



BOARD OF APPEAL

GARRETT S. HOAG
DANA T. LOWELL
F. LESTER FRASER

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Appeal of Johann H. and Katharina Wenten

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 8:30 p.m. on September 15, 1965, on the appeal of Johann H. and Katharina Wenten, from the refusal of the Inspector of Buildings to issue a permit to them to construct an addition on the side of their dwelling at 16 Dearborn Street. The reason for such refusal was that said addition would violate Section XIX of the Zoning By-law which requires a twenty-foot side yard and Chapter IV, Section 1 (b) of the Building Code which requires that the exterior walls of a Type V building shall be at least ten feet from any party line.

Johann H. Wenten spoke in support of the appeal at the hearing.

Hugh D. Braderick, 4 Dearborn Street, spoke in favor of the request.

On August 30, 1965, the Inspector of Buildings notified the appellants in writing that a permit could not be issued for the proposed construction for the above-mentioned reasons, and on the same date the appellants took an appeal from such refusal.

Statement of Facts

The house involved which was built in 1923, is located within a single-residence district requiring a minimum lot area of 15,000 square feet.

A plot plan drawn by Gleason Engineering Company, dated August 30, 1965, was submitted which showed the existing dwelling on the property as well as the proposed addition.

The appellants seek permission to construct an addition 9.5' x 20' at the rear of their dwelling which will provide an additional room. The addition is designed to continue the existing line of the house which is three feet from the lot side line on the northerly side, and if constructed, will fill in an opening at the northwesterly corner of the house. When the house was built it was legally located on the lot. Since then, the Zoning By-law has been changed and now requires that there shall be provided a minimum side yard of twenty feet. Because of the layout of the house, it would not be feasible to construct the room on the southerly side of the house although there is considerably more land on that side. The appellants have a real need for an additional room and the proposed location appears to be the only reasonable place for it.

Decision

The Board finds that a real need exists for the proposed addition and the facts in this case satisfy the conditions set forth in Section XIX of the Zoning By-law and Chapter IV, Section 1, of the Building Code, on which

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the Board's authority depends to grant a special exception from the application of the side yard restrictions in the Zoning By-law and the setback restriction in the Building Code. The lot is small and irregular in shape with a frontage of 70', a depth of 140' and a rear of only 35'. Therefore, compliance with said side yard restrictions is impracticable because of the width, and shape of the lot. The lot was held of record on April 1, 1940, under a separate and distinct ownership from adjacent lots. It is the further opinion of this Board that the setback requirements of Chapter IV, Section 1, of the Building Code do not appear to have contemplated a case such as this where this is a legally existing building without exterior walls of incombustible material less than ten feet from the party line. It would appear to be futile to require an extension of the building on the same line to have exterior walls of a non-combustible material while the existing wall is not so covered. Moreover, literal enforcement of the Building Code may result in manifest injustice and the relief sought may be granted without derogating from the general intent and purpose of the Code.

Accordingly, the requested exception from the Zoning By-law and variance from the Building Code are authorized and the issuance by the Building Inspector of a permit for the proposed addition in accordance with the plan submitted and on file with this Board is hereby authorized.

R O Aldrich

Richard O. Aldrich

F. Lester Fraser

F. Lester Fraser

Edward T. Kilmain

Edward T. Kilmain

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PLAN OF LAND
 IN
WELLESLEY, MASS.
 OWNED BY
JOHANN H. WENTEN
 SCALE 30 FEET TO AN INCH
 AUGUST 30, 1965.
 GLEASON ENGINEERING COMPANY

