

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF APPEAL

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APPEAL OF ALLEN N. HOOKER, and others G.

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 8:35 p.m. on October 9, 1975, on the appeal of Allen N. Hooker, and others, claiming to be aggrieved by the issuance of a building permit to the Maugus Corporation for the construction of a paddle tennis court on the property of the Maugus Club at 40 Abbott Road. Said appeal was made under the provisions of Section XXIV, Paragraph B of the Zoning By-law.

On August 11, 1975, the appellants filed their appeal with this Board and thereafter due notice of the hearing was given by mailing and publication.

FACTS RELATIVE TO LOCATION AND PROPOSED USE

The property involved, containing 66,321 square feet, is located within a Single Residence District, in which district, among other uses, a club, except a club the chief activity of which is a service customarily carried on as a business, is permitted, and such accessory uses as are customary and incidental thereto in connection with the allowable uses.

The Maugus Club has been in existence for over seventy-five years, and is a duly incorporated organization, the chief activities of which are social and the services of which are not performed as a business. Over and above administrative offices and function rooms, it has indoor badminton courts and bowling alleys. No activity or function is carried on outside of the building, except for parking of vehicles for those members or guests attending functions or using the facilities.

The proposed paddle tennis court is a structure, measuring 30 feet by 60 feet, with footings to be sunk below the frost line, and wooden posts to extend 12 feet above the deck of the court, spaced at intervals of 6 feet, with screening of 1 inch hexangular galvanized mesh enclosing the playing area. The deck, as proposed, will be of aluminum, built up about three feet above ground level. The area between the deck and ground surface will be enclosed with plywood, and in the space of the bottom 6 inches a poly liner will be attached. It is proposed that 4 lights, 20 feet above the deck surface will be in place to illuminate the court. The proposed location of the court is 30 feet from Abbott Road, 38 feet from the easterly side lot line, and 114 feet from the westerly side lot line. The land on which the Club building is located, slopes downward from south to north.

The Maugus Club property is situated between two residential streets, and is bounded on the other two sides by residential properties. Abbott Road is a main residential roadway, running in a generally south direction from Washington Street, the main east-west thoroughfare in the Town, and is a high residential population public way, on which are located substantial and marketable properties.

STATEMENTS OF INTEREST

Henry D. White, Attorney, represented the appellants at the hearing, and outlined in detail their reasons for opposing the issuance of the permit.

Also speaking in opposition to the issuance of the permit involved were the following: Allen N. Hooker, 44 Abbott Road, Richard P. Axten, 96 Abbott Road, George Erickson, 139 Abbott Road, William B. Squier, 9 Clovelly Road, John J. Cavagnaro, 43 Abbott Road, Avery P. Maher, 45 Seaward Road, Frederic R. Morgenthaler, Gordon P. Ramsey, 72 Abbott Road, and Stanley E. Pratt, 51 Abbott Road. All felt that the introduction of a paddle tennis court in the proposed location at the Maugus Club would create additional traffic in an already busy area and would result in a serious safety problem for the children and motorists using Abbott Road. They further felt that it would be a total detriment to the quiet, single-residence neighborhood in terms of noise, night lighting and unsightliness and would result in a definite devaluation of their properties.

Letters opposing the issuance of the permit were received from Carroll B. Stewart, 29 Abbott Road as well as Stanley E. Pratt, 51 Abbott Road. A letter was submitted which was written by Helen W. Priem, Realtor, 550 Washington Street, Wellesley, to Allen N. Hooker, 44 Abbott Road, in which she stated that the asking price of his house, if put on the market today, would be \$59,500., however, if the Maugus Club installed a paddle tennis court on their premises, the asking price would go down to \$49,500. It would be very difficult, she stated, to sell a property so close to the court because of overhead lights and the noise from the participants.

Allen N. Hooker, 44 Abbott Road, abutter to the Maugus Club, stated that the proposed tennis court, if built, will be less than forty-five feet from his house with three of his bedrooms in view of the proposed court. Such use of the property, he felt, would constitute a nuisance and an intrusion of his rights as a property owner because of the noise which would be generated from its activities as well as the lights shining onto his property. All of this, he felt, would result in the reduction of the selling price of his property about \$10,000., as estimated by the realtor.

Mr. Hooker further questioned the intent and meaning of, "such accessory uses as are customary" in a single residence district as referred to in Section II of the Zoning By-law. In his opinion a "paddle tennis court" is not a customary use for a social club which, in his opinion, the Maugus Club has been for many years.

A petition signed by 81 nearby residents opposing the issuance of the permit by the Building Inspector was submitted at the hearing.

Charles A. Goglia, Jr., Attorney for the Maugus Club, stated that, in his opinion, the proposed tennis court is a permitted use within a Single Residence District. The Club has been in existence since the 1890's, he stated, and has had badmitton courts and bowling alleys, and it would seem to him that the proposed tennis court would be consistent with the club's activities and in compliance with the allowable accessory uses for such a club.

He explained that only four people will be playing the game at any one time, and felt that they will not generate a great deal of traffic or noise in the area. The courts are constructed of aluminum and insulated so that the noise would be minimal. The lights should not be disturbing either, he felt, as 85% of the light will be turned onto the court. He strongly felt that a "paddle tennis court" is a customary accessory use, within the meaning of the Zoning By-law, to the Maugus Club and its use would not prove detrimental to surrounding properties.

Walter F. Greeley, President of the Maugus Club, stated that the proposed tennis court is, in his opinion, a customary activity of the club. He wants to continue to conduct the Club's activities as a good neighbor, he stated, and agreed to talk further with neighbors and attempt to find a more agreeable location for the court.

A representative from Richard J. Reilly, Jr., Inc., the company installing the tennis court, explained that he had installed another such court in Wellesley and has installed a number of other courts throughout the area. In his opinion, the proposed use of the property should not be disturbing to the neighborhood and in no way detrimental.

Attorney Henry D. White, stated at the hearing that he was representing eighty-one persons who are aggrieved by the issuance of a building permit by the Building Inspector to erect a paddle tennis court at the Maugus Club. He stated that the court is obviously a structure due to its construction and size.

He explained in detail his reasons why, in his opinion, the proposed use of the tennis court at this site would be offensive and injurious to the neighborhood. Because of its size and its location on relatively high ground, he felt it could not be screened from view by abutters and others in the area. The lights, he felt, would be extremely offensive to the neighbors as well as the noise generated by players and spectators. The aluminum decking, he felt, would tend to accentuate the noise of play. The court could be used day or night on a year-round basis since lights and deck heating are provided. All of this, he felt, would be offensive as well injurious to the health and welfare of children and others in the neighborhood, because of interference with rest and sleep.

He stressed the fact that the Maugus Club always has been an "inside" club with its activities being conducted within the building as distinct to other clubs whose activities included outside tennis courts, golf courses, swimming pools and other incidental outdoor activities. The Maugus Club property is small with neighboring properties close by; some also on small lots. Because of the Club's inside activities, it has always been acceptable in the neighborhood and nearby properties have been bought and sold with that in mind. He stated, in his opinion, the proposed paddle tennis court is not an accessory use customarily connected with a club such as the Maugus Club. He felt, however, that such facilities and activities would be considered customary accessories at a club such as the Wellesley Country Club, which is outdoor oriented and with buffering land, but the Maugus Club does not allow the same interpretation of the By-law.

The traffic on Abbott Road, stated Mr. White, would be significantly increased by the added activity at the club. He felt that there is a serious traffic problem now which would be aggravated by the increased movement of cars into and out of the parking lot. Such an activity being played so near a public way, he felt, also may be distracting to drivers of passing cars

unless the court is adequately screened from view. Since the screening would not be possible, this could be a public safety hazard. It was further pointed out that a reduction in market values within the area would be extremely injurious to property owners and to the welfare of the community. The proposed tennis court, he stated, is not a suitable use in this a residential district and felt it would be extremely detrimental to the neighborhood and injurious to the neighbors.

DECISION

The question presented to the Board for decision is whether the building permit No. 17690, issued by the Building Inspector was issued in compliance with the requirements of the Zoning By-law or whether it should be revoked on the ground that a paddle tennis court would be in violation of the applicable provisions of the Zoning By-law, either Section II. Single Residence Districts or Section XVI. Restrictions Affecting All Districts.

The Board has made a careful study of the evidence submitted and has taken a view of the locus. In its opinion, the proposed paddle tennis court, in this case, would prove detrimental to surrounding properties and would be in derogation of the intent and purpose of the Zoning By-law.

There is no question as to whether a Club is allowed within a Single Residence District, as it is one of the allowable uses enumerated under said Section II.

In part Section II, Single Residence Districts states:

In a Single Residence District, no new building or structure shall be constructed or used in whole or in part, and no building or structure or part thereof shall be altered, enlarged, reconstructed or used, and no land shall be used, for any purpose except one or more of the following specified uses:

1. One-family dwelling
2. Church
3. Public School, municipally owned or operated parking lot or other public use.
4. Club, except a club the chief activity of which is a service customarily carried on as a business.

5. (a) Farm, but not a farm devoted principally to the raising of poultry, horses, domestic animals or other livestock for sale.
(b) Market garden
(c) Nursery
(d) Greenhouse,
including the use of premises for the sale of natural products raised thereon, but not including the use of premises for the sale of loam;
6. The office of a professional man in his own residence
7. Such accessory uses as are customary in connection with the uses enumerated in clauses 1, 2, 3, 4, 5, or 6, and are incidental thereto, including a private garage and a private stable.

The question, therefore, is whether the "paddle tennis court" is an accessory use which is "customary in connection with and incidental" to a Club. The Board thinks it is not in this case. It feels that it will be definitely deleterious to the neighborhood of single family dwellings and is neither "necessary" nor "commonly to be expected" in connection with a club of the type involved. Other factors which the Board has considered in determining whether a given use is so customary and incidental as to be "accessory", includes the extent or degree of use, as well as the kind, resulting annoyance to neighbors, the effect of the use on property and aesthetic values and the nature of the surrounding area. Also "accessory use" should be interpreted in the light of the statutory authority conferring upon the town the authority to adopt zoning by-laws.

The Board has referred to Section XVI of the Zoning By-law which provides, Restrictions Affecting all Districts,

"Any other provision of this by-law notwithstanding, no new building or structure shall be constructed or used, in whole or in part, and no building or structure or part thereof shall be altered, enlarged, reconstructed or used, and no land shall be used, in any part of the Town,

- A. For any purpose which by the emission or discharges of fumes, vapor, smoke, gas, dust, cinders, offensive odors, chemicals, poisonous fluids or substances, refuse, organic matter, or excrement, the causing of noise or vibrations, or by unduly increasing the risk from fire or explosion, or otherwise, would be obnoxious, offensive, dangerous or injurious to the public health or safety.
- B. For the storage or parking of motor vehicles which are, and for the immediately preceding thirty day period have been, disabled, dismantled or inoperative, unless said vehicles are enclosed within a building or are stored or parked pursuant to a permit issued at the discretion of the Selectmen.
- C. For any purpose which would be for any reason injurious to the health, safety, morals or welfare of the community or harmful to property therein.

It is the opinion of this Board, under this Section, that it is the intent and purpose of the Zoning By-law, to restrict the type of activity in any District, which would be injurious to the health, safety, morals or welfare of the inhabitants of the Town or harmful or depreciating to surrounding properties.

Each case, should be determined individually by the Board of Appeal and in making a determination of the application of the Zoning By-law consideration should be given to the location of the property involved, the physical characteristics of the property, nature and use of the building involved as well as the surrounding properties.

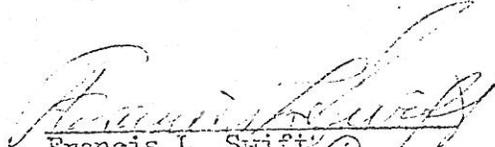
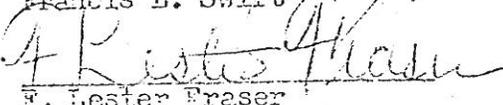
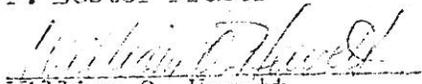
The primary purpose of Zoning is the preservation, in the public interest, of certain neighborhoods against uses which are believed to be deleterious to such neighborhoods.

The Maugus Club is located in the center of an above-average residential neighborhood and has been in operation since the 1890's with its activities being conducted within the building. The Board

is not aware of any disturbances, other than traffic congestion, that the neighbors have been experiencing from its operations during these years, nor were any presented to the Board at the hearing.

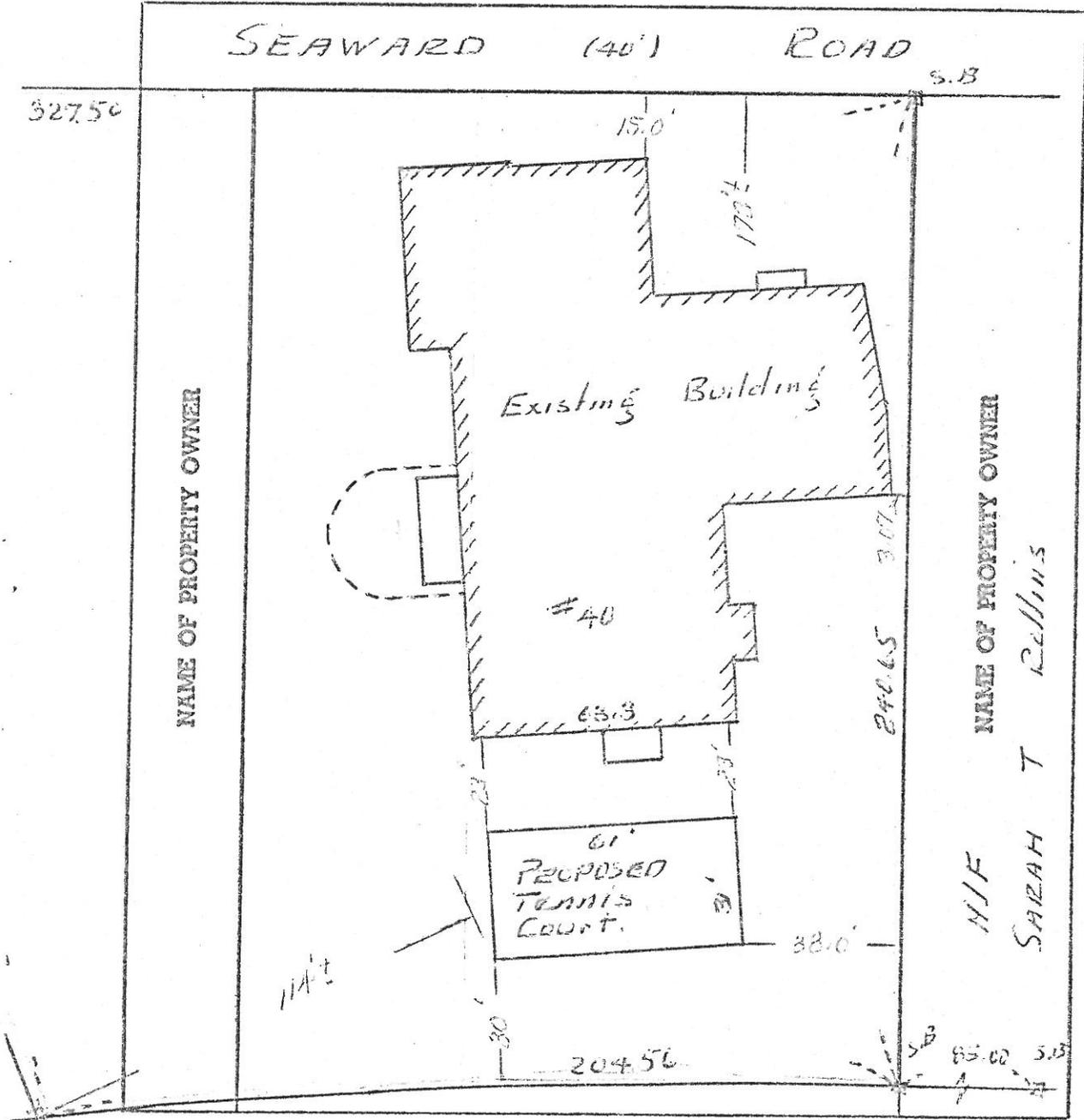
The introduction of a paddle tennis court at the site appears to be the first time a question has arisen relative to a permitted accessory use at this Club. It is the opinion of the Board that because this type of activity is relatively new, an uncertainty still exists as to the effect it will have on all neighborhoods, however, it is the Board's opinion, that in this particular case, a paddle tennis court, in the proposed location, will prove detrimental to the values of surrounding properties as well as disturbance to the neighbors and will aggravate traffic on a very busy street. The Board has no doubt, in this case, that to find otherwise would be in derogation of the intent and purpose of the Zoning By-law.

It is, therefore, the unanimous opinion of the Board, that permit No. 17690 was and is invalid ab initio. Accordingly, the appeal is granted and the building permit is revoked.


Francis L. Swift

F. Lester Fraser

William O. Hewett

Filed with Town Clerk 1/20/76

DIAGRAM



INDICATE DISTANCES FROM LOT LINES AND BUILDINGS ON LOT

ABBOTT (40') ROAD.