

TOWN OF WELLESLEY



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WELLESLEY, MASS.

65-56

BOARD OF APPEAL

1965 JAN 5 PM 4:26

GARRETT S. HOAG  
JOHN L. HAYDEN  
DANA T. LOWELL

KATHARINE E. TOY, CLERK  
TELEPHONE  
CE 5-1664

Appeal of Richard D. and Mary T. Fogerty

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 8:25 p.m. on December 2, 1965, on the appeal of Richard D. and Mary T. Fogerty from the refusal of the Inspector of Buildings to issue a permit to them to construct an addition on the rear of their dwelling at 4 Hunting Street. The reason for such refusal was that said addition would violate Chapter IV, Section 1, of the Building Code which requires that all Type V buildings shall be placed at least ten feet from any party line and Section XIX of the Zoning By-law which requires that there shall be provided a side yard not less than twenty feet in width on each side of every building hereafter erected or altered within a Single-residence District. Said appeal was made under the provisions of Chapter 40A, Section 15, of the General Laws and Chapter I, Section 11, of the Building Code.

Richard D. Fogerty spoke in support of the appeal at the hearing.

The Planning Board opposed the granting of the request in its report.

The following persons appeared and spoke in favor of the request: Jean N. Jordan, 176 Walnut Street, Ruth K. Hughes, 175 Walnut Street and Ernest Reynolds, 33R Cedar Street.

On November 15, 1965, the Inspector of Buildings notified the appellants in writing that a permit for the proposed addition could not be granted for the above-mentioned reasons and on the same date the appellants took an appeal from such refusal. Thereafter due notice of the hearing was given by mailing and publication.

Statement of Facts

The house involved was built approximately fifty years ago, on a lot of land containing 4,026 square feet. It is located within a Single-residence District requiring a minimum lot area of 10,000 square feet.

The appellants seek permission to construct a one-story addition 15' x 22' on the rear of their dwelling in order to provide an extra room. The house is small with only three rooms on the first floor. The appellants have three sons and need additional living space which the proposed addition, if allowed, will provide. In connection with the construction of the proposed addition, the appellants propose to build a retaining wall and provide off-street parking space for three cars which are now parked at times on the street. There is a seven or eight foot drop in the land from the front of the house to the back which will require some filling and grading. It was stated that aluminium clapboards are now being put on the house as well as other improvements being made to the property. It was further stated that the proposed

addition should not in any way prove detrimental to the neighborhood and would be most beneficial to the appellants.

A plot plan was submitted drawn by Gleason Engineering Co., dated November 5, 1965, which showed the existing dwelling on the lot as well as the proposed addition. Said plan showed the proposed addition, if built, will lie 5' from the lot line on the northerly side and 14' from the lot line on the southerly side. It is designed to continue the line of the existing house, but will be closer to the lot line than the present house because of the angle of the lot line at the rear of the lot.

Decision

The Board has given careful study to the plans and facts submitted and has taken a view of the locus.

Section XIX of the Zoning By-law provides that the Board of Appeal may make special exceptions to the side yard regulations when it shall find that (1) compliance with the requirements is impracticable because of the width, depth and shape of the lot, and (2) the lot was held of record on April 1, 1940, under a separate and distinct ownership from adjacent lots. The Board is unable to make the findings prescribed as conditions under which the exception may be granted. On April 1, 1940, the lot involved was not held of record under a separate and distinct ownership from adjacent lots.

The Board, however, has considered the request under the provisions of Section 15, of the General Laws, Chapter 40A, and is unable to find any condition affecting the land which does not affect the district generally, a condition which must be found before the Board may grant a variance under the General Laws.

The Board feels it would be a mistake to permit substantial enlargement of the house which is on a lot less than half as large as the minimum standard fixed by the Town, and less than half the distance from the lot line now required by the Zoning By-law.

From the evidence submitted, the Board cannot find that manifest injustice will result if this variance is not granted, nor does it feel that the case was not contemplated by the provisions of the Building Code at the time of its adoption. While the Board is sympathetic with the problem involved, it feels that to permit the proposed addition would be contrary to the intent and meaning of the law.

Accordingly, the appeal is denied and the case dismissed.

Garrett S. Hoag  
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Dana T. Lowell  
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F. Lester Fraser  
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Filed with Town Clerk \_\_\_\_\_

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JAN 5 1966

PLAN OF LAND  
IN  
**WELLESLEY, MASS.**  
OWNED BY

**RICHARD D. & MARY T. FOGERTY**

SCALE 20 FEET TO AN INCH

NOVEMBER 5, 1965.

GLEASON ENGINEERING COMPANY

