



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
 TELEPHONE
 235-1664

Appeal of Robert E. and Helene M. Cunniff
 (Aggrieved persons)
 Crestwood Realty Trust
 21 Westerly Street

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 8:25 p.m. on May 13, 1971, on the appeal of Robert E. Cunniff and Helene M. Cunniff, claiming to be aggrieved from the issuance of a building permit by the Building Inspector to Crestwood Realty Trust to erect 17 Town Houses at 21 Westerly Street. Said appeal was taken under the provisions of Section XVI-A, Section XVII C and Section XXIV of the Zoning By-law and Chapter 40A, Sections 13 and 15 of the General Laws.

On March 15, 1971, the appellants filed their appeal with this Board and thereafter due notice of the hearing was given by mailing and publication.

Henry D. White, Attorney, represented the appellants as well as several nearby property owners at the hearing.

Also speaking in opposition to the issuance of the permit involved were the following: Paul J. Barry, 22 Pleasant Street, who questioned the height of the proposed buildings, and stated that as an abutter, he felt that the buildings will prove detrimental to his property as well as surrounding properties because of the increased traffic to be expected as well as fumes gas, and lack of sun.

Mary Barry, 22 Pleasant Street also opposed the proposed construction.

Moorad Murradian, 7 Pleasant Street, referred to the new Town House by-laws which were accepted at the Town Meeting held in March, 1971, after the issuance of the permit involved. He stated that the new by-laws show that it is the intent of the Town to control Town House developments and that the Board should use these by-laws as a guide.

Caroline S. Lory, 26 Pleasant Street, stated that there is a serious traffic condition at the corner of Everett Street and Westerly Street now and that the addition of 17 new units will create a more hazardous condition. Several traffic counts have been taken at Westerly and Everett Street, and it was found that over a nine-day period during one hour there were from 129 to 150 cars pass or 1,098 total. In her opinion, the values of surrounding properties, therefore, will be hurt by the construction of the proposed Town House units.

Paul Mortarelli, 134 Linden Street, likewise, felt that the proposed construction would be detrimental to the neighborhood.

A petition signed by approximately 300 persons favoring the appeal was submitted at the hearing. The Board noted, however, that a substantial number of those signing the petition did not identify their residence and there

Cunniff
(Aggrieved persons)

were indications that a number of those signing were children.

Statement of Facts

The property involved which contains 88,070 square feet is located within a General Residence District, a district in which the proposed Town Houses are permitted provided they comply with all other Zoning and Building requirements.

Crestwood Realty Trust filed its application for a permit to build 17 dwelling units and 14 garages on February 11, 1971, on the property involved and on March 5, 1971, the Building Inspector issued a building permit for the proposed construction, there being no apparent violation of the Zoning By-law or Building Code.

Attorney Henry D. White explained at the hearing that Westerly Street was accepted by the Town to the west side of Pleasant Street and that the access of the proposed houses is on an unaccepted portion of Westerly Street which is in very poor condition. He alleged that already there is a great deal of traffic on Westerly Street, which is narrow and cannot be widened into the now required 40' width, without acquiring land on either side. While the property involved is within a General Residence District, most of the houses in the immediate neighborhood are single-family dwellings, some of which will be as close as 20' to the property line of the building complex. He further stated that the proposed complex could not be erected now in a Town House District until plans have been approved by the Board of Appeal and a number of other requirements met. This, he felt, indicates that the Town wishes to control Town Houses and that the Town Meeting Members also felt that a control was necessary. He stated that while he realized that the buildings involved are not controlled in any way by the new by-laws, he felt that the Board should nevertheless use the new law as its guide in making its decision. He claimed that the serious traffic situation on Westerly Street would unquestionably become more serious as a result of the proposed construction. For these reasons, Attorney White urged the Board to revoke the permit issued by the Building Inspector.

Frederick Murdock, Attorney for the owners of the property, stated that the Building Inspector issued a permit to Crestwood Realty Trust to construct 17 Town Houses and 14 garages on the property involved, there being no apparent violation of either the Zoning By-law or Building Code. Although it was not possible to provide 17 garages, he stated, parking facilities would be provided adequate to take care of the probable number of cars to be expected. Space for 25 cars will be provided or approximately 1 1/2 spaces for each unit. It has been estimated, he stated, that the cost will be approximately \$27,000. per unit or a total valuation of approximately \$450,000. which should be a good tax return to the Town. Prior to purchasing the property, the owners checked with the Bank involved and were given a firm commitment after it had made a thorough investigation of the proposed construction.

The owners have not requested any variance, stated Mr. Murdock, and are prepared to comply with all the present Zoning By-laws and Building Code. The owner has rights over Hollis Street and Westerly Street as indicated in a deed filed in 1846. The use is within the intent and purpose of the Town By-laws, and he therefore requested that the permit issued by the Building Inspector be validated so that work may continue with the proposed Town Houses.

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(Aggrieved persons)

Decision

It is the unanimous opinion of this Board after making a careful study of the evidence submitted at the hearing to substantiate the alleged violation of Section XVI A, Section XVI C of the Zoning By-law and Section 15 of Chapter 40A, of the General Laws, that there is no violation of the Zoning By-law or the Building Code, and in its opinion, the Building Inspector issued the permit properly.

Westerly Street, which abuts the property, is a private way over which the owners of the property involved appear to have rights to pass and it appears to this Board that the 17 dwelling units and 14 garages comply with all applicable provisions of the Zoning By-law and the Building Code. The sole issue before this Board is whether the Building Inspector erred in issuing the permit involved.

From all that appeared at the hearing, the owners of the property involved in this appeal were lawfully entitled to have a building permit issued to them at the time they applied for it and at the time it was issued, and nothing that appeared at the hearing would justify a finding that the buildings for which the permit was issued, or their use and occupation would be "obnoxious, offensive, dangerous or injurious to the public health or safety" or "injurious to the health, safety, morals or welfare of the community or harmful to property therein" within the meaning of those terms as they appear in Section XVI-A and XVI-C of the Zoning By-law. Therefore, in the opinion of this Board, there is no reason why the permit should not have been issued as it was, and

Accordingly, the action of the Building Inspector is affirmed and the permit is effective as of the date of its issuance March 5, 1971.

Philip H. Cahill
Philip H. Cahill

Dana T. Lowell
Dana T. Lowell

Robert T. Colburn
Robert T. Colburn

Filed with Town Clerk _____

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