



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
 TELEPHONE
 235-1664

Petition of Mildred Wise

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 8:05 p.m. on August 8, 1968, on the petition of Mildred Wise for a variance to continue to use the premises located at 34 Cottage Street as a five-family dwelling. Said request was made under the provisions of Chapter 40A, Section 15, of the General Laws.

On June 26, 1968, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Norman T. Byrnes, attorney, represented the petitioner at the hearing and outlined in detail the history of the use of the property involved and the petitioner's need for its continued use as a five-family dwelling.

Mildred Wise, owner of the property spoke in support of the request and stated that since she purchased the property in 1955, she had made a number of improvements to the property at considerable expense.

Lillie D. Canfield, 32 Cottage Street, favored the granting of the request.

The Planning Board in its report objected to the continued use of this property as a five-family dwelling.

Harold Mock, member of the Planning Board, stated that he as well as the Board unanimously felt the request is unreasonable and to grant a variance for a new owner would be to compound a situation which has been wrong for many years.

Statement of Facts

The house involved, which was built over seventy years ago, is located on a lot containing 7,497 square feet, within a Single-residence District requiring a minimum lot area of 10,000 square feet. It is a three-story frame, brick covered dwelling containing five separate apartments. On the first floor there are two apartments each with living room, bedroom, kitchen and bath. On the second floor there are two apartments each with living room, bedroom, kitchen and bath. On the third floor there is one apartment with living room, dining room, two bedrooms, kitchen and bath. There is a screened porch on the back of the house leading to the parking area which can accommodate four cars.

At the Town Meeting of March 17, 1925, the Town adopted its first Zoning By-law and the Town was divided into five districts. The

property involved was placed in a Single-residence District and has remained in that district since that time. However, it appears from the records that the house was then being occupied by three families, and, therefore, became a non-conforming dwelling.

According to the Town records, on December 13, 1926, a hearing was held by the Board of Selectmen on the petition of the then owner of the property, Alma Avery, to convert the premises from a three-family dwelling to a five-family dwelling. The Board denied the petition. However, since approximately 1929, the premises apparently have been used as a five-family dwelling.

The petitioner has an agreement to sell the premises, the sale being conditioned upon the entitlement of the premises legally to be used as a five-family dwelling. The petitioner stated that she purchased the property in 1952, as a five-family dwelling without having any knowledge that it was being used illegally until the question arose in connection with her present sale of the property.

Because the petitioner is an elderly widow who must support herself in the future largely from the proceeds of the sale, it was stated that extreme hardship will result to her financially if she cannot sell the premises for the purpose for which it has been used for almost forty years. Petitioner contends that her situation is unique, that relief can be granted without derogating from the intent and purpose of the Zoning By-law as it has been enforced for many years, that no change in the type of use will be involved and that to continue its present use should not prove detrimental to the neighborhood.

Decision

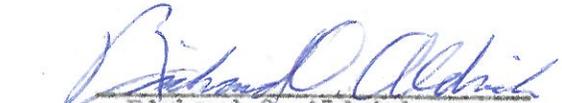
The Board has made a careful study of all the facts in this case and has taken a view of the locus.

In 1926, the Board of Selectmen were alone authorized by the Zoning By-law to permit a change from one non-conforming use to another non-conforming use. In this case the request to change the use was denied by the Board of Selectmen under the provisions of the Wellesley Zoning By-law on December 13, 1926.

The request before this Board was made under the provisions of Chapter 40A, Section 15, of the General Laws which authorizes the Board of Appeal upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of the applicable zoning by-law where, owing to conditions especially affecting such parcel or 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, and where 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 ordinance or by-law, but not otherwise.

The Board is unanimously of the opinion that this is not a proper case for granting the requested relief. Sympathy for the petitioner's personal financial problems cannot substitute for the statutory prerequisites of relief. No conditions especially affecting the parcel in question within the contemplation of the statute have been called to our attention. Lack of knowledge of pertinent legal factors when the property was purchased is not such a special condition. Failure, if any, on the part of Town authorities to enforce legal restrictions on the use of the premises cannot help petitioner's case. Even if the requisite special conditions were present, the Board could not under the circumstances in this case, find that the requested permanent variance could be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law

Accordingly, the petition is dismissed.


Richard O. Aldrich

Dana T. Lowell

F. Lester Fraser

Filed with Town Clerk _____