

TOWN OF WELLESLEY



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BOARD OF APPEAL
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GARRETT S. HOAG
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DANA T. LOWELL

KATHARINE E. TOY, CLERK
TELEPHONE
CE. 5-1864

Appeal of Jack Larsen

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 January 22, 1964 on the appeal of Jack Larsen from the order issued to him by the Inspector of Buildings directing the removal of a "mobile home" from the premises at 47 Croton Street as same was in violation of the terms of Chapter III, Section 11, of the Building Code.

The appellant spoke in support of his appeal at the hearing.

The following persons appeared at the hearing and spoke in favor of granting the appeal: George Webb, 90 Overbrook Drive, Mrs. Richard Dunn, 49 Elm Street, Mr. Bacon, Director of the New England Family Assoc., George Burrells, President of Charles River Chapter of New England Camping Association, a representative from the Saugus New England Family Campers, and Robert L. Ruter, Hanson, Mass., president of Family Motor Coach, Inc.

Katherine J. McDermott, 5 Hundreds Road, opposed the granting of the appeal. In her opinion, the "mobile home" is not in keeping with the neighborhood; to allow it to remain on the property would prove detrimental to the area which has been for many years above average. If this is allowed, other similar vehicles or boats could be parked on surrounding properties and definitely change the character of the neighborhood.

The Planning Board stated in its report that it believed that the vehicle is of the type known as a trailer and covered by Chapter III, Section 11, of the Building Code even though it may be capable of being self propelled, and that it should not be permitted to remain on the premises.

Statement of Facts

On December 16, 1963, the Building Inspector ordered the removal of a "mobile home" from the appellant's premises at 47 Croton Street, Wellesley. On December 24, 1963, the appellant appealed in writing from the Building Inspector's order and thereafter due notice of the hearing was given by mailing and publication. The "mobile home" involved was parked for months next to Mr. Larsen's residence at the address from which it was ordered removed which is a single-residence district under the provisions of the Wellesley Zoning By-laws (Section 2). The "mobile home" involved is a 1960 Dodge truck with a "Frank Motor Home" body. It is thirty-five (35) feet long, is registered in Massachusetts as a motor vehicle, contains four (4) double seats accommodating thirteen (13) persons, a propane gas stove, air conditioning, sink, radio, television, washstand, toilet, ice box, hot and cold running water, bath tub and shower and gasoline generator to operate the equipment on the road. There is also a bunk in the rear and provision for connecting water from an outside source and for connection with a soil pipe.

Decision
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Chapter III, Section 11 of the Wellesley Building Code provides: "Trailers. No structure or vehicle designed for human habitation of the type commonly known as a trailer, shall be permitted to remain on any premises unless a permit therefor has first been obtained from the Inspector. Whoever permits such structure or vehicle to remain on any premises after being notified by the Inspector to remove the same shall be subject to a penalty of \$5. for each day such structure or vehicle remains on the premises after such notice to be paid into the treasury of the Town of Wellesley."

The Building Inspector is the enforcement officer of the Building Code as well as the Zoning By-laws.

We consider first the question of whether or not the appellant's "mobile home" is a "vehicle designed for human habitation of the type commonly known as a trailer...." within the meaning of Section 11 quoted above, and are led inexorably to the conclusion that it is not.

Legislative enactments cannot be presumed to go beyond the purpose manifested by their words. If the words in the legislation are clear and explicit there is no room for speculation. Corcoran v S. S. Kresge Co., 313 Mass. 299, 303 (1943). If coverage of structures or vehicles other than trailers had been intended the draftsman would have omitted the limiting clause "of the type commonly known as a trailer" or would have specifically included other types of structures or vehicles. Words must be construed according to the "common and approved usage of language". Needham v Winalow Nurseries, Inc. 330 Mass. 95, 99 (1952); Town of Manchester v Phillips 343 Mass. 591, 595; Corcoran v S. S. Kresge Co., Supra. "common usage" or definition of the word "trailer" by courts and other authorities invariably include the essential characteristic of non-self propulsion and the necessity for hauling by other vehicles and also make a clear distinction between "trailers" and "mobile homes". See Town of Manchester v Phillips, supra at 595-596 (Court stated that "A town has power by its zoning by-law, and by other by-laws, to regulate trailers and mobile homes" and in interpreting a Manchester ordinance which referred to "overnight camp, trailer, or mobile home" said that "they refer, we think, to this species of self-contained unit, which frequently is in form a mobile trailer."); Haden v Lee's Mobile Homes, Inc. (Ala. opp) 136 So. 2d 912, 916; Safeguard Insurance Co. v Justice 203 Va. 972, 128 S.E. 2d 286, 288, 290; Black's Law Dictionary (1951); Modern American Dictionary (1962); The Law of Mobile Homes (1957) Sec. 3.1, 3.2. The Massachusetts statutory definition emphasizes the non-self propelled nature of "trailers" and our vehicle law clearly distinguishes between "trailers" and other types of vehicles. General Laws Chap. 90 §.1 defines a "Trailer" as a vehicle or object on wheels and having no motive power of its own, but which is drawn by, or used in combination with a motive vehicle. Other sections of Chapter 90 of the General Laws refer to motor vehicles and trailers, consistently treating them as distinct types of vehicles. See also Mass. Gen. Laws Chap. 140 Sec. 32 L. The law of other states is in accord. See Gen. stats. Conn. Tit. 17 Sec. 2350 (22); Rev. Stats Me. Chap. 22 Sec. 1; N. H. Rev. Stats. Ann. Sec. 259.1; R. I. Gen. Laws Sec. 31-1-5; N. Y. Vehicle & Traffic Law Sec. 119, Sec. 156. It seems to us clear, therefore, that the Building Inspector had no authority under Chapter III, Section 11 of the Building Code to issue that order that he issued. Nor do we know of any other provision of that Code which authorized it.

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Though he did not do so it is of interest to consider whether had the Building Inspector based his order on Section II of the Zoning By-law, it would be enforceable. Section II of that By-law provides in pertinent fact:

"In Single Residence Districts, no new building or structure shall be constructed or used in whole or in part, and no building or structure or part thereof shall be altered, enlarged, reconstructed or used, and no land shall be used, for any purpose except one or more of the following specified uses:

1. "Single family detached house;
.....
.....
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;"

The question therefore is whether the appellant in using land in a Single Residence District for the purpose of storing his mobile home was using his land for an accessory use which is "customary in connection with and incidental" to a single family detached house. We think he was not.

In Pratt v Building Inspector of Gloucester 330 Mass. 344, 346 (1953) the Supreme Judicial Court held that single residence district provisions of zoning by-laws must be construed, "with regard to the obvious intent of maintaining the character of the neighborhood as appropriate for one family detached houses."

and again in the same case at pages 346 and 347:

"When the question arises as to uses which in general tend to become deleterious to a neighborhood of homes it would seem that the most liberal test open to use must be whether the use is one that is so necessary in connection with a one family detached house or so commonly to be expected with such a house that it cannot be supposed the ordinance was intended to prevent it." (emphasis supplied)

In our view the storing of applicant's thirty-five foot long mobile home next to his residence is definitely deleterious to the neighborhood of single detached residences and is neither "necessary" nor "commonly to be expected" in connection with such a house. The Supreme Judicial Court in Wellesley v Brossi 340 Mass. 456 (1960) recently held that parking an "unlettered pick-up truck of ordinary size," a business vehicle, was not "incidental to residential use." How much less so is parking a thirty-five foot bus-like appearing vehicle? We take judicial notice of the fact that storage of such a vehicle in a Single Residence Zone is very uncommon if not unique in Wellesley. To store such a vehicle in a Single Residence District is, we believe, no more "necessary" or "commonly to be expected" and no more a use accessory to a detached single residence than to store an airplane in such a district is. See Falmouth v Gingress 338 Mass. 274, 276 (1958)

(holding that storing an airplane was not a use accessory to a single residence). In New York the law is similar. "Customary and incidental" was interpreted to exclude the storing of a ton and one-half truck in a residential area Facci v City of Schenectady 196 N. Y. S. 2d. 827 829 (Sup. Ct. 1957), and the construction of a large radio tower. See Presuell v Leslie 3 N. Y. 2d 384, 144 N. E. 2d 381.

Other factors which we may properly consider in determining whether a given use is so customary and incidental as to be "accessory" includes the extent or degree of use, as well as the kind (See Town of Needham v Winslow Nurseries 330 Mass. 95,103 (1953), resulting annoyance to neighbors (See Pratt v Building Inspector of Gloucester supra.), the effect of the use on property and aesthetic values (See Presuell v Leslie, supra), and the nature of the surrounding area (See Pratt v Building Inspector of Gloucester, supra). Finally "accessory use" should be interpreted in the light of the statutory authority conferring upon the town the authority to adopt zoning by-laws.

The Zoning power may be exercised, not only to conserve the obvious aspects of health and safety but also, ".....to conserve the value of land and buildings; to encourage the more appropriate use of land throughout the city or town; and to preserve and increase its amenities." General Laws ch. 40A Sec. 3; Town of Manchester v Phillips 343 Mass 591 (1962). Application of all these factors to the facts of the instant case confirm our conviction that the storing of the appellant's mobile home in a Single Residence District is not an accessory use customary in connection with single detached houses in Wellesley and is therefore in violation of Section 2 of the Zoning By-law. The decision in Town of Marblehead v Gilbert 334 Mass. 602 (1956) rests on the peculiar language of the Marblehead Zoning By-law and is distinguishable.

But the Building Inspector's order made no reference to Section II of the Zoning By-law, an omission which is fatal to its validity. Both the appellant and the public are entitled to notice of the basis of his authority to act as he did and having had notice of an invalid basis the appeal must be granted.

Garrett S. Hoag
Garrett S. Hoag

John L. Hayden
John L. Hayden

Dana T. Lowell
Dana T. Lowell

Filed with Town Clerk _____

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