

Petition of Joseph T. Murphy and Albert Auburn

Pursuant to due notice the Zoning Board of Appeals held a public hearing in the hearing room on the second floor of the Town Hall at 8:20 p.m. on September 27, 1979, on the application of Joseph T. Murphy and Albert Auburn, requesting a Comprehensive Permit to construct a building which will provide thirty-six (36) dwelling units on land owned by them, located between the Cochituate Aqueduct and No. 10 Cedar Street. Said request was made under the provisions of Massachusetts General Laws, Chapter 40B, Section 20-23. It is the intention of the applicants to restrict the occupancy of ten of the units to elderly and handicapped persons, eight other units to be restricted for occupancy by qualified families, and the balance of the units to be rented at their true market value without restriction.

On September 11, 1979, the petitioners filed their request for a hearing before this Authority and thereafter due notice of the hearing was given by mailing and publication.

Board members present were: Francis L. Swift, Chairman, William O. Hewett and William F. Cullinane.

At the hearing, Robert L. Devin, Esquire, representing the petitioners, outlined in detail the applicants' proposal for the construction of thirty-six apartment units on the site involved as described in the drawings submitted with the application.

He stated that Joseph T. Murphy and Albert Auburn, both residents of Wellesley, are General Partners of Cedar Street Associates, a Massachusetts Limited Partnership organized and existing under Chapter 109 of the General

Laws of Massachusetts.

The units to be constructed, he stated, will be financed with a mortgage loan to be obtained from the Massachusetts Housing Finance Agency (the MHFA) which has approved the site by letter dated December 10, 1976, and which has invited the submission of a mortgage application.

The proposed development is to be located on a site containing 52,467 square feet, and the building to be constructed will contain twelve (12) one-bedroom apartments, 22 two-bedroom apartments and 2 three-bedroom apartments. Two of the one-bedroom apartments to be contained in the proposed building will be specially equipped for occupancy by handicapped persons. It is the intention of the applicants to restrict the occupancy of ten of the units, 8 one-bedroom apartments and 2 two-bedroom apartments to elderly and handicapped persons. Additionally, 8 other units, 6 two-bedroom apartments and 2 three-bedroom apartments will be restricted for occupancy by qualified families. The balance of the units will be rented at their true market value without restriction.

It was stated that the proposed building has been located on the site, as shown on the site plan, in a manner respecting the present topography of the site. It is a single structure containing living units on four floors serviced by an elevator located in the central entrance lobby serviced by stairways and ramps. The building will occupy 8,953 square feet of the site or 17.06% of the site. Parking will be provided for thirty-seven automobiles. The usable open space after deducting the building coverage area and the roadways and parking areas, will be approximately 46.5% of the site area. The proposed structure will be set back from Cedar Street 107 feet, and the northerly side yard set back will be sixty feet. Parking areas will abut the property lines. Access to the development will be available from Cedar Street and parking space has been provided adjacent to the entrance of the proposed structure and will have

plans submitted. He explained that the applicants believe that the requirements and regulations from which exemptions are sought are not inconsistent with the local and regional need for low and moderate income housing; Wellesley does not currently meet any of the statutory minima set forth in Section 20 of Chapter 40B of the General Laws and he outlined the three basic requirements.

There presently exists in Wellesley a need for additional housing units for low and moderate income elderly families, he stated, and while there are over 125 acres of land potentially available for such housing, many sites, however, being less than two acres in size, of which the parcel proposed for development is one.

The applicants believe that the requirements and regulations from which exemptions are sought are not inconsistent with the local and regional need for low and moderate income housing and believe that approval of the application would not only help to meet the need for additional housing units for low and moderate income families as based upon information provided by representatives of Wellesley Housing Authority as of May 26, 1977, but would also meet the need outlined by the Metropolitan Area Planning Council in its report, which stated that in 1970 more than 100,000 renter households and a significant number of homeowners were in need of housing assistance in the MAPC region, and that this application represents a modest but important proposal to meet a portion of the need.

Joseph T. Murphy and Albert Auburn, petitioners, both spoke in support of the request at the hearing.

A number of persons spoke in opposition to the request and a petition was submitted objecting to the proposed project, signed by 101 persons.

The reasons given in the petition were that the proposed development, if allowed, would be detrimental due to: A. Health and Safety Hazard,

B. Destroy Residential Character of Neighborhood, C. Not Appropriate Location in the Town of Wellesley and in the Region of Newton-Wellesley-Needham, D. Lack of landscaped and recreational areas, E. Site unsuitable for dense development unreasonable amount of slope extensive grading, F. This unit would add 18 units of subsidized housing in this area making 10 times that in any other part of Wellesley, G. With this subsidized family project, we will be adding more children to the Fiske School district. This school now is the headquarters for Title One Special projects. The Fiske School will be asked to handle from this one project a possible increase in the regular school additional student population of 30. H. It is unreasonable to request Zoning Board of Appeals to grant all deviations as asked by the petitioners, which were enumerated in the petition.

Letters opposing the request were received from: Katherine Donahue Papanian, 46 River Ridge, Patricia A. and Alfred C. Parolla, 83 River Ridge, Mary E. and James F. Donahue, 42 River Ridge, William B. Donahue, 10 Cedar Street, Dennis E. Brown, 8 Fairbanks Avenue, Donna M. and Charles R. Stone, 39 River Ridge, Mr. and Mrs. Shafoor Sheikh, 34 River Ridge and John C. Staudunas, 103 Walnut Street.

Robert H. Murphy, Chairman of the Planning Board, outlined the reasons for the Board's opposition to the granting of the request.

He stressed the fact that the site is not suited for the dense development; the site slopes down from Cedar Street 10' to the center, and then rises 35' to the rear; the proposed project would add to the congested traffic and safety hazards at the intersection of Cedar Street and Walnut Street; the proposed site does not meet the criteria of Policy 2.24.3 of the Town's Comprehensive Plan for apartment construction and the site does not meet the criteria outlined in the 1970 report of the Wellesley Low and Moderate Income Housing Study Committee which stated that low and moderate

income housing for the elderly should be so located that the occupants can walk to or use public transportations to shop for necessities and other goods, to use cultural and recreational facilities, and to have access to services such as medical, financial, religious and personal. Mr. Murphy further stated that the Board considers that the proposal is potentially detrimental to the safety and health of the occupants of the housing and their neighbors, in that it represents poor site design in relation to the surroundings, and that it is decidedly deficient in meeting the requirements of the Town for multi-family housing. He called attention to the Planning Board's recommendations with respect to the petitioners' previous request, which, if followed, the Board felt would not leave the Town with housing which is either illegal, or destructive to the character of the Town or to the welfare of the housing occupants.

A complete report was submitted by the Planning Board and is on file.

A report was received from M. R. Berdan, Director of the Board of Public Works, in which he requested that additional site data as well as additional plumbing, electric and landscaping data also be provided to that Board for review before final approval is given.

A set of architectural plan, including a site plan, were submitted which showed the elevations of the building, floor layouts and the exterior materials of the building. Said plans were drawn by Williams & Faige Associates, Dedham, Mass.

Statement of Facts

The property involved contains 52,476 square feet, and is located within a Single Residence District, abutting the Aqueduct on the northerly side and residential-zoned property on the southerly side and easterly side.

The petitioners seek a Comprehensive Permit to construct a building which will provide thirty-six dwelling units on land owned by them, under the provisions of Massachusetts General Laws, Chapter 40B, Section 20-23. It is the intention of the applicants to restrict the occupancy of ten of the units of elderly and handicapped persons, eight other units to be restricted for occupancy by qualified families, and the balance of the units to be rented at their true market value without restriction.

The petitioners outlined in detail the request and submitted plans and evidence to substantiate the need for the proposed development. They stressed the need for additional low and moderate income housing in the Town of Wellesley as well as the Metropolitan Area, of which Wellesley is one of the communities, and stated that they are prepared to stipulate and agree to the inclusion of conditions numbered 1 and 2 contained in this Board's prior decision, which limited the occupancy of the units solely to families of low and moderate income, with not less than 80% of the units to be elderly occupancy and that the selection of qualified tenants for the units shall be subject to the supervision and final determination of the organization in Wellesley, presently called the Council on Aging. It was stated, however, that while the applicants intend to apply for subsidy for all the units to be constructed, realistically they expect to receive subsidy for something less than 100% of the proposed units, and therefore, request a proviso that the conditions numbered 1 and 2 be modified and limited in scope to affect only those units for which the applicants receive Section 8 assistance subsidy from the Federal Government through the Massachusetts Housing Finance Agency and provided further that the conditions shall be consistent with the allocation of the rental assistance subsidy between the family and elderly units, and that the conditions modified not impose any limitation on the applicants which would

have the effect of restricting the occupancy of any market rent unit to any particular group of prospective tenants.

Decision

The Cedar Street Associates, a Massachusetts Limited Partnership organized under Chapter 109 of the Massachusetts General Laws, the general partners of which are Joseph T. Murphy and Albert Auburn, seek to obtain a comprehensive permit under the authority of Massachusetts Laws, Chapter 40B, Section 20-23.

The Zoning Board of Appeals has carefully considered the application for the comprehensive permit, with the supporting data and plans, together with information, statements, presentations, and reports at the public hearing, and our own further investigation since 1977.

The instant application is the second such application by Cedar Street Associates, seeking a comprehensive permit, but is not a duplicate of the first. On July 11, 1977, the applicants filed their first application under Chapter 40B, seeking a comprehensive permit to construct an apartment building which would provide forty-eight subsidized low and moderate income housing units. On November 10, 1977, this Board granted a comprehensive permit to the applicants to construct one residential structure containing thirty-six dwelling units. The 1977 application sought forty-one bedroom units and seven two-bedroom units, providing fifty-five bedrooms. The permit granted by this Board on the previous application allowed for not more than forty-three bedrooms, in thirty-six units, limited solely to families of low and moderate income as that term is defined in applicable laws and regulations, but in no event shall elderly occupancy of the units (age 62 and above) be less than 80% of the total number of units. It was stated at that time that it was the intention of the applicants to restrict

the occupancy of all units to be constructed to elderly and handicapped persons. That permit, subject to the terms, conditions, and safeguards was accepted by the applicants, but construction was not commenced nor completed within the time set forth in said permit and the permit as granted automatically terminated.

This Board is cognizant of the construction which the Supreme Judicial Court has placed on the provisions of Chapter 40B, Section 20, 21, 22, and 23. The Board is also aware that applying the standards of the statute, as construed by the Courts, the Town of Wellesley has not met the minimum low and moderate income and elderly housing requirement.

The instant application, as filed by the Cedar Street Associates, seeks a permit which will allow the construction of a building in a single residence zone which will provide sixty-three bedrooms in thirty-six housing units. The applicants stated that one-half of the units to be constructed will be rented at their true market value. It is, therefore, accepted that this number of units would not be available to low and moderate income persons.

The Wellesley Zoning By-law was first adopted in 1925. For purposes of the by-law, the Town is divided into classes of districts as shown on the Zoning Map. From time to time, that by-law and map have been amended. There are fifteen districts designating residential, educational, business, industrial, transportation and conservation classifications. The Zoning By-law and amendments thereto, have been adopted for the purpose of promoting the health, safety, convenience, morals and welfare of the people and to encourage housing for persons of all income levels, and has regulated and restricted, to those ends, the height, number of stories, size of buildings, size and width of lots, the percentage of lots that may be occupied,

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the size of yards and other open spaces, the density of the population and the location and use of buildings and land. The Zoning By-law inflicts no disparity on some but not on others, nor does it deprive any fundamental right. It is addressed to family needs. The evaluation of the Zoning By-law has been a guideline to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. There are seven multi-family districts described in the Zoning By-law among which are Limited Apartment and Planned Development Districts, but none of which districts permit construction as requested by the applicants.

There is presently under construction in the Town, a facility which is located approximately one mile from the applicants' property. This facility will generate an increase of automobile traffic, due both to employee use and public use of the facility. Also in the recent past, there has been constructed, and near to completion, a housing development located on Washington Street, in the City of Newton, approximately three hundred yards from the Wellesley Town line. This development consists of sixty housing units, and is about one-half mile from the applicants' land.

This Board has reviewed the Town's Comprehensive Plan, Policy 2.2h3, and the 1970 report of the Town's Low and Moderate Income Housing Study Committee. In considering the applicants' previous request, it was the opinion of this Board, that a modification of that request was consistent with the needs of the Town, and that additional low and moderate income housing was required. In view of the change in conditions within the Town and the addition of public housing nearby, and in view of the change in purposes for the requested housing, this Board does not see the present application in the same light.

The site is located less than two hundred yards from the intersection of Cedar, River and Walnut Streets, an intersection described as far back as 1972, as congested and with safety hazards for traffic. This condition has not been eased nor improved since that time, but has deteriorated. Pedestrian traffic of the elderly and handicapped attempting to traverse this intersection can only increase and compound the hazard. Of like importance is the difficulty and danger of entering and exiting the proposed project at a distance so close to the congested intersection.

Low and moderate income elderly housing should be so located that the occupants can walk to or use public transportation to shop for necessities and other goods, to utilize cultural and recreational facilities and have access to services such as medical, financial, religious and personal. The nearest convenience shopping is over one-half mile away. The shortest route being along the steeply sloped River Street route to Washington Street. Other services are at a greater distance.

The topography and the location of the proposed building raises substantial questions concerning the desirability of the site for multi-family housing, particularly elderly. Surface drainage must be pumped in order to be discharged into the existing Town drainage system. There is a ten-foot decline from Cedar Street to where the building is proposed to be erected. The sewerage will of necessity have to be pumped also. The health of the occupants would be adversely affected in the event of a power shortage or power failure.

The applicants assert that the project as presented, to obtain a Comprehensive Permit, is a modest but nevertheless important proposal to

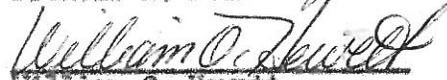
meet a portion of the need for low and moderate income housing. The application, as filed, runs counter to the purpose and the intent of the statute, that is, to provide housing for low and moderate income occupants.

It is the opinion of this Board that the area of the proposed site is not equipped to provide the facilities and services necessary for a high density population, that the project as designed is potentially detrimental to the health and safety of the anticipated occupants and their neighbors, and that the required need for low and moderate income housing does not overcome the planning objections to the details of the proposal.

Therefore, the application is denied.

Filed with Town Clerk _____


Francis L. Swift


William O. Hewett


William F. Cullinane



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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Petition of Joseph T. Murphy and Albert Auburn, as they are General Partners of Cedar Street Associates, a Massachusetts Limited Partnership.

By date of June 29, 1979, the Petitioners filed an application for a comprehensive permit to construct a building which will provide thirty-six dwelling units on land owned by them, located between the Cochituate Aqueduct and No. 10 Cedar Street. Said request was made under the provisions of Massachusetts General Laws, Chapter 40B, Sections 20-23. The matter came in for a hearing before this Board September 27, 1979, and a decision denying the permit was filed on November 5, 1979.

The Petitioners duly appealed to the Housing Appeals Committee, whose decision dated March 4, 1981 contained findings, rulings and order as follows:

"III. FINDINGS, RULINGS AND ORDER

"In view of the subsidiary findings, and upon a review of the whole record, under the provisions of G.L. c.40B, ss20-23, the Housing Appeals Committee finds that the decision of the Board of Appeals of the Town of Wellesley was unreasonable and not consistent with local needs.

"The decision of the Board of Appeals of the Town of Wellesley is hereby vacated and the Board is directed to issue a comprehensive permit to the appellant in accordance with the appellant's application.

"Such comprehensive permit shall provide for the construction of a housing development on the locus which is the subject of this appeal in the approximate number of units and designs as presented before the Housing Appeals Committee, subject to the following conditions:

"(1) Construction shall in all particulars be in accordance with all present applicable zoning and building by-laws for the construction of multi-family buildings, except those which are not consistent with this decision. The subsidizing agency or agencies may impose requirements for compliance with any other recognized building codes or portions of such codes and, in the event of conflict, the requirements of the subsidizing agency or agencies shall govern.

"(2) No construction shall commence until detailed construction plans and specifications shall have been approved by the subsidizing agency or agencies and such agency or agencies have granted a construction mortgage loan and subsidy financing for the project has been committed.

"(3) The design of the development is to be subject to such changes in site and building design, type and location of units, and amenities, as are recommended or required by the subsidizing agency or agencies.

"(4) Prior to final financial commitment, the subsidizing agency shall, as part of its project review, comply with the applicable requirements of the Massachusetts Environmental Policy Act, G.L. c.20, ss61-62.

"(5) If anything in the decision of the Housing Appeals Committee would seem to permit the building or operation of such housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency or agencies, the standards of such agency shall control."

Said decision was duly appealed by this Board to the Superior Court Department of the Trial Court, which affirmed the decision of the Housing Appeals Committee by judgment entered July 22, 1981. This Board again duly appealed, and upon accepting this Board's application for direct appellate review, the Supreme Judicial Court affirmed the Superior Court judgment by decision dated March 26, 1982 in the decision styled Zoning Board of Appeals of the Town of Wellesley v. Housing Appeals Committee, et al., 1982 A.S. (1982).

ORDER

Pursuant to the decision of the Housing Appeals Committee dated March 4, 1981, this Board hereby issues a comprehensive permit to the Petitioners, Joseph T. Murphy and Albert Auburn, as they are General Partners of Cedar Street Associates, a Massachusetts Limited Partnership, in accordance with their application dated June 29, 1979, and pursuant to Massachusetts General Law, Chapter 40B, ss20-23, according to the following terms:

1. This comprehensive permit is issued in accordance with the appellant's application dated June 29, 1979, a copy of which is hereto attached, incorporated by reference and made a part hereof. Except as and to the extent modified by the subsidizing agency or otherwise inconsistent with the decision of the Housing Appeals Committee decision dated March 4, 1981, the Petitioners are hereby ordered to comply with terms of said application.

2. This comprehensive permit provides for the construction of a housing development on the locus which is the subject of the Petitioners' application dated June 29, 1979, in the approximate number of units and design as presented before the Housing Appeals Committee and which is the subject of the decision of the Housing Appeals Committee dated March 4, 1981.

3. This comprehensive permit is issued subject to the following conditions:

(1) Construction shall in all particulars be in accordance with all present applicable zoning and building by-laws for the construction of multi-family buildings, except those which are not consistent with this decision. The subsidizing agency or agencies may impose requirements for compliance with any other recognized building codes or portions of such codes and, in the event of conflict, the requirements of the subsidizing agency or agencies shall govern.

(2) No construction shall commence until detailed construction plans and specifications shall have been approved by the subsidizing agency or agencies and such agency or agencies have granted a construction mortgage loan and subsidy financing for the project has been committed.

(3) The design of the development is to be subject to such changes in site and building design, type and location of units, and amenities, as are recommended or required by the subsidizing agency or agencies.

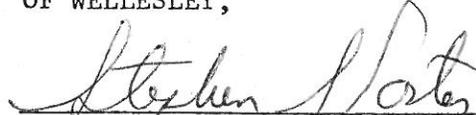
(4) Prior to final financial commitment, the subsidizing agency shall, as part of its project review, comply with the applicable requirements of the Massachusetts Environmental Policy Act, G.L. c.20, ss61-62.

(5) If anything in the decision of the Housing Appeals Committee would seem to permit the building or operation of such housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency or agencies, the standards of such agency or agencies shall control.

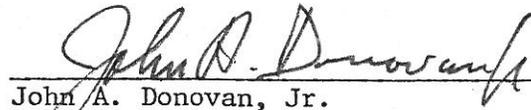
3. This comprehensive permit is subject to the further condition that construction is subject to compliance with the State Building Code as amended. Compliance inspections shall be carried out by local officials

in the usual manner. Any dispute or grievance arising out of any interpretation, order or requirement, direction or failure to act, shall be referred by either party to the State Building Code Appeals Board as provided in G.L. c.23B, s23, and Section 121.1 of the State Building Code.

BOARD OF APPEALS OF THE TOWN
OF WELLESLEY,



Stephen S. Porter, Chairman



John A. Donovan, Jr.



Robert R. Cunningham

Filed with the Town Clerk,
Town of Wellesley:

July 2, 1982

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