72 - 44

TOWN OF WELLESLEY MASSACHUSETTS

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MASS.
1972 SEP 14 A 8:35

Petition of Developers Trust and
Town Line Trust

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 August 24, 1972, on the petition of Developers Trust and Town Line Trust, requesting approval of plans pertaining to the construction of an office building and related parking facilities, to be located at 96 Worcester Street, on the southwesterly intersection of Route 128 and Route 9, within a Limited Business District. Said request was made in accordance with the requirements of Section I of the Zoning By-law with the following exceptions:

The petitioners requested a special exception from the terms of Section XXI, Part D, Subpart 3., Development Standards, Landscaping, Paragraph b. of the Zoning By-law, which requires provision for landscaped open space within the parking area involved. A further exception was requested from the terms of Section XX of the Zoning By-law which would permit the proposed building to be erected to a height in excess of that allowed under said section and a further exception from the terms of Section IX 2 (c) which would permit the proposed building to be located less than the required fifty feet from the property line abutting a private way.

On July 28, 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.

The petitioners were represented at the hearing by Richard W. Spaulding, Executive Vice-president of Spaulding and Slye Corporation, the corporation which has contracted to lease and develop the property and to construct the proposed building.

Also speaking on behalf of the petitioners was Vixvaldis Paukulis, Architect for the proposed project, who explained in detail the design of the building as well as its materials, color and location. He further explained the screening and landscaping.

H. W. Moore, Engineer for the project, also explained that approval had been requested from the State Department of Public Works to allow construction of a deceleration lane on the south side of Route 9 to facilitate the flow of traffic in and out of the proposed development. He also answered questions relative to the site engineering.

Beverly F. Ottaway, Chairman of the Planning Board, stated that his Board would review the project at its next meeting and make its recommendations.

Franklin Sanders, Chairman of the Conservation Commission, stated that a Hatch Act hearing on the proposed development was scheduled for September 6th.

Harry J. Palladino and Mary H. Fyffe, members of the Park and Tree Board of the Town, opposed the developer's plan to omit required landscaping in the parking lot in favor of cluster landscaping in front of the building.

Lucile B. Tucker, 276 Grove Street, questioned the need to exceed the height limitation provided by the Zoning By-law.

Jacob Brier, 1 Boston Place, Boston, attorney for Rose Cioppa, 114 Worcester Street, stated that there is no hardship involved pertaining to the site; that the proposed development will greatly increase the traffic in the area which will create a serious problem for the neighborhood.

Paul Flanagan, 8 Dearborn Street and Thomas W. Wildman, Jr., 3 Park Place, expressed their concern regarding the drainage and traffic problem which they felt will result if the request is granted.

The Wellesley Planning Board in its report offered no objection to the proposed substitute landscape plan; nor to the proposed height of the building or its location relative to the setback from the private way, but it recommended that the proposed drainage of the parking lot be accomplished in a manner which will reduce the amount of water required to pass across the surface of the parking lot and make provisions for the removal of all pollutants prior to discharge.

A report was received from the Planning Board of the Town of Needham in which it recommended that a fifty-foot wide buffer strip of open space, unpaved, be established along the line of Hurd Brook in Wellesley parallel to the Needham Town Line, and that no drainage be allowed from the proposed parking area into the Hurd Brook.

Statement of Facts

The property involved, which contains approximately ten acres, is located within a Limited Business District. Spaulding and Slye Corporation has entered into an agreement to lease the property involved and intends eventually to construct three buildings on the site.

They now seek permission to construct the first of the three buildings. The building involved for which the plans have been submitted for approval, is to be a three-story building with a fourth terrace level and is to be used as an office building, a use allowed within the District involved. If built, it will cover 9.6% of the lot, with parking facilities provided for 393 cars.

Plans and specifications showing the locus, the location and elevations of the proposed building, its exterior materials, provision for off-street parking facilities, interior roads and driveways, water, sewage disposal, drainage and landscaping were submitted for approval.

The petitioners also seek an exception from the terms of Section XX of the Zoning By-law which will allow the erection of a building which exceeds the limitation of forty-five feet or three stories. The proposed building is designed to contain three stories and a terrace level for occupancy. On the East elevation, the height of the southerly portion of the building will exceed 45 feet by approximately 7⅓' and the height of the middle portion of the building will exceed 45 feet by approximately 7⅓' plus 13 feet for a visual screen around the cooling tower. On the West elevation the height of the southerly portion of the building will exceed 45 feet by approximately 7⅓' and the height of the middle portion of the building will exceed 45' by approximately 7⅓' for a visual screen around the cooling tower. On the South elevation, the height of the middle portion of the building will exceed 45 feet by approximately 7⅓' for a visual screen around the cooling tower.

The petitioners further seek an exception from the terms of Section XXI, Part D, Subpart 3. which will allow the petitioners to provide an amount

of landscaped open space in cluster form in front of the building involved equal to the area required by the By-law for the parking area. A further exception is also requested from the terms of Section IX. 3 (c) which will allow the Northwesterly corner of the proposed building to be located 28.8' from a private way to be constructed on the premises which will be used as an entrance and exit to and from the development.

It was pointed out by the petitioners that, in their opinion, the desired excessive height of the building would not cause undue congestion of traffic or population, or interruption of light and air, and that a literal enforcement of the by-law would cause a substantial hardship. The location of the air conditioning and elevator equipment on the roof of the building appears to be the most practical location for it, and the occupancy of the terrace level will also provide in a practical manner additional space which should not prove detrimental to the area and helps to make the design economic notwithstanding the limitations imposed by the shape and grade of the lot, the need for a large parking area dictated by the office use of the building and the need to have an access way from the relatively narrow frontage on Worcester Street. It was further pointed out that the proposed building would be completely enclosed by trees, forming a visual natural screen which, in their opinion, would be more attractive than if the landscapping were distributed throughout the parking lot as required. The requested exception to the setback requirement, it was felt, would not prove detrimental to the area involved or to the neighborhood and was necessary for the economic design,reasons referred to above

On September 14, 1972, the petitioners submitted, at the request of the Board of Appeal, a list of minor changes which were made a part of the site plan, drawing C-1.

Decision

The Board has made a careful study of the plans submitted, including the revisions submitted at the request of the Board and has taken a view of the locus. In its opinion, said plans with the conditions herein imposed, make adequate provision for the matters of public interest referred to in Sections XIIA 2 (h) (1) (i) through (vii) of said Section.

It is the further opinion of the Board that the requested exceptions from the terms of the Zoning By-law can properly be granted. The Board finds that the exception from Section XX, Heights of Buildings, which will allow the petitioners to provide a screen around the equipment on the roof and occupy a terrace level of the building, will not cause undue congestion or traffic or population, or interruption of light and air, or result in a detriment to the owners or occupants of nearby land, and that a literal enforcement of said Section would cause a substantial hardship to the petitioners and would be impractical considering the need to develop a plan which is economic while at the same time complying substantially with the height restriction of the Zoning By-law and with the lot coverage, parking and other applicable requirements. If the building were to be designed so as to accommodate all the mechanical equipment within the forty-five foot limitation, the ground coverage of the building would have to be increased and the parking area extended with a resulting loss of landscaped green area, and a possible detrimental affect on the proposed development of the remaining property.

It is the further finding of the Board that the proposed cluster landscaping and the location of the northwesterly corner of the proposed building only 28.8' from a private way rather than the required fifty feet, will not prove detrimental; that a literal enforcement would cause substantial hardship, and that literal compliance is impractical because of the size, width, depth, shape and

grade of the lot. It is the belief of this Board that the landscaping to be provided will be more attractive in front of the building than within the parking spaces in this instance, and that the location of the building in relation to the private way will be more advantageous than if it were to be located back a greater distance in compliance with the Zoning By-law. The way involved is an entrance and exit to the property involved and will be used exclusively by those entering and leaving the property, therefore, it is the opinion of this Board that the location of the proposed building will not prove detrimental to the public good.

Accordingly, the plans submitted and on file with this Board, identified as follows: Plan L-1, dated 7/21/72, A-1, dated 7/21/72, A-2, dated 7/14/72, A-3, through A-7, dated 7/21/72, all drawn by Robert C. Abrahamson, Registered Architect, C-1, dated 7/27/72, revised 9/14/72, drawn by Benjamin H. Bugbee, Jr., Registered Engineer, and C-2, dated 7/19/72, drawn by Joseph L. Calabro, Land Surveyor, respectively are approved as submitted and the requested exceptions are hereby granted and the Inspector of Buildings is authorized to issue a permit for the proposed construction subject to compliance with the applicable provisions of the Building Code, the requirements of the Town of Wellesley (including the Department of Public Works and Fire Department), the rules and regulations of the Massachusetts Department of Public Safety, any other applicable provisions of law and the following conditions imposed by this Board which shall be binding upon Petitioners, their successors and assigns:

1. All work shall be performed in accordance with the plans hereby approved, the exceptions herein authorized and the Zoning By-law.

2. Petitioners shall provide such additional screening not presently shown on the plans, as the Board in its discretion may from time to time require.

3. The landscaping and other screening provided for the premises shall be maintained to the satisfaction of the Board for the life of the building.

4. All existing trees shall be retained as indicated in the landscape plan and remain while healthy and shall be replaced by young healthy trees if and when they have to be removed.

5. Area lighting, if any, shall be shaded or directed away from the abutting property owners.

6. All easements, if any, taken by the Town of Wellesley to carry out the petitioners' plan shall be at the expense of the developers.

7. All utilities are to be installed and maintained at no expense to the Town of Wellesley.

8. A deceleration lane shall be either (i) provided as shown on the plan submitted or in accordance with other plans, which have been approved in writing by the Massachusetts Department of Public Works or (ii) officially refused authorization in writing by said Department, prior to occupancy of the building.

9. Upon completion of the building, a complete set of architectural plans, including a complete set of mechanical plans, shall be submitted to this Board showing exactly how the building was constructed. Said plans together with satisfactory evidence of compliance with condition #8 hereof, shall be submitted to this Board at least ten business days prior to occupancy of the building.

10. Approval shall be obtained from Metropolitan District Commission, authorizing the proposed project area to drain surface drainage, if any, into the Charles River. Petitioners by proceeding with construction of the proposed building and improvements shall be deemed to have agreed to provide, at no cost to the Town of Wellesley, for any different or supplemental facilities for surface drainage from the premises as may at any time be required by applicable provisions of law.

11. A surety performance bond or letter of credit running to the Town of Wellesley shall be provided in the amount of $50,000. which shall be in all respects satisfactory to Town Counsel and the Board of Appeal and shall be posted with the Treasurer of the Town of Wellesley before commencement of work. Said bond or letter of credit shall be conditioned on the completion of the work in accordance herewith and the performance of all conditions hereof, shall be signed by party or parties satisfactory to Town Counsel, and shall be released after completion of the project, provided that provision satisfactory to the Board of Appeal has been made for performance of any conditions which are of a continuing nature.

Richard O. Aldrich
Richard O. Aldrich

F. Lester Fraser
F. Lester Fraser

Edward T. Kilmain
Edward T. Kilmain

Filed with Town Clerk _____

OCT 14 25 PM '77
CERTIFIED MAIL
TOWN CLERK'S OFFICE
RECEIVED

LAFAYETTE 3-4431

New Address
11 BEACON ST.
BOSTON, MASS. 02108

JACOB I. BRIER
ATTORNEY AT LAW
~~21 BEACON STREET~~
BOSTON, MASSACHUSETTS 02108

November 3, 1972

Board of Appeal
Town of Wellesley
Town Hall
Wellesley, Mass.

RE: Rose Cioppa v. Developers Trust and Town Line Trust, et als - Norfolk Superior Court, Equity #108041

NOTICE OF FILING OF BILL IN EQUITY

In accordance with the provisions of Massachusetts General Laws, Chapter 40A, notice is hereby given you that the plaintiff, Rose Cioppa, in above entitled action, filed a Bill in Equity with the Superior Court of Norfolk County, Dedham, on October 30, 1972.

A copy of said Bill in Equity together with a photostat of a certified copy of the decision of the Board of Appeal, Town of Wellesley, attached to said Bill in Equity, is enclosed.

ROSE CIOPPA, Plaintiff

BY: Jacob I. Brier
her attorney

JIB:gmn
encls.(2)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

COMMONWEALTH OF MASSACHUSETTS

NORFOLK SS,

SUPERIOR COURT
IN EQUITY

ROSE CIOPPA
114 Worcester Street
Wellesley, Mass., PETITIONER

VS.

DEVELOPERS TRUST and TOWN LINE TRUST
96 Worcester St., Wellesley
at the Southwesterly Intersection
of Route 128 and Route 9

and

RICHARD O. ALDRICH
26 Lathrop Rd., Wellesley

DANA T. LOWELL
101 Brooks Rd., Wellesley

F. LESTER FRASER
5 Richland Rd., Wellesley

EDWARD T. KILMAIN
81 Prospect St., Wellesley

Being the members of the Board of Appeal
of the Town of Wellesley

EDWARD T. KILMAIN setting in place of
DANA T. LOWELL, as alternate, said Lowell
being absent

and

THOMAS G. DiMAURA
LOUISE E. DiMAURA
PAUL W. DiMAURA, TRUSTEES OF DEVELOPERS TRUST

and

WILLIAM A. DAVISON,
THOMAS G. DiMAURA
AUGUSTA N. MACROKANIS, TRUSTEES OF TOWN LINE
TRUST
d/o Spaulding & Slye, Corp., their authorized

representative, located at One Washington Mall, Boston, Mass.

APPEAL OF ROSE CIOPPA, A PERSON AGGRIEVED BY DECISION OF BOARD OF APPEAL ON PETITION OF DEVELOPERS TRUST AND TOWN LINE TRUST RELATING TO APPLICATION FOR BUILDING PERMIT

TO THE JUSTICES OF THE SUPERIOR COURT:

1. The petitioner states that she is a resident at 114 Worcester St., Wellesley, that she has been and is the owner at all times material of the property at 114 Worcester St., Wellesley, that she is a property owner determined by the Board of Appeals of said Town of Wellesley, to be within the neighborhood affected and was a person in interest and entitled to notice in respect to hearing of appeal by Developers Trust and Town Line Trust, from denial of a building permit for a proposed building to be erected on premises at 96 Worcester St., Wellesley and seeking a variance or special exceptions from certain terms of the zoning by-laws of the Town of Wellesley, applicable to the premises at 96 Worcester St., Wellesley, that your petitioner is aggrieved by the decision of the Board of Appeal granting exceptions from the applicable provisions of the zoning by-laws in authorizing the Inspector of Buildings of the Town of Wellesley to issue a permit for proposed construction at 96 Worcester Street.

2. The decision of the Board of Appeal was filed in the office of the Town Clerk, Town of Wellesley on October 11, 1972 and there is attached to this Bill, a copy of the decision appealed from bearing the date of filing thereof and certified by the Town Clerk.

3 Written notice of this Appeal, together with a copy of this Bill in Equity has been given to the Town Clerk contemporaneously with the filing of this Bill.

4 The decision of the Board of Appeal exceeds the authority of the Board and for reason of the allegation that the decision of the Board exceeds its authority, petitioner states:

(a) that the decision does not set forth the conditions effecting the parcel of land at 96 Worcester Street or conditions which especially effect such land but do not effect generally the zoning district in which it is located.

(b) in fact, there are no conditions which meet the statutory requirement of conditions especially affecting the parcel at 96 Worcester Street but not affecting generally the zoning district in which it is located;

(c) the decision does not set forth any facts showing a substantial hardship to the applicant, Developers Trust and Town Line Trust, which would result from literal enforcement of the zoning by-law and in fact that are no circumstances existing which would establish substantial hardship to Developers Trust and Town Line Trust from a literal enforcement of the zoning by-laws.

(d) petitioner further says that there is no showing by the applicant for a building permit that the real estate in question cannot be developed for any one or more of the purposes allowed under Section 10 of the Zoning By-Laws of the Town of Wellesley.

(e) and in such other respect as may appear at trial.

WHEREFORE, the Petitioner, Rose Cioppa, prays:

(1) that appropriate notice issue to the respondents in this bill;

(2) that a hearing be held and that the decision of the Board of Appeal, which decision is attached to this Bill, be annulled as being in excess of its authority

(3) and for such other and further relief as to this Court may seem meet, and as justice may require.

ROSE CIOPPA

by her attorney,

Jacob I. Brier

JACOB I. BRIER

TOWN OF WELLESLEY MASSACHUSETTS

LEO J. HESSION, TOWN COUNSEL

P. O. BOX 375
47 CHURCH STREET
WELLESLEY, MASS. 02181
235-1020

January 17, 1973

WELLESLEY BOARD OF APPEALS
Town Hall
Wellesley, Massachusetts 02181

Re: Rose Cioppa
Vs. Board of Appeals of Wellesley, et ali

Gentlemen:

Enclosed please find a copy of the Final Decree, which has been filed with the Norfolk Superior Court in the above matter.

You will note that the appeal from your earlier decision is dismissed with prejudice, so that no further action can be brought thereon.

Very truly yours,

Leo J. Hession

Leo J. Hession

LJH/plw
Enclosure
File: WBA-102
cc: (with enclosure)
Thomas E. Lee, Executive Secretary - Board of Selectmen

cc: (with enclosure)
Joseph E. Scammon, Building Inspector - Building Department

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

SUPERIOR COURT
EQ. NO. 108041

ROSE CIOPPA

V.

DEVELOPERS TRUST, ET AL

FINAL DECREE

This cause came on to be heard, and the entry of a Final Decree dismissing the petitioner's Bill in Equity with prejudice and without costs to either party, having been assented to by counsel for each of the parties as noted herein, it is hereby

ORDERED, ADJUDGED and DECREED that the petitioner's Bill in Equity herein be and hereby is dismissed with prejudice and without costs to either party.

Assented to, waiving appeal:

Rose Cioppa
Rose Cioppa, Petitioner

Jacob I. Brier
Jacob I. Brier, Attorney for Petitioner

Harold Hestnes
Harold Hestnes, Attorney for Respondents

Leo J. Hession
Leo J. Hession, Town Counsel

By the Court,

Assistant Clerk