approximately 51,790 square feet. On one parcel there was at the time of the hearing the burned out shell of a four-story brick and stone building which was destroyed by fire on January 24, 1972; said damaged structure has subsequently been removed pursuant to order of the Building Inspector. On the adjacent parcel is a dwelling house which has been occupied for some time as a two-family dwelling. It was proposed to raze both buildings if the requested permission is granted.

In 1971, this Board granted permission to the petitioner to convert this building known as Webb House, which was formerly used as a lodging house, into six apartments; however, during alterations, it was destroyed by fire. As a result of this, the petitioner now seeks permission to construct a multi-family dwelling consisting of thirty-nine units on the combined properties. It is proposed, if permission is granted, to construct a five-story building with each floor to have five two-bedroom apartments and three one-bedroom apartments. The height of the building would be 45' and it would cover 24% of the lot, leaving 76% for open green space. It would be located 36' back from the street line and 30' from the side lot lines. There would be an underground parking area for sixty cars and all deliveries and transient parking would be underground.

The petitioner stated that the Board of Appeal found the Webb House to be unsuitable for single occupancy when it granted permission in August 1971, for its conversion from a lodging house to a six-apartment house, and that hardship would result if relief were not granted. The fire compounded the original hardship, it was alleged, to a condition substantially more onerous than the one upon which the Board made its previous decision. It was further stated that while the proposed building is designed for five stories, if permission is granted, it will be built within forty-five feet, which is the allowable height limitation of the Zoning By-law and six feet lower than the present Webb House.

It is the contention of the petitioner that owing to conditions especially affecting the parcel involved but not affecting generally the Zoning District in which it is located, a literal enforcement of the Zoning By-law would involve substantial hardship to the petitioner by reason of the loss of the existing building by fire, the unsuitability of the locus for a single family dwelling and other reasons, and that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-law.

RECEIVED
TOWN CLERK'S OFFICE

Decision

The Board has examined the plans submitted and the locus and has carefully considered the evidence introduced in the petitioner's presentation as well as the arguments advanced by the numerous individuals who appeared in opposition.

It is clear that substantial hardship would be suffered by petitioners as a result of a permanent literal enforcement of the use restrictions of the Zoning By-law in respect of this locus. It is not appropriate for new single family residences economically or otherwise. It is literally surrounded by non-single family residence uses. For instance, across the street are apartment houses and a funeral home; a short distance down the street to the left is a business area; diagonally to the right across the street are a church and a parking lot; on both sides there are houses used for medical offices;

just beyond the medical office on the right is a parking lot, and behind the locus on Abott Street are several single-family houses but many others being used for two, three and four-family and other multiple occupancy purposes plus a municipal parking lot. The non-conforming multiple occupancy use authorized by the Board in its 1971 decision has been frustrated by the fire.

The Board also takes note of the fact that there is an obvious need within the Town of Wellesley for accommodations of the type here proposed.

The Board finds that it is not necessary at this time to decide whether the hardship shown is of the type contemplated by Chapter 40A, Section 15, of the General Laws, because the Board is unanimously of the opinion that it should not grant the petition for reasons which go beyond the issue of hardship. We are of the view that some of the criticisms directed to the too-intensive proposed use of the area and a lack of harmony with other structures in the area have some merit.

Without attempting an exhaustive comparison of the characteristics of the proposed development with those provisions of the Zoning By-law pertaining to apartments, we note significant differences. The proposed structure falls materially short of meeting the requirements of the Limited Apartment District in respect of number of stories, set-back, yards, minimum lot area per dwelling unit, and minimum lot or building site area, to mention a few. The requirements of our Limited Residence District are also in some respects more demanding. Although, these Zoning By-law provisions are not controlling, the Board feels they are entitled to consideration as a reflection to some degree of a consensus of the townspeople as to what are acceptable apartment characteristics.

In this instance the Board itself feels that the proposal does represent too intensive a use of the land, that the proposed structure, although well-conceived and possessing many attractive features, would not be in harmony with the other buildings in the area. Therefore, we are unable to find that the relief sought 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.

Accordingly, the petition is dismissed.

SEP 2 3 00 PM '71
WELLESLEY MASS.
TOWN CLERK'S OFFICE
RECEIVED

Richard O. Aldrich

Dana T. Lowell

Robert T. Colburn

Filed with Town Clerk _____