



STANLEY W. LEIGHTON
WALTER A. BARROWS
CARL E. ANDERSON

BOARD OF APPEAL

TELEPHONE
WEL. 1615-R

August 11, 1941.

Appeal of Howard C. Newton

The Board of Appeal held a duly notified public hearing in the Lower Town Hall on August 7, 1941 on the appeal of Howard C. Newton from the refusal of the Inspector of Buildings to issue a permit for an addition to his house at 12 Clifton Road. Messrs. Leighton and Barrows were present and, in the absence of Mr. Anderson, appointed Allston H. Cheever, an engineer, to take his place as to this appeal. Mr. Cheever was present and sat with the Board.

Appellant wishes to build a vestibule 5' x 5' on an existing concrete slab outside his back door. It is to be of wooden construction with removable panels of wood and glass. The rear of the house, which is of wooden construction, is only 12'4" from the separate garage, which is constructed of a wooden frame covered with stucco. Section 24 (c) of the Building By-Laws requires a distance of 15' between such buildings. The proposed vestibule is 5' square and, although it is not directly opposite the garage, it is practically all nearer than 15' to the garage, and the nearest corner is only approximately 7'6" away.

The Board of Appeal is authorized to vary the provisions of the Building By-Laws only in specific cases which appear to the Board not to have been contemplated by the By-Law although covered by it, or in specific cases where manifest injustice is done, but no such variance can conflict with the spirit of the by-law. We cannot find that this case falls within either class of case mentioned or that the proposed addition would not conflict with the spirit of the by-law. Appellant pointed out the apparent inconsistency of the by-law in allowing a garage to be made a part of a house but requiring a certain distance between a house and a separate garage. If there is any such inconsistency, as to which we express no opinion, it can obviously be removed only by action of the town meeting and not by the Board of Appeal, which must function under the by-laws prescribed by the town.

We have considered at appellant's request whether we could approve an open porch or just a roof instead of the proposed vestibule, but the distance between the garage and the new construction is so small that we cannot approve the use of any combustible materials in such new construction. If a vestibule, porch or roof were constructed entirely of incombustible materials, it would apparently be permitted by the by-law, but if it were not so

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permitted, we should be willing to vary the by-law to that extent.

The refusal of the Inspector of Buildings to issue the permit applied for is affirmed.

S. W. Leighton
W. A. Barrows
A. E. Anderson