72-57

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 Alan A. and Lynn G. Winslow

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 8:55 p.m. on September 28, 1972, on the petition of Alan A. and Lynn G. Winslow, requesting permission to allow the use of a portion of their property located at 50 Woodlawn Avenue as a classical ballet school. Said request was made pursuant to the provisions of Chapter 40A, Section 15, of the Mass. General Laws, and/or Section II 8 (b) and Section XXIV E-1 of the Zoning By-laws.

On August 1, 1972, the petitioners filed their request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Joseph A. Becker, attorney, represented the petitioners at the hearing.

Approximately twelve persons spoke in favor of the request at the hearing.

Thirty-two letters favoring the granting of the request were submitted.

A petition signed by approximately 300 Wellesley residents favoring the request was submitted.

Three letters were received from residents of Woodlawn Avenue and Woodlawn Oval who opposed the granting of the request.

A petition signed by approximately 48 residents was submitted, all of whom opposed the request.

Approximately twelve persons spoke in opposition to the granting of the request at the hearing.

Henry D. White, attorney, representing twenty-eight families, all either residents of Woodlawn Avenue or close to Woodlawn Avenue, spoke in opposition to the granting of the request. He also submitted a petition signed by forty-eight people who also opposed the granting of the request.

Attorney White stated that he did not question the value of a Classical Ballet School or the qualifications of Mrs. Winslow as an instructor, but he still questioned, as he did two years ago, whether the request can be granted by the Board, and whether it should be allowed in a residential neighborhood when opposed by so many neighbors. He referred to Section II 8 (b) of the Zoning By-law, which allows the Board to grant permission for a private school, college, academy, institute, or other use of an educational character, after it finds that the proposed use will not substantially reduce the value of any property within the district and will not otherwise be injurious, obnoxious or offensive to the neighborhood. In his opinion, the total program, in this

case, is not educational and the "so-called" school is not an educational school as it involves more than ballet. It also includes jazz as indicated in its advertisement. He made reference to Kurz vs. Appeals of North Reading 341 Mass. 110, (1960) in which it was found that the teaching of various types of dances can hardly be considered educational use, with the possible exception of the classical ballet.

Woodlawn Avenue is a through way to a number of streets in the back, stated Mr. White, which creates considerable traffic now, and the proposed use of the property, he felt, would very definitely increase the traffic even with car pools. Music and applause would also be heard in the area, he alleged, as experienced by the neighbors on the previous evening when Mrs. Winslow held an open house at which the students performed.

Attorney White further stated that a real need must be found by the Board of Appeal under Section XXIV-E of the Zoning By-law before it can grant permission for the proposed use under said section. The "real need", he alleged, refers to property and it does not appear, in his opinion, in this case that the need is within the property involved.

Under Chapter 40A, Section 15, of the General Laws, the Board must find "hardship" resulting from a certain uniqueness about the property involved, stated Mr. White, and although the petitioners built an addition to their dwelling of the size and with the facilities necessary for a modern Ballet School, which they have not been able to use, he felt that this is not the "hardship" needed to be found under the General Laws. In his opinion, the residents in the neighborhood are entitled to residential atmosphere and should not have the proposed use granted.

At the request of the Board, Attorney White submitted a brief, in which he made reference to three cases in support of his position. Said brief is on file with this Board.

Those speaking in opposition all felt that the proposed use of the property would prove detrimental to their property; while not opposed to ballet as such, they felt that the proposed use was a business, that the petitioners planned to have the school operate there from the time they purchased the property, and requested a denial of the request.

Statement of Facts

The property involved is located within a Single-residence District, requiring a minimum lot area of 10,000 square feet, and the proposed use of the property is not one permitted unless this Board determines that it is an appropriate additional use under Section II 8, or grants a special permit under Section XXIV-E 1 of the Zoning By-law or a hardship variance under Chapter 40A of the General Laws.

The petitioners seek permission to use a portion of their home as a classical ballet school. The petitioners' attorney outlined in detail the need for the school, the purpose of the school, the facilities available, and the background and qualifications of Mrs. Winslow the instructor. He stipulated the number of students per class to be not more than twelve, with adult classes limited to ten; class hours not to commence before 9:00 a.m. nor later than 6:00 p.m., with no classes allowed on Sunday; the instruction limited to Classical Ballet and its established variations, and gave the assurance that

everything possible would be done to control any increase in traffic. Car pools will be arranged to provide for a maximum of four cars per class, it was stated, except in case of emergency, and no on-street parking will be allowed. No hornblowing will be allowed, nor excessive noise of any type, it was stated, nor have the petitioners any intention of altering the residential quality and character of Woodlawn Avenue or of interfering with or limiting or reducing the right of any property owner to the quiet and peaceable enjoyment of his property. In connection with these statements, Attorney Becker, submitted a list of "conditions of use" which the petitioners have agreed to abide by providing the request is granted.

Attorney Becker stated that he felt the petitioners are legally entitled to judicial review of the case at this time although similar requests have been denied on two previous occasions by this Board. The time which has elapsed has changed the views of some of the neighbors and the situation generally, it was alleged. Mrs. Winslow, is an extremely dedicated and well-qualified teacher, he stated, and offers outstanding instruction in the classical ballet with facilities which meet all the students' needs. It was pointed out that the present facilities at the American Legion House are unsuitable. A larger unobstructed room is needed with a smooth floor and space for a large mirror. All of these are provided within the petitioners' home.

Attorney Becker further stated that he felt that a "real need" exists in the Town of Wellesley for a Classical Ballet School and present rental facilities are inadequate for proper ballet instruction. He further stated that in 1969, along with other extensive improvements to her home, Mrs. Winslow built an addition to her exact professional standards for personal daily use and practice. The present availability of this outstanding privately-financed facility for classical ballet education, coupled with the professional background and training possessed by Mrs. Winslow constitute a cultural resource in the Town of Wellesley which should be encouraged and utilized, he stated, and requested the Board to consider the community needs and benefits of the Town to be derived from the proposed use of the property. He further alleged that the granting of the petition will not substantially reduce the value of any property within the District or otherwise injure the neighborhood. He felt that since no activity is visible nor audible, the only possible injury to the neighborhood and area of concern could be the fear of a major increase in traffic. In connection with this he presented the list of conditions above-mentioned, which, in his opinion, would provide realistic assurance to adjoining property owners and the neighborhood in general that the granting of the request would not infringe upon their right to the quiet enjoyment of their property nor be detrimental to their properties.

At the request of the Board, Attorney Becker submitted a brief, in which he reviewed the facts presented at the hearing and further justified his reasons for the request.

Decision

In July 1969, and in October 1970, the petitioners made similar requests to this Board for permission to conduct a Classical Ballet School in a portion of the dwelling involved and both requests were denied as a result of the negative vote of one of the Board members in 1969 and the negative vote of two of the Board members in 1970.

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Board member Lowell now believes, as he did in respect to the earlier requests, that the petitioners may properly be granted a temporary one-year permit under Section XXIV-E 1, subject to such appropriate conditions and limitations with respect to the petitioners' ballet school and other associated operations as would insure an adequate review of the situation on the basis of actual experience, including the effect on persons, property and conditions, including traffic, in the neighborhood, before consideration was given to the granting of any subsequent temporary permit or of permission for an educational use.

Board members Aldrich and Fraser, however, are of the same opinion that they were in 1970, and feel that the evidence adduced is insufficient as a matter of law to justify the granting of a special permit under the provisions of Section XXIV E 1, for a temporary period. They cannot find the sort of "need" contemplated by the Zoning By-law. Moreover, they cannot find that the proposed non-conforming use would not substantially reduce the value of any property within the district or otherwise injure the neighborhood; to the contrary, they are of the view that the conducting of the activities proposed by petitioners could be injurious to the neighborhood and would be distastful to many of the neighbors.

They are further of the opinion that the requested non-conforming uses of the property cannot be granted under Section II 8 (b) of the Zoning By-law as they are not educational in character within the meaning of the Zoning By-law. Moreover, in their view they could not under the circumstance, make the finding required by said Section II 8 (b) and Section XXIV E that the proposed uses, even if assumed to be "educational" in character will not subatantially reduce the value of of any property in the district or otherwise be injurious, obnoxious or offensive to the neighborhood. No such unique condition was shown pertaining to the property involved which would support a finding of the hardship contemplated by Chapter 40A, Section 15, of the General Laws. While the use of the petitioners' home might prove more beneficial both to petitioners and to those attending classes because of the better facilities which could be provided there, it is still the view of Board members Aldrich and Fraser that the proposed use of the property would create an increased amount of traffic and congestion and would be substantially detrimental to the public good and would substantially derogate from the intent and purpose of the Zoning By-law. Therefore, a variance under the terms of Chapter 40A, Section 15, of the General Laws cannot be granted. Board members Aldrich and Fraser wish to call attention to the fact that they have made a careful and diligent study of all the new evidence submitted by the petitioners' attorney and others, and cannot find that there has been any substantial or significant change in the views of the majority of neighbors or the circumstances generally, since the petitioners made their last request in 1970, nor could it find from the evidence submitted that the proposed non-conforming use of the property would be any different or used to any significantly lesser extent than at the time of the previous two requests.

Accordingly, the petition is denied in its entirety.

Richard O. Aldrich

Richard O. Aldrich

Dana T. Lowell

Dana T. Lowell

Leslie Fraser

Filed with Town Clerk _____

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. EQUITY NO.

ALAN A WINSLOW AND LYNN G. WINSLOW

V.

RICHARD O. ALDRICH, DANA T. LOWELL AND F. LESTER FRASER
AS THEY ARE MEMBERS OF THE BOARD OF APPEAL OF THE TOWN OF WELLESLEY

BILL OF COMPLAINT

The plaintiffs invoke the provisions of C. 40A § 15 and amendments thereto of the General Laws of Massachusetts and respectfully represent as follows:

1. The plaintiffs, Alan A. Winslow and Lynn G. Winslow are residents of property No. 50, Woodlawn Avenue, Wellesley, within our county of Norfolk.

2. The respondents, Richard O. Aldrich, Dana T. Lowell and F. Lester Fraser, are members of the Board of Appeal of the Town of Wellesley, within our county of Norfolk.

3. The plaintiffs, on or about August 1, 1972, filed a petition with the Board of Appeal of the Town of Wellesley seeking permission for the allowance of the use of a portion of their property No. 50, Woodlawn Avenue, Wellesley, as a classical ballet school. Said permission was sought pursuant to the provisions of C. 40A, § 15, of the Massachusetts General Laws, and/or §II 8b and §XXIV E-1 Zoning By-Laws of the Town of Wellesley.

4. After hearing by the Board of Appeal on the petition of the plaintiffs, the respondents, Richard O. Aldrich, Dana T. Lowell and F. Lester Fraser, acting as members of the Board of Appeal

of the Town of Wellesley, rendered a decision denying the request of the plaintiffs for allowance of the use of a portion of their premises, No. 50, Woodlawn Avenue, Wellesley, as a classical ballet school.

A copy of said decision of the Board of Appeal, bearing the date of filing and with the office of the Town Clerk of Wellesley and attested by the Assistant Twon Clerk of Wellesley, is appended to this bill.

WHEREFORE, the plaintiffs pray:

1. That the court hear all the pertinent evidence and determine the facts.
2. That the court find and rule that the decision of the Board of Appeal exceeds the authority of the Board of Appeal.
3. That the court find and rule that the proposed use of using the premises of the plaintiffs' for a classical ballet school is an educational use, and that accordingly, such permission should be granted.
4. That the court find and rule that the denial of such permission sought by the plaintiffs, in the use of said premises, would constitute a hardship under the provisions of §15 of C. 40A, and that desirable relief could be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning By-Laws of the Town of Wellesley.
5. And for such other and further relief as this court may deem meet and proper.

By their Attorney,

Joseph A. Becker

TOWN OF WELLESLEY MASSACHUSETTS

ALBERT S. ROBINSON, TOWN COUNSEL

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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: Alan A. Winslow et al
vs: Board of Appeal of the Town of Wellesley
Norfolk Superior Court
No. 109747

Dear Miss Toy:

I have received notice from the Superior Court that the appeal filed against the Board in the referenced action has been dismissed. You will recall that this case concerned the "Ballet School" on Woodlawn Avenue. As this constitutes a disposition in the Board's favor, I am closing my file.

Very truly yours,

Albert S. Robinson

ASR/ss
File no. WJ 117