

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF APPEAL

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

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KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Petition of Richard A. Collari

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 8:00 p.m. on January 20, 1972, on the petition of Richard A. Collari, requesting a temporary permit under the provisions of Section XXIV, E (1) of the Zoning By-law, which would allow him to conduct his dental practice on the first floor of the building located at #1 Grantland Road.

Timothy H. Donohue, attorney for the petitioner spoke in support of the request at the meeting.

The following persons spoke in favor of the request: Agnes McColgan, 125 Oakland Street, who stated that she felt that Dr. Collari was being penalized and to deny him the requested permit would result in mental cruelty to him. J. F. Cowen, Jr., 36 Standish Road, stated that Dr. Collari is continuing the same dentist practice that Dr. Kelley had for many years and, in his opinion, it is an improvement over a possible family occupying the building. Carolyn D. Johnstone, 39 Grantland Road, who stated that she was one of the eleven persons who previously opposed the request. She explained that previously it was her understanding that the fire engines would not be able to get through in case of a fire. Now with parking allowed on only one side of the street, she feels that there will be no problem. Also registering their approval were: James K. McCabe, 15 Fiske Road, Lucile B. Tucker, 276 Grove Street, Virginia Burger, 28 Cunningham Road, Eleanor L. Miller, 61 Oakland Street, Theodore Kapala, 132 Oakland Street, Barbara L. Kent, 6 Oakland Circle, William H. Sullivan, 24 Cunningham Road, James W. Walsh, 43 Woodlawn Avenue, Victor Maccini, 102 Oak Street, and Marion A. MacLeod, 43 Glen Road. It was their feeling that it would be a great loss if Dr. Collari had to move; that there was little traffic congestion resulting from his use of the property and that the cars were no problem. They also felt that a great hardship would result to Mrs. Harding, the tenant on the second floor, if she were required to move.

Avard M. Mitchell, M. D., physician of Mrs. Harriet E. Harding, occupant of the second floor of the building involved, stated that Mrs. Harding is almost 89 years old and has lived in her present residence for 21 years. She is ideally situated in her present residence and a change would be unwise as it would be difficult or impossible to adjust to strange new surroundings. It would be much to her advantage if she were to remain in her present residence as long as her health will permit.

Letters favoring the request were received from Robert C. and Madeline M. Dale, 86 Westgate Road, Elizabeth J. Loyte, 395 Worcester Street and Marion A. MacLeod, 43 Glen Road.

A petition signed by approximately 500 residents of Wellesley, was submitted favoring the request to allow Dr. Collari to carry on his practice of dentistry on the first floor of the house involved.

Francis Flanagan, 3 Grantland Road, opposed the granting of the request. When Dr. Collari agreed to buy Dr. Kelley's practice and real estate in 1968, he stated, there was an existing problem which Dr. Collari recognized. He sought permission to operate a dentist office, but the Board of Appeal denied this request. Subsequently, he appealed the case to the Superior Court which upheld the finding of the Board of Appeal. During the entire time Dr. Collari, he stated, has continued his practice. Mr. Flanagan pointed out that there are a number of available offices for Dr. Collari in a Business Zone and that by vacating the premises involved, he will not have to leave Wellesley and lose his practice. Dr. Collari, he stated, went into this after he had been denied permission by the Board of Appeal; he took a chance and lost. He further pointed out that there is legal parking for only one car in front of the building. Dr. Collari has a hygienist, a secretary and a part-time girl; each one has a car which is parked in the driveway, therefore, there is no provision for patients to have off-street parking.

Mr. Flanagan further stated that Judge Collins of the Norfolk Superior Court, permanently enjoined Dr. Richard A. Collari, Intervenor, from permitting, as long as he controls the premises, the use of the premises or any part thereof as a professional office unless the professional person so using the premises is a resident in a one family dwelling on the premises. Dr. Collari, he stated, has continued his dentist practice for the past three years in complete defiance of the Judge's decree as well as the Zoning By-law of the Town of Wellesley. He further stated that he found it hard to believe that Dr. Collari intended to move his wife and three children into a three-room apartment on the second floor of the building involved.

John Pickens, 4 Grantland Road, opposed the granting of the request. He stated that there is a fantastic problem with cars. He lives across the street and has difficulty at all times backing out of his driveway. While there are "no parking" signs on the street, cars are being parked there illegally.

Albert Graf, 395 Worcester Street, opposed the request. There is only one way in and out of the second floor; the outside wooden steps are unsafe, in his opinion, and the apartment should not be used with its present means of egress.

Patrick Murphy, 5 Cunningham Road, stated that he had lived there for the past fifteen years and, in his opinion, there is a traffic hazard on Grantland Road which causes great abuse to safety.

Helen G. Flanagan, 3 Grantland Road, stated that she has not been well and the excessive number of cars in the driveway beside her house has caused her great discomfort.

Michael Zeeb, 10 Cunningham Road, stated his opposition and pointed out that so many of those favoring the request were living a great distance from the property involved; except for four, none of those favoring the request were from the neighborhood.

A petition signed by 28 nearby residents, all on Grantland Road and Cunningham Road, was submitted opposing the request.

#### Statement of Facts

The building involved was built in 1924, on a lot of land containing 9,300 square feet, and is located within a Single Residence District requiring a minimum lot area of 10,000 square feet. Upon its completion it

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was given to the Wellesley Friendly Aid Association and was used by it as a clinic until 1950 at which time it moved to another location. In 1950 the late Dr. Frederic C. Kelley purchased the property and set up a dental office on the first floor of building and rented the second floor to a single person. Shortly after Dr. Kelley started to operate his dental practice on the first floor of the building, a complaint was made to the Town that he was not residing there, that two medical doctors also had offices on the first floor, and that the second-floor apartment was rented, all in violation of the Zoning By-law. The Town brought suit against Dr. Kelley as a result of this and during the course of the trial the parties agreed upon terms of settlement. The Final Decree and Stipulation allowed Dr. Kelley, as a personal privilege, to maintain his own office for the practice of dentistry in the premises in question without actually residing there, but specified that said privilege would not pass to any succeeding owner of the premises. He was further permanently restrained and enjoined from letting any portion of said building to any other professional man for use as his office and from employing any other dentist in connection with any office he maintained in said building.

In 1968, Dr. Kelley passed away and his widow petitioned the Board of Appeal for an exception or variance which would allow the continued use of the premises as a dental office on the first floor and a residential apartment on the second floor. This request was denied by the Board of Appeal in a decision filed with the Town Clerk on March 19, 1969. On April 4, 1969, an appeal was filed by Joanne M. Kelley, Executrix of the Estate of Frederic C. Kelley vs. Board of Appeal of Wellesley in the Superior Court of Norfolk County. A final decree was made by Judge Joseph K. Collins, which was filed on April 7, 1971, in which it was stated that Richard A. Collari, Intervenor in this case, is permanently enjoined from permitting, as long as he controls the premises, the use of the premises, 1 Grantland Road, Wellesley or any part thereof as a professional office unless the professional person so using the premises is a resident in a one family dwelling on the premises and further that the said Joanne M. Kelley and the said Richard A. Collari have one (1) month from entry of this decree to comply. A contempt order was subsequently entered by the Town and proceedings have been continued until January 31, 1972.

The petitioner now seeks a temporary permit to carry on his dental practice on the first floor of the building involved.

Timothy H. Donohue, Attorney for the petitioner, reviewed the background of the case at the hearing and stated that Dr. Collari intends to live in the house, but feels that it would be harmful to evict the tenant, who is 89 years old, from the premises. He urged the Board to grant a temporary permit to Dr. Collari which would allow him to continue his practice until the tenant moves out. He stated that he had asked Dr. Collari to circulate a petition through the neighborhood and to get those favoring the request to sign it. A petition signed by 518 residents of the Town of Wellesley was submitted; twenty-nine, he stated, were people living on Grantland Road and Cunningham Road.

It was stated that the second floor has a living room, bedroom, kitchen and bath room. Dr. Collari has three children ages 2, 5 and 6, and he feels that the apartment will be large enough to accommodate his family and he will make arrangements to reside with his family in the house as he cannot afford to give up his practice.

Decision

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The Board is empowered by Section XXIV E-2(a) of the Zoning By-law to grant a temporary and conditional permit for a non-conforming use only where it finds that, "a real need exists and that the proposed non-conforming building, structure or use will not substantially reduce the value of any property within the district, or otherwise injure the neighborhood."

No such findings are possible in this case. In the Board's view no "need" within the contemplation of the Zoning By-law can be shown here. Although petitioner is widely respected and accepted as a highly skilled practitioner and obviously makes a significant contribution to the medical resources of the community, it seems clear to the Board that there is no need for a dental office in this particular location. Quite to the contrary, the Board received abundant evidence that the people in the immediate vicinity were overwhelmingly opposed. Moreover, the Board believes that other dental office locations are available in the Town of Wellesley.

No personal need or hardship in favor of petitioner is perceivable other than the inconvenience that might conceivably attend his accommodating his future plans to the Court's decisions. Obviously, any such inconvenience will be the natural and proximate result of petitioner's own actions and inaction. In almost three years which have lapsed since the decision of this Board denying the earlier request for a variance, petitioner has had time to consolidate his practice and make alternative arrangements compatible with the Town's Zoning By-law, and, since last April, the decree of the Superior Court.

Whether circumstances not now known to this Board would warrant any further extension of time or other dispositions or conditions is, we respectfully urge, a question for determination by the Court.

The Board is further of the view that to grant the relief requested by petitioner would be detrimental to the value of property within the district and injurious to the neighborhood.

The Board has been most concerned with the position of Mrs. Harding in this matter and the possibility that her health might be adversely affected by the actions which petitioner indicated he would take if his request were denied. However, the Board is mindful of the fact that petitioner has successively taken completely contradictory positions in respect to the suitability of the premises for use as an in-residence professional office. We also note that there is also the possibility that other neighbors' health might be said to have been adversely affected by the consequences of our granting petitioner's request.

In our view it would be unsound and inappropriate for this Board to base its decision upon either of these conjectural and speculative hypotheses. Here again we respectfully suggest that the Courts have considerable latitude in Summary Process matters to prevent hardship and injustice.

Accordingly, the Board is unanimously of the opinion that the petition should be, and it is hereby dismissed.

*Richard O. Aldrich*  
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*F. Lester Fraser*  
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*Edmund R. Korman*