



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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ZBA 86-57  
Petition of Paul & Catherine Tosti  
41 Harris Avenue

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Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, October 23, 1986 at 8 p.m. in the Great Hall of the Town Hall at 525 Washington Street on the petition of PAUL AND CATHERINE TOSTI appealing a decision of the Building Inspector refusing to process or issue a building permit at 41 HARRIS AVENUE until such time as the Planning Board approves the adequacy of the unaccepted end of Harris Avenue, per letter of the Building Inspector dated September 11, 1986. Said appeal is pursuant to Section XXIV-C and Section XIX of the Zoning Bylaw.

On September 18, 1986 the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Albert Auburn, attorney for the Tostis. He stated that there is a barn-style garage on the premises and he displayed photos and described the surrounding properties. The Tostis wish to convert the garage into a dwelling unit for their son but cannot obtain a building permit because the street does not meet certain standards. Meetings had been held with the Planning Board about improving the unaccepted portion of Harris Avenue. Some improvements were made by the Tostis but they were not adequate in the opinion of the Planning Board. Mr. Auburn claims that the lot existed prior to when the conditions affecting the street were put into the Zoning Bylaw. Gail Oliva, Vice Chairman of the Planning Board, referred to the Zoning Bylaw of March 5, 1985 and stated that the Planning Board is not asking for the street to be brought up to subdivision standards but is asking for improvements allowing for access for emergency vehicles, increased capacity of utilities, etc.

No others were present expressing favor or opposition to the request.

Statement of Facts

The property in question is located at 41 Harris Avenue, containing 13,336 square feet of land, having 123.47 feet of frontage on an unaccepted portion of Harris Avenue. In 1972, 1955 feet of Harris Avenue were constructed and accepted by the Town as a public way. Approximately 300 feet lying northerly of the accepted terminus of the accepted street - a 90 foot diameter cul-de-sac - remained unbuilt and unaccepted. A garage (approximately 32' by 28') exists on the lot. A building permit was issued for the garage in November 1983, stating that "This garage not to be used for business purposes or habitation".

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The Tostis have recently applied for a building permit to alter the second story of the existing garage for residential use. Arthur LaConte, Inspector of Buildings, in a letter of September 11, 1986, informed the Tostis that the application cannot be processed or issued without Planning Board approval of the adequacy of the unaccepted end of Harris Avenue (per Section XIX of the Zoning Bylaw revisions adopted March 25, 1985) which approval had not been granted.

Discussion had been taking place since July, 1985 between the Planning Board and the Tostis regarding improvements required to upgrade the way to adequate standards. The Planning Board on July 17, 1985 voted to require the unaccepted portion of Harris Avenue to be upgraded to the same construction as the accepted portion of Harris Avenue with some form of turnaround at the end of the street which is acceptable to the Planning Board.

The Planning Board, at its regular meeting of July 22, 1986, voted that the portion of Harris Avenue in question requires considerable work to make it an adequate way, as outlined in a letter of July 23, 1986 to Arthur LaConte, on file at the ZBA office.

The Planning Board, at its regular meeting of October 21, 1986, voted "to oppose the granting of the appeal before the ZBA and to recommend that the appeal be dismissed. After review and discussion of the history of this case the Planning Board is convinced that the Inspector of Building has not exceeded his authority and that his actions are completely consistent with and uphold the Zoning Bylaw as adopted by the Town Meeting".

Decision

This Authority has made a careful study of the evidence presented. The petitioner is appealing a decision of the Building Inspector who refuses to process or issue a building permit until such time as the Planning Board approves the adequacy of the unaccepted end of Harris Avenue.

Section XIX-A of the Zoning Bylaw defines Frontage as:

"a way in existence when the Subdivision Control Law became effective in the Town of Wellesley having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate

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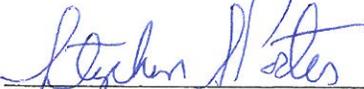
construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon or served thereby, and for the installation of municipal services to serve the land and the buildings erected or to be erected thereon;"

The Inspector of Buildings refused to issue a building permit because the Planning Board did not approve the adequacy of the way.

The Zoning Bylaw clearly states that the Planning Board must find that the way is adequate and that the Planning Board has the power to rule on the adequacy of the unaccepted end of Harris Avenue.

There is nothing in the Zoning Bylaw which permits the Zoning Board of Appeals to grant relief for a matter such as this. This Board does not have the authority to decide whether the way is adequate and it would be beyond the jurisdiction of this Board to rule on the issue.

Therefore, the request before this Board is dismissed.

  
Stephen S. Porter, Chairman

  
John A. Donovan, Jr.

  
William E. Polletta

cc: Planning Board  
Building Inspector

mam

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

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