



BOARD OF APPEAL

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Petition of Edward M. and Arlene Levitt

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 8:55 p.m. on October 9, 1975, on the petition of Edward M. and Arlene Levitt, Trustees U/D/T, dated March 12, 1973, requesting permission to construct and use a building at 611 and 617 Washington Street, as a Licensed Nursing Home, as provided under Section II 8 (d) and Section XXIV of the Zoning By-law.

On September 5, 1975, the petitioners filed their request for a hearing before this Board, and thereafter due notice of the hearing was given by mailing and publication.

Richard M. Perlmutter, attorney and associate of the petitioners, spoke in support of the petition at the hearing.

Frederick Glover, architect with the firm of R. Wendall Phillips & Associates, described the design and construction of the proposed building, its location, provision for parking, etc.

Julio DiGiando, 44 Denton Road, Lee Steele, 6 Denton Road, Enid Wilson, 61 Denton Road, Owen B. Stratton, 55 Denton Road, and Alan H. Schechter, 71 Denton Road, all opposed the request.

Mr. DiGiando stressed the serious traffic problem on Washington Street, and the present difficulty of getting out of Denton Road onto Washington Street. Others from Denton Road also were concerned with the present traffic problem on Washington Street and the probable aggravation of the situation if the request is granted.

Mr. Stratton stated that there is a great deal of activity at St. Andrews' Church during the week which creates traffic congestion even though there is a parking lot at the corner of Washington Street and Weston Road which accommodates 32 cars, and felt that if the proposed request is granted, it will add to the present problem.

Barry Spacks, 16 Abbott Street, abutting property owner at the rear of the property involved, stated that he felt the proposed building will be too close to his property and its size should be reduced, otherwise it will prove detrimental to his property.

Richard W. Clayton, Jr., 8 Cross Street, questioned the adequacy of 30 parking spaces on the site, although it may meet the State requirement.

Herbert Austin, 11 Leighton Road, owner of the property abutting the petitioners' property on the westerly side, stated that he had no objections to the granting of the request. He felt that Washington Street is no longer a single residence area in reality.

The Planning Board in its report stated that it had no objection to the petition.

Statement of Facts

The property involved is located within a Single Residence District requiring a minimum lot area of 10,000 square feet. On one parcel there was a four-story brick and stone building which was destroyed by fire in January 1972 and subsequently removed pursuant to an order of the Building Inspector. Said building, which was known as the Webb House, had been used for approximately seventy-five years for various non-conforming uses including a hospital, a college dormitory, a nursing home and a lodging house. Just prior to its being destroyed by fire, this Board granted the petitioners permission to convert the building into six apartments, however, during the alterations, it was destroyed. On the adjacent parcel is a dwelling house which has been occupied until recently as a two-family dwelling. It is proposed to raze this dwelling if the requested permission is granted.

In May, 1973, the Board of Appeal granted a variance to the petitioners, allowing the construction of a 20-unit garden apartment project. Subsequently, the Planning Board of the Town of Wellesley, appealed the action of the Board of Appeal. The matter was tried before the Norfolk County Superior Court in late 1974 and the decision of the Board of Appeal in granting the variance was overturned by that Court for the reason that the evidence presented to the Court did not warrant the required statutory finding of hardship.

The petitioners now seek permission to construct a three-story 44-room nursing home on the site involved. The proposal is consistent with the provisions of the Zoning By-law, as a nursing home is a use which the Board of Appeal may allow under Section II 8 (d), if it finds that the proposed use will not substantially reduce the value of any property within the district and will not otherwise be injurious, obnoxious or offensive to the neighborhood. The building is designed to have a two-story wing on the front which will form an ell around a courtyard and will be used as the functional area of the building, including kitchen, dining room, recreation room, administration offices, etc. The main part of the building will have three stories, with the upper two stories consisting of 44 bedrooms off the main corridors to provide 101 beds. It was stated that extra space has been provided in the dining and public function areas which could accommodate a day care center if the need arises.

It was pointed out that there are a large number of non-conforming uses in the neighborhood so that the proposed use should not be inconsistent with many of the other buildings in the immediate area, and it was felt, would not prove detrimental to the neighborhood. The necessary licenses will be approved only after a determination of need is made by the Department of Public Health of the Commonwealth of Mass. and relevant health planning agencies.

Plans showing the elevations of the building, floor layouts and exterior materials were submitted. Said plans were drawn by R. Wendell Phillips and Associates, Inc., 164 Newbury Street, Boston, dated August 1975. A site plan was also submitted, drawn by R. Wendell Phillips and Associates, which showed provision for off-street parking to accommodate 30 cars as well as proposed landscaping of the lot. A plot plan was submitted drawn by Joseph A. Bodio, Land Surveyor, Barnes Engineering Company, Inc., Auburndale, dated September 4, 1975, which showed the two-story wing on the front of the proposed building to be 31' back from Washington Street, with the main part of the building 49' back from the street line, 20' from the lot line on the westerly side, 46.77' from the lot line on the easterly side and 39.5' from

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the lot line on the northerly side.

Decision

The Board has made a careful study of all the evidence submitted and has taken a view of the locus.

While the property involved is located within a Single Residence District, it is on Washington Street, a heavily traveled road which is not a suitable location, in the opinion of this Board, for single-family dwellings. Provision has been made by the petitioners for off-street parking which, in the opinion of this Board, is adequate to obviate any additional traffic hazard.

The premises involved are literally surrounded by non-single family residence uses. Across the street are apartment houses, lodging houses and a funeral home; a short distance down the street to the left is a business area; diagonally to the right across the street are a church and a parking lot; on both sides there are houses used for medical offices; just beyond is a vacant lot used for parking and behind the locus on Abbott Street are several single-family houses but many others are being used for two, three and four family and other multiple occupancy purposes, plus a municipal parking lot.

In 1973, when the petitioners appeared before the Board of Appeal seeking a variance, the Board found: "This situation as it affects the locus is a result of a number of factors including the natural aging and obsolescence of old residences, the gradual expansion and encroachment of business and business related uses and the increased incidence of legal and illegal non-conforming multiple residence uses, in some cases as a result of action by the Town Meeting and in other instances by sufferance of other agencies of the Town." It further found at that time, "there can be no serious argument about the inappropriateness of the locus for new single-family residence development." This Board has received no evidence and on its own investigation has found none, which supports a contrary finding.

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Although the Court overruled the decision of the Board in 1974, the Court did find that the proposed use would not substantially derogate from the intent and purpose of the by-law because of the same factors previously found, but as a matter of law, the evidence did not warrant the required statutory finding of "hardship." In this case, "hardship" is not a criteria necessary to find to grant the relief sought. Section XXIV of the Zoning By-law requires that the Board find that the proposed use will not substantially reduce the value of any property within the district, and will not otherwise be injurious, obnoxious, or offensive to the neighborhood.

In the opinion of this Board, the foregoing circumstances limit the property's desirability for residential use. Adequate provision has been made by the petitioners for off-street parking and ingress and egress.

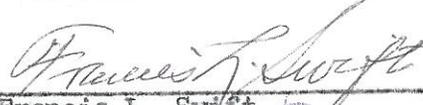
For these reasons, it is the unanimous opinion of this Board that the proposed use of the property will not substantially reduce the value of any property within the District and will not otherwise be injurious, obnoxious or offensive to the neighborhood.

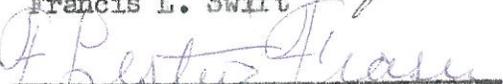
Accordingly, the requested permission is granted provided that it may be terminated by the Board in the event that any of the following conditions are not or cease to be complied with:

1. That all work shall be performed in accordance with the plans heretofore or hereafter filed with and approved by the Board and in compliance with all other requirements of local and State laws.
2. That petitioners shall promptly file such additional detail final plans and specifications for the proposed construction as the Board shall require showing the locations and elevations of building, exterior materials and incorporating such provisions for off-street parking facilities, screen and exterior lighting and other appurtenances as the Board shall in its sole discretion require, which final plans shall be subject to the Board's approval.
3. Eating and/or dining facilities shall be provided solely for patients and those caring for and providing service to said patients; except that petitioners may make said facilities available to senior citizens.
4. That the landscaping shall be maintained to the satisfaction of this Board for the life of the building and subject to such changes as the Board may by regulation from time to time prescribe.
5. That provision satisfactory to this Board for sewage, drainage and other utilities shall be made at no expense to the Town of Wellesley
6. That the owner of subject premises shall make such additional or other provisions for off-street parking and screening thereof and otherwise administer the project as the Board may by regulation from time to time prescribe.
7. That upon completion of the building a complete set of architectural plans, including a complete set of mechanical plans, shall be submitted to this Board at least ten days prior to occupancy of the building.
8. That a surety performance bond running to the Town shall be provided in the amount of \$20,000. in form satisfactory to Town Counsel and the Board of Appeal which shall be posted with the Treasurer of the Town of Wellesley before commencement of the work. Said bond shall be conditioned on the completion of the work in accordance herewith and signed by a party or parties satisfactory to Town Counsel and this Board.

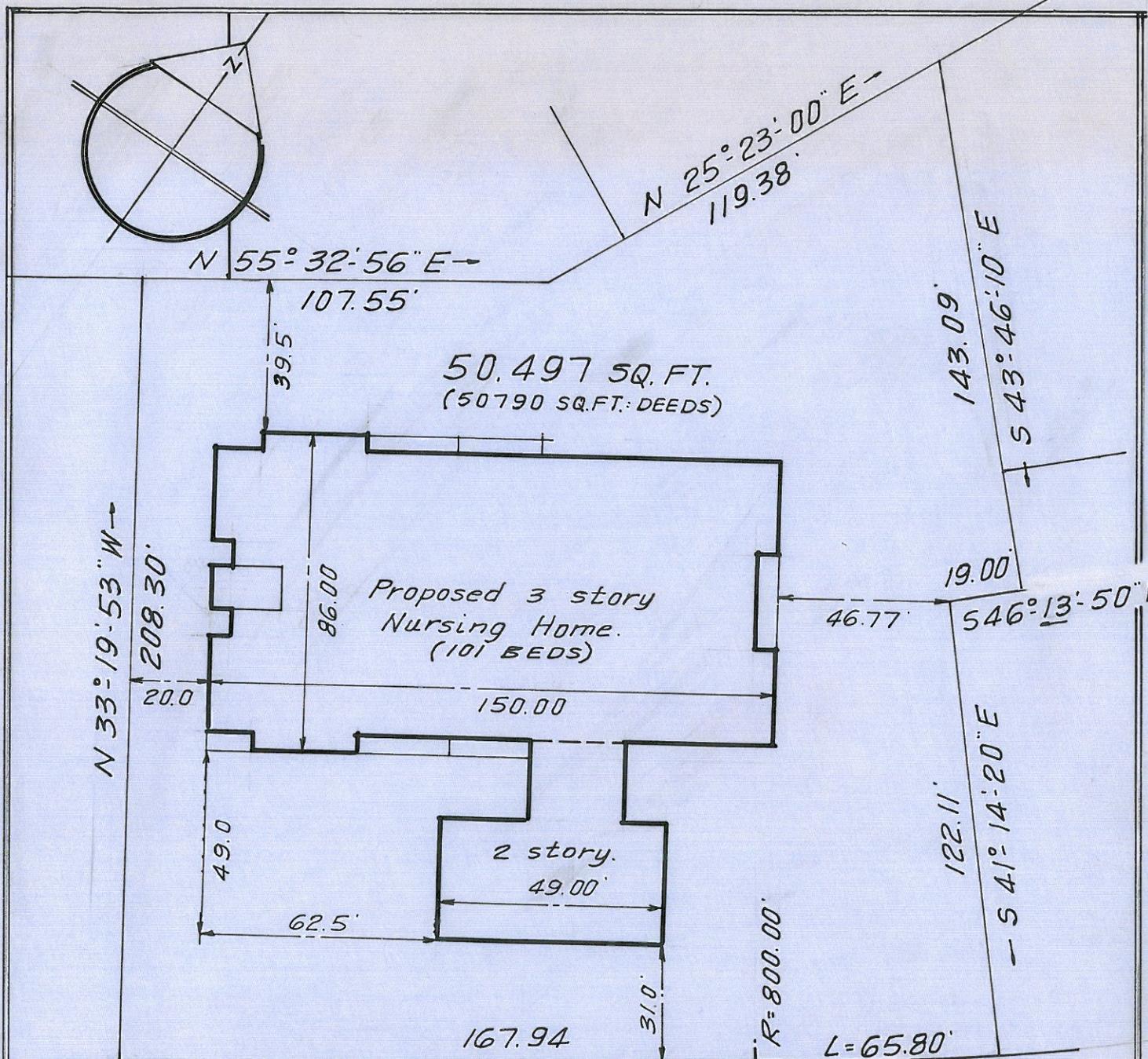
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Francis L. Swift


F. Lester Fraser


William O. Hewett



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@ WESTON RD

S 55° 32' 46" W
WASHINGTON ST.

PLOT PLAN
IN
WELLESLEY, MASS.
SHOWING PROPOSED LOCATION
OF A NURSING HOME AT:
609-611 & 617 WASHINGTON ST.
SCALE: 1" = 40 FT. - SEPT. 4, 1975.
Barnes Engineering Company, Inc.
411 Lexington St. Auburndale, Mass.

