

TOWN OF WELLESLEY



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BOARD OF APPEAL

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Petition of Aspasia Manty

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 8:15 p.m. on October 28, 1965, on the petition of Aspasia Manty requesting permission to rent rooms in the dwelling owned by her at 89 Crest Road. Said request was made under the provisions of Section II-8 (a) and Section XVII-B of the Zoning By-law and Chapter 40A, Section 15, of the General Laws.

On September 28, 1965, the petitioner filed her request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

William D. Morton, Jr. attorney, represented the petitioner at the hearing.

The following persons spoke in opposition to the granting of the request: Peter J. Feeney, 95 Crest Road, Austin H. Baker, 106 Crest Road, and John T. Griffin, 68 Linden Street. All felt that the continued non-conforming use of the property would prove detrimental to the neighborhood, and unfair to those maintaining their dwellings in compliance with the restrictions of a Single-residence District. The house now has one apartment, the legality of which is in question and to allow an increase in its non-conforming use, would, in the opinion of those opposing the request, establish a precedent for other large houses in the neighborhood to be converted into similar uses.

Joseph E. Seamon, Building Inspector, stated that he made an inspection of the premises in the Spring of this year and at that time the kitchen facilities on the third floor had been removed.

George J. Cononi, Plumbing Inspector, stated that no plumbing permits had been issued for work to be performed in the dwelling.

The Planning Board opposed the request as it did its request for a three-family dwelling. In its opinion the requested use would substantially derogate from the intent and purpose of the Zoning By-law.

Statement of Facts

The house involved is an alleged non-conforming two-family dwelling located within a single-residence district requiring a minimum lot area of 10,000 square feet.

The petitioner purchased the property involved in 1948, and has been occupying a portion of it with her husband and five daughters since that time. She has been renting a four-room apartment in an ell of the house since the time she purchased the property and for approximately two years has been renting two rooms on the third floor. The house, which is approximately one hundred years old, contains fifteen rooms, four rooms on the first floor, plus a four-room apartment in one ell of the house, five rooms

and bath on the second floor and two rooms on the third floor. The petitioner and her husband now have only one daughter living with them and find that the house is excessive in size for them and because of their financial situation, cannot maintain the property unless some added income is derived from it. It was pointed out that the petitioner's income has been reduced since the retirement of her husband and unless she can continue to rent the two rooms on the third floor, she will have to sell the property. It was stated that the kitchen facilities were removed in June of 1964, as a result of a denial by this Board to grant permission for a third-floor apartment. It was pointed out that the house is being well maintained and the rental of the rooms on the third floor should not prove detrimental to the neighborhood in any way.

Decision

In July 1964, this Board denied the petitioner permission to alter the dwelling involved and to convert the same into a three-family dwelling house. At that time the Board was unable to find the criteria required of it under the provisions of Chapter 40A of the General Laws to grant the request. It was the opinion of the Board at that time that the petitioner purchased the property with knowledge that the house was located within a single-residence district, and it found that with few exceptions the dwellings in the neighborhood were occupied as single-family dwellings. It was not made clear to the Board at that time that the house was a legal non-conforming two-family dwelling and from the new evidence submitted at this hearing, the Board is not convinced that the house is a lawful two-family dwelling.

In its denial, the Board ordered the removal of the third-floor apartment which had already been established and in use at the time of the hearing. Although the kitchen facilities were removed as requested, the petitioner has continued to rent the rooms on the third floor, without kitchen privileges, which is a direct violation of the Zoning By-law of the Town of Wellesley.

Although it was pointed out at the hearing that other houses in the neighborhood were occupied by more than one family, some lawfully and some unlawfully, this Board cannot find that, owing to conditions especially affecting such 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, nor can it find that 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 by-law, conditions the Board must find under the provisions of Chapter 40A, Section 15, of the General Laws.

Accordingly, the requested permission is denied and the petition dismissed.

Garrett S. Hoag

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F. Lester Fraser

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