

TOWN OF WELLESLEY



68-14  
MASSACHUSETTS

BOARD OF APPEAL

RICHARD O. ALDRICH  
DANA T. LOWELL  
F. LESTER FRASER

82:1 M  
KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Appeal of Edward D. Meehan  
(Aggrieved Party)  
Richard M. and Joanne E. Roach

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 March 21, 1968, on the appeal of Edward D. Meehan claiming to be aggrieved from the issuance of a permit by the Inspector of Buildings to build a storage building for bicycles and garden tools on the premises at 100 Elmwood Road, owned by Richard M. and Joanne E. Roach. Said appeal was taken under the provisions of Section XVI-C and XXIV of the Zoning By-law and Chapter 40A, Section 13, of the General Laws.

On February 9, 1968, Richard M. Roach filed an application with the Building Department for a permit to erect a shed for bicycles and garden tools and on February 23, 1968, the Inspector of Buildings issued said permit.

A written appeal, dated March 1, 1968, was filed with the Board of Appeal by Edward D. Meehan, 104 Elmwood Road, opposing the granting of said permit by the Inspector of Buildings on the grounds that the proposed building, if erected, would be in violation of Section XVI-C of the Zoning By-law. Thereafter due notice of the hearing was given by mailing and publication.

Nicholas B. Soutter, attorney, represented the appellant at the hearing.

Edward D. Meehan, 104 Elmwood Road, abutting property owner, spoke in opposition to the issuance of the permit for the erection of the proposed bicycle and tool shed. He stated that for the past three years he has been registering complaints with the Building Department of alleged violations of the Zoning By-law with respect to the property involved. He contended that workmen and trucks used in connection with the owner's building business have been at the premises numerous times and various types of business operations have been carried on within the house. Mr. Roach denied that he had been making any unlawful use of the premises and stated that he intended to use the shed principally for storing bicycles and garden tools and that he would not use it for business purposes.

The following persons spoke in favor of allowing the proposed shed to be erected: Richard M. and Joanne E. Roach, 100 Elmwood Road, Josephine S. Thar, 101 Elmwood Road, Albert C. and Valerie H. Perry, 96 Elmwood Road and Robert A. Plachta, 94 Elmwood Road.

Letters favoring the erection of the proposed shed were received from the following: Melvin J. and Joann S. Thar, 101 Elmwood Road, Elizabeth H. Kalber, 82 Elmwood Road, Raymond T. and Mary C. DeBan, 105 Elmwood Road.

Henry D. White, attorney, represented Richard M. and Joanne E. Roach.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 15,000 square feet.

Section XVI-C of the Zoning By-law provides in substance that no building or land shall be used for any purpose which would be for any reason injurious to the health, safety, morals or welfare of the community or harmful to property therein.

The proposed shed is to be 10' x 12' and its stated purpose is to house bicycles and garden tools. It is to be located twenty feet from the rear corner of the dwelling and eleven feet from the lot line on the easterly side.

The question before the Board was whether the Inspector of Buildings erred in issuing the permit to Richard M. Roach.

It was alleged at the hearing that some operations of the owner's business are being conducted at the premises involved and that the proposed building would lend itself to be used in connection with the construction business operated by the owner. An investigation is being made by the Town Departments and it was felt that the permit should be held up until a finding has been made.

Decision

The Board has studied the facts available to it in this case and has taken a view of the locus. From the evidence submitted and the investigation made by this Board, it cannot find that the proposed building would violate any by-law of the Town of Wellesley. In the opinion of the Board, Section XVI-C of the Zoning By-law is designed to prohibit the construction of any building or structure which is dangerous or injurious to the public health, safety, morals or welfare or harmful to property, and that this section is not designed to prevent the erection of a building or a structure which in and of itself is not objectionable for any of these reasons even though in some manner such building or structure may later be used in an improper or unlawful manner. The Board makes no finding relative to improper business use of the premises on a continuing basis as to which the evidence adduced in this hearing was incomplete. There was not sufficient evidence of such a continuing improper business use as to warrant any inference that the proposed shed would be used for business purposes.

The Board, therefore, finds that the Inspector of Buildings properly issued the permit in question. There is no prohibition in the By-law against the storage of bicycles and garden tools, and if it develops that there is a use of the shed which is in violation of the Zoning By-law, complaint thereof should be registered with the proper authority.

Accordingly, the appeal is dismissed and the action of the Inspector of Buildings affirmed.

  
Richard O. Aldrich  
  
Dana T. Lowell  
  
F. Lester Fraser