



## BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Appeal of Roger G. Hamilton

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 8:10 p.m. on October 1, 1970, on the appeal of Roger G. Hamilton, being aggrieved by an order of the Inspector of Buildings to cease using the premises, owned by the Estate of Wm. J. Hamilton, at 3 Stevens Street in violation of Section II of the Zoning By-law which limits the use of property within a Single-residence District. Said appeal was made under the provisions of Section XXIV-B of the Zoning By-law. If the Board of Appeal finds that the present use of the premises is in violation of the Zoning By-law, the appellant further appeals under the provisions of Section II 8 (a) and Section XXIV-E of the Zoning By-law for permission which will allow the premises to continue to be occupied by unrelated persons.

On August 19, 1970, the Inspector of Buildings notified the appellant in writing that the use of the above-mentioned premises by several unrelated persons did not constitute single family occupancy within the meaning and intent of the Zoning By-law and further ordered that the unlawful use of such premises cease immediately. On August 31, 1970, the appellant took an appeal from such order and thereafter due notice of the hearing was given by mailing and publication.

The appellant spoke in support of the appeal at the hearing.  
Two of the tenants also spoke in support of the request.

A letter opposing the granting of the request was received from Charles Prombain, attorney representing Horace Bezanson, 1 Stevens Street.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet. The members of the Board have taken a view of the premises.

The appellant stated at the hearing that the premises are now being leased to four persons, three teachers and one nurse. They all signed the lease on the 23rd of July, approximately a month prior to receiving notice from the Building Inspector informing him of the violation. They are paying rentals totaling \$350.00 per month. In his opinion, to evict these people now would cause undue hardship. The property has been in an Estate for about fourteen months and the appellant has had the management of the property for about two months.

Prior to the present occupancy of the dwelling, it was leased to four enlisted Navy men stationed on a ship in Boston. During their occupancy, the property was not maintained well, however, the present tenants are alleged to have thoroughly cleaned the house and to be maintaining it in a very orderly manner. It was the stated feeling of the appellant that the present use of the property should not prove detrimental to the neighborhood and that a literal

enforcement of the By-law will result in hardship to all involved.

Attorney Prombain's letter alleged facts showing deplorable conditions in and about the premises in question during their former occupancy by some "seven to eleven" sailors. It was also stated that currently there are frequently six or more automobiles parked on or about the property.

The Board is convinced, quite apart from the accuracy or inaccuracy or possible explanation of details that the use of the property has been for some time a source of considerable annoyance to some of the neighbors.

#### Decision

Section II of the Zoning By-law provides that "In Single-residence Districts, no new building or structure shall be constructed or used in whole or in part ..... for any purpose except one or more of the following specified uses: 1. One-family dwelling ..." unless permission is granted by this Board for one of several other uses specified in clause 8 of said Section II. Section 1A. defines a "one-family Dwelling" as "A detached dwelling containing not more than one dwelling unit," and a Dwelling Unit as, "A room, group of rooms, or dwelling forming a habitable unit for one family with facilities for living, sleeping, cooking and eating, and which is directly accessible from the outside or through a common hall without passing through any other dwelling unit."

Prior to the most recent amendment of the Zoning By-law, which became effective August 24, 1970, Clause 1 of Section II read, "Single family detached house;" and the other terms which are defined since the amendment were not then defined. The Board is of the opinion that the pertinent provisions prior to the amendment should be given the same construction as that given above. Therefore, the fact that the appellant alleges that he entered into leases with the present occupants on July 23, 1970, is not in the Board's view of any relevance, legally or equitably, to the issue before us.

The By-law therefore prohibits use of a dwelling in a single residence district for habitation by more than one family. A "family" is variously defined for different purposes by the lexicographers and courts. We prefer and accept as a basic definition most in keeping with the intent which we ascribe to those who drafted and adopted the Zoning By-law as amended that definition which is numbered "5" in Webster's New International Unabridged Dictionary (Second Edition, 1961) which reads: "A group comprising immediate kindred, especially the group formed of parents and children constituting the fundamental social unit in civilized societies." Black's Law Dictionary (Fourth Edition, 1951) states at page 728: "In most common use, the word (family) implies father, mother, and children, immediate blood relatives." We believe, however, that common usage and understanding support expansion of the foregoing definitions to include for purposes of the Zoning By-law those bonafide servants, if any, engaged on the premises in the domestic service of the basic family unit.

This case does not require any further refinement or definition in respect of other possible special situations incidental to the primary single family occupancy of a single family residence which should perhaps under some circumstances come within the scope of permitted use under the Zoning By-law. We feel that there can be no doubt in the instant case that the predominant motive for the multiple occupancy is commercial or economic and does not in any significant way involve a "family" in the sense in which that term is used in the Zoning By-law.

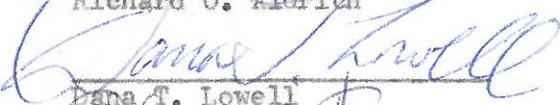
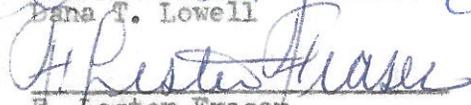
The relative attractiveness of the individuals concerned, their apparent good intentions and their personal problems are not proper mitigating considerations for this Board. The potential for mischief in accepting the proposition advanced by the appellant is obvious.

It is the unanimous opinion of this Board, therefore, that continued non-conforming use of the property is unlawful and will substantially reduce the value of surrounding properties in the district and otherwise injure the neighborhood.

Accordingly the appeal is dismissed.

Appellant has requested alternative relief under Sections II 8 (a) and XXIV E of the Zoning By-law. The Board is unanimously of the opinion that the facts in this case do not furnish a proper basis for relief under either provision.

Accordingly, the requested permission is denied.

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

Filed with Town Clerk \_\_\_\_\_

NOV 10 1964

JOHN M. MULLEN  
COUNSELLOR AT LAW  
24 MILK STREET  
BOSTON, MASSACHUSETTS 02109  
TELEPHONE 617 - 357-9680

July 15, 1971

Mr. Roger G. Hamilton  
25 Patton Road  
Wellesley, Massachusetts 02181

Re: Estate of William J. Hamilton  
3 Stevens Street, Wellesley

Dear Mr. Hamilton:

This will confirm my understanding of the statements made in our telephone conversation last evening.

You stated that the house at 3 Stevens Street is now vacant and is not now occupied by a number of unrelated persons. You also stated that you have engaged a real estate broker to rent the house to one family.

When I was at the District Court of Northern Norfolk in Dedham this morning, I asked the Court, by agreement of the parties, to continue the pending application for a criminal complaint until 2:00, Wednesday, September 15, 1971. It has been so continued.

May I suggest that when the house is rented to and occupied by one family you so notify Mr. Joseph E. Scammon, the Building Inspector of the Town of Wellesley. It is my expectation that upon such notification there will be a recommendation that the pending application for the issuance of a criminal complaint be withdrawn.

Very truly yours,

  
John M. Mullen

cmj

cc: Harry E. Warren, Esquire  
Mr. Joseph E. Scammon  
Miss Katherine E. Toy

TOWN OF WELLESLEY



MASSACHUSETTS

HARRY E. WARREN, TOWN COUNSEL

September 28, 1971

OFFICE:  
28 STATE STREET  
BOSTON, MASS. 02109  
523-1425

John M. Devine, Jr., Clerk  
District Court of N. Norfolk  
631 High Street  
Dedham, Massachusetts 02026

Re: Commonwealth v. Estate of William J. Hamilton

Dear Mr. Devine:

An application for the issuance of a complaint against the Estate of William J. Hamilton for failure to comply with an order to cease the unlawful use of the premises at 3 Stevens Street, Wellesley, by a number of unrelated persons was filed by the Building Inspector of the Town of Wellesley on April 6, 1971. The application for this complaint was the subject of a hearing by Judge Geishecker and the matter was continued from time to time upon the representation that the parties were seeking to dispose of the controversy by agreement. The last continuance was until September 30, 1971.

The alleged unlawful use of the premises at 3 Stevens Street, Wellesley, by a number of unrelated persons has ceased and a representative of the Estate of William J. Hamilton has informed me that future occupancy will be by one family.

In accordance with the telephone conversation with Mr. Mullen today, the complainant now wishes the application for the issuance of a complaint to be withdrawn and the case be terminated by a discontinuance.

Very truly yours,

Harry E. Warren  
Town Counsel

cmj

cc: Board of Selectmen  
Mr. Roger G. Hamilton  
Mr. Joseph E. Scammon  
✓ Miss Katherine E. Toy