

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF APPEAL

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Petition of Inez M. Stevenson

This is a petition seeking a variance from the provisions of Section XIX of the Zoning By-law of the Town of Wellesley pursuant to the provisions of Massachusetts General Laws Chapter 40A, section 15.

The petitioner is the owner of a parcel of land with a dwelling-house and attached garage located on it, at 329 Worcester Street, Wellesley, Massachusetts.

The parcel owned by the petitioner is in a Single-residence District which has a minimum lot requirement of 15,000 square feet. The parcel owned by the petitioner has 16,578 square feet, or 1,578 square feet more than the minimum requirement.

The particular provision of the Zoning By-law from which the petitioner seeks relief is that portion of Section XIX which sets forth under the titles: "Requirements - Front Yard", the minimum distance which, in any zoning district, with exceptions not material to this petition, a building or structure may be placed from the front line of the lot on which it is situated.

Section XIX of the Zoning By-law contains other provisions regulating the dimensions of front and side yards, but there appears to be no question whatsoever concerning the compliance of the dwelling owned by the petitioner with any of the front yard requirements of the Zoning By-law except the one hereinafter set forth, since the petitioner's dwelling-house, the front line of which is the closest to Worcester Street of any structure situated on the lot, is 51.88 feet from Worcester Street, or 21.88 feet in excess of the specific requirement set out in Section XIX of the Zoning By-law.

The petitioner, however, requests a variance from the application of the proviso contained in Section XIX that:

" . . . where, on a frontage of 500 feet including the lot to be affected, or on a frontage between two intersecting or entering streets if such frontage is less than 500 feet, all existing buildings (if they are not less than three in number) have front yards of a depth greater than 30 feet, the minimum depth thereof shall be the depth required."

The petitioner, in connection with the alleged application of this proviso to his property, referred to a situation involving a previous proceeding before this Board, which may be summarized as follows:

1. In 1956 the parcel of land owned by the petitioner on which the petitioner's dwelling-house is located, was a portion of a larger parcel of land owned by one Kelly. In that year Kelly set off two adjoining parcels of land, each of over 16,000 square feet in area and each fronting on Worcester Street, now numbered 325 Worcester Street and 329 Worcester Street, and sold the westerly of the two adjoining parcels to the petitioner. Subsequently, Kelly sold the easterly of the two parcels to one Gavin.

2. In 1958, the petitioner sought and obtained a building permit from the Town of Wellesley and the period for appeal therefrom having expired without any appeal, the petitioner proceeded to construct on the parcel of land the dwelling-house in the location in which it is now situated.

3. Later in 1958, Gavin, the purchaser of the other lot, sought and obtained a building permit from the town but within the prescribed period of time the action of the Building Inspector in granting such building permit was appealed by one MacCrellish.

4. The ground for MacCrellish's appeal was the proviso contained in Section XIX of the Zoning By-law above quoted, and MacCrellish's contention was substantially as follows:

(a) Prior to the erection of a dwelling-house on the petitioner's (Stevenson's) lot, the minimum set-back of the houses having frontage on Worcester Street between Longfellow Road and Bancroft Road was in excess of 120 feet, the set-back of the house then owned by one Robert Loring and located at the corner of Longfellow Road and Worcester Street, and under the proviso cited above no building or other structure could lawfully be located on Worcester Street between Bancroft and Longfellow with a lesser set-back from Worcester Street;

(b) Stevenson's dwelling-house was located in its then and present situation on the lot and had its then and present set-back of 51.88 feet, pursuant to a building permit which had been issued in violation of the requirements of law. Therefore, Stevenson's dwelling-house with its set-back of 51.88 feet could not be relied upon by Gavin, or by the Building Inspector in issuing a building permit to Gavin, as justifying a similar set-back for the Gavin dwelling-house which at the time of the hearing before the Board was under construction.

(c) Therefore, the permit issued for the construction of the Gavin house had also been unlawfully issued, the action of the Building Inspector in issuing it should be declared invalid or unlawful or erroneous, the permit itself should be revoked and construction of the house stopped.

5. The Board dismissed the appeal of MacCrellish on the ground that in substance it was a collateral attack on the validity of the issuance of the permit to Stevenson, a matter which was not before the Board and hence not subject to determination by the Board in connection with MacCrellish's appeal against the issuance of a permit to Gavin.

The Board dismissed MacCrellish's appeal and upheld the validity of the permit issued to Gavin. However, it commented that "if the permit for the building at 329 Worcester Street was invalidly issued the building may be removed by competent authority. But . . . the permit has not been found invalid . . . and we know of no pending proceedings to effect its removal."

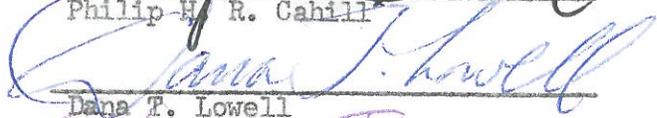
The Board's comment that the permit issued to Stevenson had not been found invalid and that no removal proceedings were pending is equally true today. Its comments concerning the possible consequences if the permit for 329 Worcester Street had been invalidly issued represented dicta even at the time. To the present situation, in 1970, they do not appear to have any application at all.

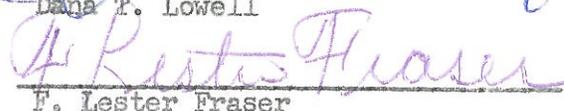
In its 1959 decision the Board specifically held the permit issued to Gavin validly issued. Therefore, the Gavin dwelling-house, lawfully erected pursuant to a valid building permit, since 1959 has represented the "existing building", the front-yard depth of which, being greater than 30 feet and being the minimum front-yard depth on the northerly side of Worcester Street between Longfellow Road and Bancroft Road, establishes the minimum set-back along that portion of Worcester Street. Since the Stevenson dwelling-house has the same set-back, it is in compliance at this time with all the applicable provisions of Section XIX of the By-law.

Since the petitioner's dwelling-house appears to be in compliance with all the applicable provisions of Section XIX of the Zoning By-law, we cannot find that any of the circumstances exist under which this Board could properly grant a variance pursuant to General Laws Chapter 40A, section 10, and therefore, the decision of this Board must be:

That the petition be dismissed.

  
Philip H. R. Cahill

  
Dana T. Lowell

  
F. Lester Fraser