



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Petition of the Estate of Frederic C. Kelley

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 8:10 p.m. on December 12, 1968, on the petition of the Estate of Frederic C. Kelley, requesting an exception or variance which would allow the continued use of the premises at #1 Grantland Road as a dental office on the first floor and a residential apartment on the second floor. Said request was made under the provisions of Section II 8 (d) of the Zoning By-law and Chapter 40A, Section 15, of the General Laws.

On October 25, 1968, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Henry D. White, Attorney, represented the petitioner at the hearing and outlined in detail the reasons for the request. He stated that a temporary variance would not be sufficient for his client's purpose.

George P. deCoen, 22 Grantland Road, spoke in favor of the request, stating that he had resided in a house four or five removed from the premises in question for twenty-five years and has been a patient of Dr. Kelley for a long time and had never observed any parking or other problems incident to Dr. Kelley's use of the premises.

John H. King, Attorney, stated that a year ago Dr. Kelley had a gentleman working for him and a complaint was made to the Building Inspector that this was a violation of the decree of the Superior Court. He represented Dr. Kelley at that time and the violation was corrected, he stated.

Francis L. Flanagan, an attorney residing at 3 Grantland Road, opposed the granting of the request. He reviewed the facts in the case since 1950, and stated his view that there is no hardship involved and the proposed use of the property would derogate from the intent and purpose of the by-law. He stated that while Dr. Kelley conducted his practice there, there had been serious parking problems and that this is the time to convert the property to an allowable use within the Zoning By-law.

A petition, signed by thirty-eight nearby residents, was submitted opposing the request.

In response to the Board's invitation to both parties to submit briefs in support of their positions, Mr. Flanagan submitted a brief in which he discussed the legal issues.

The following persons also spoke in opposition to the request: Francis L. Flanagan, 3 Grantland Road, Helen G. Flanagan, 3 Grantland Road, Stanley Pullen, 31 Grantland Road, Walter A. Fisher, 32 Grantland Road, James Corscadden, 28 Grantland Road, Carl Cristoforo, 12 Grantland Road, Mrs. Albert Graf, 391 Worcester Street and Michael G. Zeeb, 10 Cunningham Road.

TOWN CLERK'S OFFICE  
WELLESLEY, MASS.  
JAN 13 1969

Statement of Facts

The building involved was built in 1924, on a lot of land containing 9,300 square feet, and is located within a Single-residence District requiring a minimum lot area of 10,000 square feet. Upon its completion it was given to the Wellesley Friendly Aid Association and was used by it as a clinic until 1950 at which time it moved to another location.

It was stated at the hearing that no one was interested in purchasing the property in 1950 as a single-family dwelling and at that time it was purchased by Dr. Kelley as a dental office with an apartment on the second floor.

Shortly after Dr. Kelley started to operate his dental practice on the first floor of the building, a complaint was made to the Town that he was not residing there, that two medical doctors also had offices on the first floor, and that the second-floor apartment was rented all in violation of the Zoning By-law. The Town brought suit against Dr. Kelley as a result of this, and during the course of the trial the parties agreed upon terms of settlement. The Final Decree and Stipulation allowed Dr. Kelley, as a personal privilege, to maintain his own office for the practice of dentistry in the premises in question without actually residing there, but specified that said privilege would not pass to any succeeding owner of the premises. He was further permanently restrained and enjoined from letting any portion of said building to any other professional man for use as his office and from employing any other dentist in connection with any office he maintained in said building.

A short time ago, Dr. Kelley passed away suddenly and his widow now desires to sell the property and dental practice. A dentist is interested in purchasing the practice and building and has agreed to buy the property conditioned upon favorable action by the Board of Appeal. Since the death of Dr. Kelley the prospective purchaser has been conducting a dental practice on the premises. Although this is in violation of the Zoning By-law and the Court Decree, it was said to be the only way that the practice could be held together; otherwise the patients would go to another dentist and the practice would go to pieces, and have no value.

It was explained that the apartment on the second floor has access only by an outside stairway. It is entirely separate from the lower floor of the building which consists of a dental office, laboratory, secretarial office and waiting room. The building, therefore, does not lend itself well to use as a single-family dwelling without fairly extensive alterations and in any event would suffer from an undersized lot compared to other residences in the area.

Ample parking can be provided in the driveway to accommodate seven or eight cars if necessary, so that theoretically no cars should have to be parked on the street.

This is an attractive, well maintained but relatively congested residential area. The premises in question abut one of the access ramps to Route 9, a very heavily travelled thoroughfare and the lot is by virtue of an earlier street taking undersized even for this area. The street is standard width. Immediately across the street is the residence and office of a practising optometrist. A great deal of opposition was expressed by neighbors.

Decision

Petitioner did not seriously argue and the Board clearly cannot find that the premises in question constitute a "medical institution" within the meaning of Section II 8 (d) of the Zoning By-law.

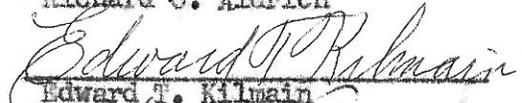
Petitioner has also invoked Section 15 of Chapter 40A of the General Laws which requires as a basis for relief a finding that, "owing to conditions especially affecting such parcel or building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law...."

RECEIVED  
TOWN CLERK  
1967  
The Board is unanimously of the view that the facts here do not satisfy the foregoing requirements. The relatively smaller size of the lot was a fact at the time when the existing non-conforming use was commenced and in any event does not of itself critically affect its usability for residence purposes. That the adaptation of the building to its present non-conforming use cannot properly be the basis for a claim of hardship under the foregoing statute seems clear. Moreover, even if such a contention could legally be entertained, the Board is of the opinion that there is in fact no substantial hardship, that the building could, without inordinate expense, be altered for use as a single-family residence with or without a professional office on the premises for use by the occupant.

The Board is further of the opinion that to grant the requested relief would substantially derogate from the intent and purpose of the Zoning By-law. The intent and purpose of Section II (6), in part at least, would appear to be deliberately to limit the total use of the single-family residence professional office privilege by restricting it to use by the actual occupant and presumably thereby limiting the use in most instances to those situations where physical conditions were most conducive to inoffensive exercise of the privilege. It would neither be logical nor consistent with this intent and purpose to grant a variance to permit this business use in a single-family residence area where the evidence indicates that this more intensive use of the land is not particularly desirable physically and is opposed by a large number of neighbors some of whom claimed that exercise of this use had substantially and adversely affected their enjoyment of their own single-family homes.

Accordingly, the petition is dismissed.

  
Richard O. Aldrich

  
Edward T. Kilmain

  
F. Lester Fraser