TOWN OF WELLESLEY MASSACHUSETTS

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

68-25

Appeal of the Academy of the Assumption

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 8:40 p.m. on April 25, 1968, on the appeal of the Academy of the Assumption from the refusal of the Inspector of Buildings to issue a permit to enlarge and enclose the porch on the front of the dwelling known as Dana Cottage at 50 Oakland Street. The reason for the refusal is that such an addition would violate Chapter IV, Section 1, of the Building Code which requires that all Type V buildings shall be placed at least thirty feet from the line of any public or private street and at least fifty feet from the center line of any public or private street, and Section XIX of the Zoning By-law which requires that all such buildings shall provide a front yard at least thirty feet in depth. The appeal was taken under the provisions of Chapter I, Sections 10 and 11, of the Building Code, Section XIX of the Zoning By-law, and Chapter 40A, Section 15, of the Massachusetts General Laws.

On April 8, 1968, the Building Inspector notified the appellant in writing that a permit for the construction of an addition on the front of the dwelling involved could not be issued for the above mentioned reasons. On the same date the appellant took an appeal from such refusal and thereafter due notice of the hearing was given by mailing and publication.

The appellant was represented at the hearing by Richard C. Driscoll, Jr., Attorney.

Sister Marion DePaul from the Academy spoke in favor of the petition.

A petition favoring the granting of the request was submitted which had been signed by 12 nearby property owners.

Charles A. Kent, 6 Oakland Circle, stated that he had registered a complaint with the Building Inspector relative to the work being performed on the porch involved without a permit. He further stated that while he would like to see the work completed, he did want the law enforced and a permit required for its completion.

Statement of Facts

The building involved is a small cottage, built approximately fifty years ago on that portion of the Academy of the Assumption campus which lies southerly of Worcester Street and easterly of Oakland Street.

It is occupied by a group of girls who are being given special assistance by the Sisters at the Academy. It is located within an Educational District requiring a minimum lot area of 20,000 square feet, although the Academy parcel in question constitutes a far larger tract.

The appellant is requesting from this Board a variance from the terms of the Building Code and an exception from the Zoning By-law (or, in the alternative, a variance under General Laws Chapter 40A, Section 15) which will permit the completion of alterations already started on the front porch of the dwelling involved. It was stated that the appellant did not realize a permit was necessary for the renovation work on the porch since it did not involve substantial structural changes. The porch had been partially glassed in and the appellant planned to enlarge it slightly and enclose it completely.

A plot plan was submitted, drawn by Gleason Engineering Company, dated April 8, 1968, which showed the existing dwelling with the porch as extended. This plan showed the porch to be 6' x 19.3' and located 24' back from Oakland Street. Although it was not determined exactly, it appears that the porch had been extended approximately six feet in width (i.e., across the front of the building) and a few inches in depth.

Decision

With respect to the necessity for an exemption from the front yard restrictions of Section XIX of the Zoning By-law, it appears that the Academy parcel southerly of Worcester Street and easterly of Oakland Street has been held of record by the appellant for many years, and we do not understand that any lots adjoining it are, or on April 1, 1939 were, held other than in ownerships separate and distinct from that of the appellant. It would appear impracticable to alter, in the manner in which the appellant finds necessary, the building which is the subject matter of this appeal, while still remaining in compliance with the front yard requirements of Section XIX, because of the short distance which lies between the front of the existing building and the street. It therefore appears that an exception may be made by this Board to the provisions of Section XIX of the Zoning By-law, in accordance with the authority contained in said section.

In view of the location of the existing porch with respect to the building, and the fact that the building was constructed at least fifty years ago, it appears to the Board that the Building Code did not contemplate the situation presented here and that thus, to require strict compliance with its terms, could result in an injustice to the appellant. In such circumstances, this Board is empowered, upon appeal, to vary the provisions of the Code.

The proposed change will result principally in extending the existing porch a matter of about 6 additional feet across the front of the already existing building, with the extension of the porch toward the street representing a matter of only a few inches. The proposed alteration will, therefore, encroach a minimal distance into the existing front yard and it

is the opinion of the Board that the relief desired by the appellant may be granted without any adverse effect upon the interests of the public. In this connection, it is significant that a substantial number of neighboring homeowners submitted a petition recommending the allowance of the appeal.

Accordingly, the appeal is allowed, a variance is granted from the provisions of Chapter IV, Section 1 of the Building Code and an exception is made to the provisions of Section XIX of the Zoning By-law with respect to the minimum front yard requirements, and the Building Inspector is authorized to issue a permit in accordance with these findings and opinion.

Philip H. R. Cahill

Dana T. Lowell

F. Lester Fraser

Filed with Town Clerk_____

PLAN OF LAND
IN
WELLESLEY, MASS.
OWNED BY
ACADEMY OF THE ASSUMPTION
SCALE 40 FEET TO AN INCH
APRIL 8, 1968.
GLEASON ENGINEERING COMPANY

COMMONWEALTH OF MASSACHUSETTS
WILLIAM H. GLEASON
5164
REGISTERED
LAND SURVEYOR

WORCESTER STREET

ACADEMY OF THE ASSUMPTION

EXISTING DWELLING

19.3'

ALTERATION

42'

OAKLAND STREET

GRANTLAND ROAD