



## BOARD OF APPEAL

75-59

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 235-1664

Appeal of Robert G. and Elizabeth Cotter McGroarty from the  
 Issuance of Building Permit No. 17690 to World Plan Executive  
 Council

This Board held a public hearing in the hearing room on the second floor of the Town Hall at 8:45 p.m. on November 20, 1975, on the appeal of Robert G. McGroarty and Elizabeth Cotter McGroarty, claiming to be aggrieved from the issuance of a building permit by the Building Inspector for the construction of a one-story addition on the rear right side of the dwelling situated at 67 Longfellow Road and owned by World Plan Executive Council.

Mr. and Mrs. McGroarty (hereinafter "McGroarty") were represented by Ms. Laura Steinberg and G. Michael Hawkey, lawyers of the firm of Sullivan and Worcester, 225 Franklin Street, Boston.

World Plan Executive Council (hereinafter "World Plan") was represented by Messrs. George R. Halsey and Paul H. Rothschild, lawyers of the firm of Deutsch & Krasnow, 141 Milk Street, Boston.

A stenographer took a transcript of the proceedings.

After each party presented its case, witnesses, duly sworn, were examined and cross-examined.

After the testimony of witnesses comments from other persons present at the hearing were accepted.

The hearing closed with concluding statements being made by both parties.

STATEMENT OF FACTS

McGroarty is the owner of premises situated on 323 Worcester Street, Wellesley, Massachusetts. Said premises abut 67 Longfellow Road, owned by World Plan. The premises owned by McGroarty and those owned by World Plan are both situated within a Single Residence District as defined by Section II of the Town of Wellesley Zoning By-Law.

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Mc Groarty's appeal contains the following complaints:

a. That they are aggrieved by the issuance of Building Permit No. 17690 dated October 16, 1975 by the Wellesley Inspector of Buildings for the construction, on said premises at 67 Longfellow Road, of a one-story addition on the rear right side of the house situated on said premises for conference ("checking") rooms.

b. That the issuance of said permit, and the use to which said premises will be devoted upon completion of the construction authorized by said permit, are in violation of the Town of Wellesley Zoning By-Law, for the following reasons, among others:

(i) The proposed use of the addition to be constructed at 67 Longfellow Road, is not a use permitted as a matter of right within a Single-Residence District.

(ii) Said proposed use of the addition violates Section XVI(A) of the Town of Wellesley Zoning By-Law in that the present use of said premises causes excessive noise and is obnoxious, offensive, dangerous, and injurious to the health and safety of McGroarty and of other residents of the Town of Wellesley and that construction of the addition approved by said permit would aggravate such situation.

(iii) Said proposed use violates Section XVI(C) of the Town of Wellesley Zoning By-Law because the increase in traffic volume about said premises is and threatens in the future to be injurious to the health, safety and welfare of McGroarty and other residents of the Town of Wellesley.

(iv) Said permit was issued by the Inspector of Buildings in violation of the provision of Section XXIII(B) of the Town of Wellesley Zoning By-Law which provides that no permit shall issue for the construction of any building or structure which would be in violation of any of the provisions of the Wellesley Zoning By-Law.

(v) Said proposed use is detrimental to the fair market value of the property of McGroarty and of other residents of the Town of Wellesley.

(vi) Said proposed use is permissible, pursuant to Section II(8)(b) of the Town of Wellesley Zoning By-Law, only upon the express approval of the Board of Appeal.

(vii) Said proposed use violates the Massachusetts Basic Building Code, in that to the extent the premises are being used for a course of instruction being given, on a regular basis, to ten or more persons, the use of the premises is a schoolhouse as defined by said Building Code; and use of an unprotected frame structure as a schoolhouse is prohibited by the Basic Building Code.

(viii) The aforesaid permit was issued by the Inspector of Buildings in violation of said Building Code which provides that no addition of frame construction may be erected within a Fire District No. 2, unless for residential uses and the general neighborhood within which said premises at 67 Longfellow Road are located are within such a Fire District and the proposed use of said addition is not for residential purposes.

The Board finds that the premises at 67 Longfellow Road are, in fact, situated within a Single Residence District in which the uses permitted of right are set forth in Section II of the Wellesley Zoning By-Law and are therein stated as follows:

- "1. One-Family Dwelling;
2. Church;
3. Public school, municipally owned or operated public 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) Greenhouse, including the use of the 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;"

In addition to those uses allowed as of right, certain other uses are permitted under Section II 8, provided permission is obtained from the Board of Appeal. These additional uses will be considered further on in this decision.

#### DECISION

The first issue raised at the hearing was whether or not this Board, as constituted at the hearing, could rule on State Building Code questions.

At the outset, this Board notes that the case of O'Donnell v. Board of Appeals of Billerica, 349 Mass 324 (1965), holds that appeals to a board of appeals under the building by-law are not governed by Chapter 40A.

Therefore, this Board must look to the State Building Code in order to resolve this issue.

We note that section 126.81 of the State Building Code provides (in part):

"Any building code board of appeals duly established by ordinance or by-law or otherwise in a city, region or town and in existence on January 1, 1975, shall qualify as a local board of appeals under section 126 notwithstanding anything to the contrary contained herein."

The Town of Wellesley board of appeals for building code purposes was established under section 127.1 of the Building Officials Conference of America, Inc. Basic Building Code adopted (with modifications) by the adjourned session on April 6, 1970 of the Annual Town Meeting. Therefore a local board of appeals was in existence on January 1, 1975 as defined in said section 126.81.

But section 126.81 must be read further, and it continues: "However, the procedure and rights for appeals for such board of appeals shall be governed by this Code."

We consider that "procedure" should be understood to mean "a manner of proceeding" and "a set of established forms or methods for conducting the affairs of a business, legislative body, or court of law" (The American Heritage Dictionary of the English Language, New York, 1969) or, as in "Black's Law Dictionary" (Fourth Edition), "The mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right. . ."

Therefore, this Board concludes that the State Building Code governs matters such as a quorum (section 126.85), entry of an appeal (section 126.31), and other aspects of procedure (section 126.86).

We do note that section 126.86 provides:

"The local board of appeal may establish its own rules for procedure not established herein or not inconsistent with this Code or the enabling legislation creating a state-wide building code."

This last quoted provision indicates to this Board that where the State Building Code provides for a specific form of procedure, such specified procedure must be followed notwithstanding local rules to the contrary.

The Board finds that the McGroartys' appeal, which was filed on November 13, 1975, was an amendment to the original appeal filed on October 24, 1975, and added sections viii and ix, alleging violations of the State Building Code. It did not follow the procedures set forth in the State Building Code in that it was not brought on forms provided by the State Building Code Commission (section 126.31).

Furthermore it does not appear that the appeal was served upon "the person responsible" as required by section 122.12; in this case, the Inspector of Buildings.

At the beginning of the hearing World Plan requested a postponement of the hearing for the reason, as stated by World Plan, that a quorum of five qualified members of this Board were not present. This Board denied such a postponement, stating that it would hear the evidence on the building code violation issues, but would not render a decision as to those issues if it found that, in fact, World Plan had been entitled to such postponement.

The Board finds that section 126.85 of the State Building Code requires that the local board of appeals quorum for sitting on a building question:

". . . shall be three (3) members, but when five (5) qualified members are not present to consider a specific appeal, either the appellant or appellee may request a postponement of the hearing."

This Board did not have five qualified members present at the hearing and, having not honored World Plan's request for a postponement, it can not properly render decisions as to building code matters raised at the hearing.

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The next question to be considered by this Board is whether or not World Plan is exempt from prohibitions or limitations of land use under General Laws, Chapter 40A, Section 2.

Within the text of this section there is the clause, ". . . provided, however, that no ordinance or by-law which prohibits or limits the use of land for any church or other religious purpose or for any educational purpose which is religious, sectarian, denominational or public shall be valid."

If World Plan's uses of the addition to the premises at 67 Longfellow Road fall within those uses exempted by section 2A, then as to the question of uses the Inspector of Buildings properly issued the permit that is in question.

On the other hand, if such uses do not fall within those uses exempted by section 2A, then it is within the power of this Board to determine whether or not such uses are permitted by the Town of Wellesley Zoning By-Law. If this Board determines that such uses are not so permitted, then it is the duty of the Board to order the Inspector of Buildings to revoke the building permit on the grounds that it was issued in error.

Without setting forth in these proceedings elaborate minutes of the Board's reasoning, we state that the proposed World Plan use of the addition, in our opinion, is not for "any church or other religious purpose" or "for any educational purpose which is religious. . . [or] denominational. . ."

The question, then, remains, whether or not the World Plan's proposed use is for "any educational purpose which is. . . sectarian. . . or public."

World Plan's "Memorandum in Support of Appellee", which was submitted to this Board on November 20, 1975, stated that "the Wellesley Zoning by-law does not provide for the Board of Appeal to consider the question of a claim of exemption or to inquire into the validity of the claim of exemption." This memorandum also states, "Moreover, the Board of Appeal includes persons whose expertise and training is far afield from the legal issues of exemption." The memorandum continues, ". . . it is clear that the Zoning Board has no power to examine the validity of a claim of exemption especially when it is already acknowledged by the Board of Selectmen."

Further, the memorandum states, "Town Counsel is the only town official who has authority to proceed to challenge the Society's exemption in Court, and he has already made a determination in electing not to enforce the cease and desist order that such an effort is not justified."

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With respect to the competence of this Board to determine questions arising under Chapter 40A, Section 2, the memorandum concludes, ". . .the Board has no power under Chapter 40A, §15 nor Chapter 40A, §2, nor the by-laws to entertain the exemption issue. As a practical matter it is not equipped by necessary rules of procedure to deal with this complex legal question."

This Board is not disarmed by the reasoning in the extracts from World Plan's memorandum quoted above.

Section XXIV of the Zoning By-Law provides that appeals and other proceedings relating to Zoning "under the statutes" or under the zoning by-law shall be presented to this Board. If such matters shall be presented to this Board, it is fair to conclude that the Board is to decide them, otherwise there would be no purpose in presenting them.

We understand the word "Statutes" in the phrase, "under the statutes," to include Chapter 40A, a part of which is the exemption Section 2.

As for World Plan's statement that this Board includes persons whose expertise and training is far afield from the legal issues of exemption, we would reply that the expertise of judges is far afield from the fields of medicine and automobile design, yet judges decide questions of malpractice and implied warranty.

World Plan's assertion that it is "clear" that this Board has no power to examine the validity of an exemption claim isn't "clear" at all. The same assertion suggests that, if such an exemption is acknowledged by the Board of Selectmen, this Board is foreclosed from considering the matter. The suggestion seems to be that the Selectmen have the "expertise and training" to determine the exemption question, but that the Board of Appeal does not.

World Plan also asserts that the town counsel is the only town official who has authority to challenge World Plan's exemption in court. Be that assertion correct or not, the question is not in court, but before this Board. The town counsel issue in World Plan's memorandum concludes that the town counsel has already made a determination. If our town counsel has made such a determination, he has not transmitted it to this Board, and, even if he had, we do not understand that his determination would bind this Board.

World Plan submitted a series of exhibits with its memorandum including copies of a report filed with the Division of Public Charities of the Department of the Attorney General, World Plan's articles of incorporation, audited financial statements, recognition by the Internal Revenue Service that the Maharishi International University in Los Angeles is exempt under Code section

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501(c)(3), and recognition by the Commonwealth of Massachusetts that World Plan is exempt from taxation under General Laws, Chapter 64H.

This Board recognizes that World Plan is exempt from taxation; but, it does not follow therefrom that it is exempt from zoning. Chapter 40A, Section 2, does not exempt "charitable" uses of land, its definition is more specific.

A Red Cross blood donor center would be a charitable use; but, it would not be exempt under Section 2, nor would a hospital be exempt. This Board has recently heard petitions from an historical society, a community center, and a recreational center. These were charitable uses; but, in none of these cases was it suggested that the use was exempt under Section 2.

World Plan's memorandum of November 20, 1975 includes within its exhibits a bibliography of books and articles in periodicals. Among the titles are:

"Possible Psychological and Physiological Effects of Transcendental Meditation on Aphasic Patients."

"Respiratory Changes During Transcendental Meditation."

"Some Aspects of Electroencephalographic Studies in Yogis."

"Meditation May Find Use in Medical Practice."

"Spectral Analysis of the EEG in Meditation."

"Physiological Effects of Meditation Technique and Suggestion for Drug Abuse."

"Physiological Correlates of Meditation and Their Clinical Effects in Headache: An Ongoing Investigation."

"Decreased Blood Pressure in Hypertensive Subjects Who Practiced Meditation."

"The Effect of Transcendental Meditation Upon a Complex Perceptual Motor Test."

"Recognition of Aspects of Consciousness Through Association with EEG Alpha Activity Represented by a Light Signal."

"Physics and the Study of Consciousness: Does Transcendental Meditation Induce a Macroscopic Quantum State in the Nervous System?"

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"A Psychodynamic and Neurophysiologic Assessment of Transcendental Meditation."

"Changes of Marginal Gingivitis in Meditation and Controls During an Interval of 25 Days."

"A New Effect in Infrared Radiation of the Human Skin Through TM."

"Psychophysiological Comparison of Alpha Biofeedback and Transcendental Meditation in Normal Subjects and Psychiatric Patients."

"A Wakeful Hypometabolic Physiologic State."

"Decreased Blood Lactate During Transcendental Meditation."

"The Effects of Transcendental Meditation Upon Bronchial Asthma."

Among the journals cited in this bibliography are:

"Lancet"

"Journal of the American Medical Association"

"Electroencephalography and Clinical Neurophysiology"

"Headache"

"Proceedings of the International Symposium on Drug Abuse"

"Journal of Behavioral Therapy and Experimental Psychiatry"

"Psychophysiology"

"Proceedings of Biofeedback Research Society"

"Medical Counterpoint"

"Journal of Counseling Psychology"

"Psychosomatic Medicine"

"Journal of Counseling Psychology"

"International Journal of Psychoanalytic Psychotherapy"

"International Journal of Psychoanalysis"

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"American Journal of Psychiatry"

"Seminar in Psychiatry"

"American Journal of Physiology"

"Clinical Research"

In a letter to the Board dated December 1, 1975, World Plan's counsel referred to a book entitled, "T.M., Discovering Inner Energy and Overcoming Stress", by Bloomfield, M.D. and others, Dell Publishing Company, Inc., New York, 1975. The three members of the Board who heard this case, Messrs. Fraser, Glod, and Thayer have read this book with great interest. The book explains the physiological and psychological benefits of transcendental meditation. The book is illustrated with twenty seven charts illustrating such aspects as: changes in metabolic rate; breath rate; and skin resistance; brain wave synchrony; galvanic skin responses; decreased blood pressure in hypertensive patients; and increased perceptual ability.

The Board has reviewed the cases cited in both parties' briefs, especially those relating to educational uses, namely:

Worcester vs. New England Institute and New England School of Accounting Inc., 335 Mass 486 (1957);

Sisters of the Holy Cross v. Brookline, 347 Mass 486 (1964);

Radcliffe College v. Cambridge, 350 Mass 613 (1966);

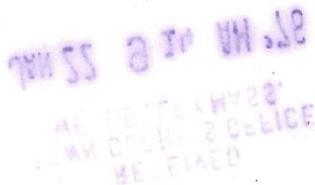
Attorney General v. Dover, 327 Mass 601 (1951); and

Chicopee v. Jakubowski, 348 Mass 230 (1964).

The Board has also read the case of Kurz v Board of Appeals of North Reading, 341 Mass 110 (1960).

None of the above cases appear to resolve controversies whose facts are similar to the present dispute before this Board. Those cases involved what appeared to be schools in one form or another.

In the Worcester case, a school of accounting was held to be an "educational" use within the meaning of Section 2. In the Kurz



case, the teaching of most types of dancing was not. In the Chicopee case the teaching of ceramics was held not to meet the standards laid down in the Worcester case.

Almost any activity teaches a participant something he didn't know before he began participating in the activity. However, this Board does not believe that the term "educational" as used in Section 2 should be construed so broadly that it includes almost any activity.

The World Plan use of the proposed addition for "checking room" appears to this Board to be akin to a medical use, something in the nature of a psychiatric clinic.

Accordingly, we find that such use is not exempt under General Laws, Chapter 40, Section 2A.

Further, we find that the use of the premises as a whole is primarily a medical use, and, therefore is not exempt from land use controls by zoning.

As noted above at page 3, these are uses that are allowed in a Single Residence District by special permission under Section II8 of the Zoning By-Law. These include (under Section II8):

- (c) Public or semi-public institution of a philanthropic, charitable, or religious character.
- (d) Hospital, sanitarium, or other medical institution.

It may be that World Plan's use corresponds to one of these uses allowed by special permission; however, no permission has been sought from this Board for such a use, as required by Section XXIV of the Zoning By-Law, therefore, this Board cannot rule on such a question.

The only matter before the Board is Building Permit No. 17690. Finding that the use thereunder is not an allowed use under Section II of the Zoning By-Law, this Board hereby revokes, to the extent it may do so itself procedurally, and directs the Inspector of Buildings to revoke Building Permit No. 17690.

We leave the question of the use of the entire premises at 67 Longfellow Road for further investigation by the Inspector of Buildings under Section XXIII G of the Zoning By-Law.

The members of the Board sitting for this hearing were F. Lester Fraser, Stanley J. Glod, and Henry H. Thayer, all of whom voted in accordance with this decision.

Filed with Town Clerk

F. Lester Fraser  
F. Lester Fraser

Jan. 22, 1976

Stanley J. Glod  
Stanley J. Glod

Henry H. Thayer  
Henry H. Thayer

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