



## BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
 TELEPHONE  
 235-1664

Appeal of Malcolm C. and Elaine T. Oliver

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 8:20 p.m. on October 1, 1970, on the appeal of Malcolm C. and Elaine T. Oliver, being aggrieved by an order of the Inspector of Buildings to cease using the premises at 24 Riverdale Road 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 of the Zoning By-law.

On August 19, 1970, the Inspector of Buildings notified the appellants 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 28, 1970, the appellants took an appeal from such order and thereafter due notice of the hearing was given by mailing and publication.

David Kenefick, attorney, represented the appellants at the hearing.

Malcolm C. Oliver of 16 Elm Street also spoke in favor of the appeal.

John Rogers, 13 Pine Ridge Road, stated that he felt such use of the property would establish a precedent in the neighborhood; he did not feel it was right and not helping the Town of Wellesley.

A letter of objection was received from Ralph and Margaret Bruster, 16 Riverdale Road.

Paul Jameson, attorney, representing Robert Holbrook, 30 Riverdale Road, stated that, in his opinion, the present use of the property is not one allowable within a Single-residence District; he stated further that his client has lived in his home for 23 years and that the present use of the property is detrimental to his and to other surrounding properties.

The following persons also spoke in opposition to the appeal; Ferdinand Becker, 15 Garrison Road, Dexter Bolles, 32 Thomas Road, Arthur F. Bell, 11 College Road and Harry J. Nugent, 31 Ledyard Street.

The following nearby property owners also spoke in opposition to the appeal: Paul E. Murphy, 32 Pine Ridge Road, Wilfred Skelly, 21 Riverdale Road and Mrs. Munn, 26 Riverdale Road. All said they felt that the use of the property was detrimental to their properties; they objected to the number of cars parked on the property, activities within the property, and felt that little consideration was given to those who had lived in the neighborhood for some years. All urged that the appeal be denied.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet. The house is a nine-room single-family dwelling 40 to 50 years old.

Owner's counsel stated at the hearing that the house was leased to three students in June of this year, prior to receiving the notification from the Building Inspector of the alleged violation. He also said that prior to leasing the property, the owner investigated the Zoning By-laws of the Town of Wellesley, and concluded that the occupancy by three persons was a permissive use within a Single-residence District. He cited a definition of a rooming house which allegedly spoke in terms of four or more unrelated people living together under the same roof. The implication in his view, therefore, was that three persons would be permitted in a single-family dwelling under Section II of the Zoning By-law. Not to allow such use of the property would, in counsel's opinion, be depriving the owner of his rights guaranteed by the Constitution of the United States and the Massachusetts Bill of Rights. Counsel stated that his client was receiving \$285.00 per month rent from three unrelated tenants.

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 I A. 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 appellants allege that they entered into leases with the present occupants in June 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 sole motive for the multiple occupancy is the non-resident landlord's desire for economic gain 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 three persons occupying the premises are in no way related and their apparent good intentions and their personal problems are not proper mitigating considerations for this Board.

The Board has viewed the premises and the Chairman of the Board on October 12, 1970, saw six automobiles parked on and about the premises, one in the back yard, three in the driveway and two in the front of the house; also a cot-bed and chairs on the front lawn. We are aware that occupancy by young single adults all having one or more cars and friends can more often than not involve a great deal of activity, noise and disturbance to nearby neighbors. We also take cognizance of the physical and aesthetic environmental pollution which frequently accompany a plethora of automobiles, non-owner occupancy and lodging house habits and attitudes. None of these problems on the scale implicit in acceptance of appellant's position are reasonably within the contemplation either of the Zoning By-law or of the residents of single-family districts in Wellesley.

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.

Although appellant did not request relief under Section II 8 (a) or XXIV-E of the Zoning By-law, it should be noted that it is the Board's view that the facts in this case do not furnish a proper basis for relief under either provision.

Accordingly, the appeal is dismissed.

*Handwritten:*  
Town Clerk's Office  
Jan 14 1971 - 11:30 A.M.

*Richard O. Aldrich*  
Richard O. Aldrich

*Sara T. Lowell*  
Sara T. Lowell

*F. Lester Fraser*  
F. Lester Fraser

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

January 25, 1971

Miss Katherine E. Toy, Clerk  
Board of Appeal  
Town of Wellesley

Dear Miss Toy:

I am enclosing herewith copy of Bill  
in Equity, Norfolk Superior Court, filed in this  
office today by David D. Kenefick, Esq., 698  
Washington Street, Norwood.

This is a Bill of Complaint pursuant  
to G.L. Chapter 40A, section 21, by Malcolm C.  
Oliver and Elaine T. Oliver, Petitioners.

Very truly yours,

*Wary C. Clark*  
Town Clerk

H  
enc.

C

O

X

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

Superior Court  
In Equity  
No.

MALCOLM C. OLIVER and ELAINE T. OLIVER  
Petitioners

Vs..

Richard O. Aldrich, Dana T. Lowell and  
F. Lester Fraser, as they are the

BOARD OF APPEALS of the TOWN OF WELLESLEY  
and

JOSEPH E. SCAMMON, BUILDING INSPECTOR  
Respondents

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BILL OF COMPLAINT PURSUANT TO G.L. C. 40A S.21

1. That your petitioners reside at 16 Elm Street in the Town of Wellesley, Massachusetts, and that they are the owners of a certain parcel of land and the single family dwelling situate thereon known as and numbered 24 Riverdale Road, Wellesley, Massachusetts.
2. That on January 5, 1970, your petitioners leased the Premises at 24 Riverdale Road, Wellesley to three students, Francis Crannell, James Laci llade and Jean-Pierre Diels, and since that time the premises have been occupied by them.
3. That the respondents Richard O. Aldrich, Dana T. Lowell, and F. Lester Fraser, are all members of the Board of Appeals of the Town of Wellesley, and reside in said Wellesley; Mr. Aldrich at 26 Lothrop Road, Mr. Lowell at 101 Brookside Road, and F. Lester Fraser at 5 Richland Road.
4. That the respondent, Joseph E. Scammon is the Building Inspector for the Town of Wellesley and resides at 25 Crescent Street in said town.
5. That on or about August 19, 1970, the petitioners received a letter from the respondent, Scammon, Building Inspector of the Town of Wellesley alleging that the premises at 24 Riverdale Road, in Wellesley and owned by the petitioners, were being used in violation of the Town's Zoning by-law; "Section II Single Residence Districts." (A copy of said letter is annexed to the Bill of Complaint and marked "Exhibit A".)
6. That your petitioners appealed from the ruling of the

Building Inspector aforesaid to the Board of Appeals of the Town of Wellesley; that a public hearing was held by said Board on October 1, 1970, after publication and notice as required by law; and that the respondents, Aldrich, Lowell, and Fraser, sitting as the Board of Appeals at the public hearing rendered a decision on the petitioners appeal, said decision upheld the ruling of the Building Inspector alleging that the premises at 24 Riverdale Road were being used in violation of the Zoning By-Law of the Town of Wellesley.

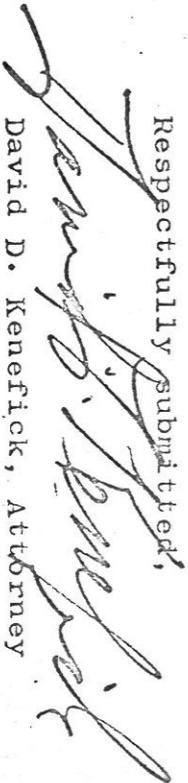
7. The written decision of the Board of Appeals was filed with the Town Clerk on January 4, 1971. (A certified copy of said decision is annexed hereto and marked "Exhibit B").

8. That said decision exceeds the authority of the Board of Appeals as set forth under the enabling statute, G.L. C.40A; that said decision is erroneous as a matter of law; and that said decision denies your petitioners equal protection of the law and deprives them of property without due process all as guaranteed by the Constitution of the United States and the Massachusetts Bill of Rights.

WHEREFORE YOUR PETITIONERS PRAY:

1. That the decision of the Board of Appeals of the Town of Wellesley (a copy of which is annexed hereto) be annulled by this Honorable Court.
2. That this Honorable Court hear all pertinent evidence and determine the facts.
3. That this Honorable Court determine that said decision of the Board is erroneous and that this Court render its decision based on the facts and the law.
4. For such other and further relief as justice and equity may require.

Respectfully submitted,

  
David D. Kenefick, Attorney  
for the petitioners

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EXHIBIT "A"

TOWN OF WELLESLEY

MASSACHUSETTS



BUILDING DEPARTMENT

JOSEPH E. SCAMMON, INSPECTOR

TEL. 235-1004

August 19, 1970

Calcolm C. & Elaine T. Oliver  
16 Elm Street  
Wellesley, Massachusetts 02181

Gentlemen:

It has come to my attention that the premises owned by you at 24 Riverdale Road, are being used in violation of "Section II Single Residence Districts" of the Town of Wellesley Zoning By-Law.

Section II lists the permitted use in a single-residence District, the principal one being, "single family detached house." The use of the above-named premises by several unrelated persons does not constitute a single family within the meaning and intent of the zoning by-law.

I, therefore, order that the unlawful use of these premises cease immediately. This order is given under the provisions of Section XXIII of the zoning by-law. Please notify this office as to when this order will be complied with.

You have the right to appeal this order to the Board of Appeal. Miss Katherine Toy, Clerk of the Board, is available in this same office.

Yours very truly,

*Joseph E. Scammon*

Joseph E. Scammon  
Building Inspector

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TOWN OF WELLESLEY



MASSACHUSETTS

*Recd. James, Clerk  
Jan. 21/1971. 11:30 AM*

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
TELEPHONE  
238-1864

Appeal of Malcolm C. and Elaine T. Oliver

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 8:20 p.m. on October 1, 1970, on the appeal of Malcolm C. and Elaine T. Oliver, being aggrieved by an order of the Inspector of Buildings to cease using the premises at 21 Riverdale Road 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 of the Zoning By-Law.

On August 19, 1970, the Inspector of Buildings notified the appellants 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 28, 1970, the appellants took an appeal from such order and thereafter due notice of the hearing was given by mailing and publication.

David Kenefick, attorney, represented the appellants at the hearing.

Malcolm C. Oliver of 16 Elm Street also spoke in favor of the appeal.

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The following persons also spoke in opposition to the appeal; Ferdinand Becker, 15 Garrison Road, Derber Dolles, 32 Thomas Road, Arthur F. Bell, 11 College Road and Harry J. Nugent, 31 Ledyard Street.

The following nearby property owners also spoke in opposition to the appeal; Paul E. Murphy, 32 Pine Ridge Road, Wilfred Stolly, 21 Riverdale Road and Mrs. Munn, 26 Riverdale Road. All said they felt that the use of the property was detrimental to their properties; they objected to the number of cars parked on the property, activities within the property, and felt that little consideration was given to those who had lived in the neighborhood for some years. All urged that the appeal be denied.

MASSACHUSETTS  
I. OLIVER

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Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet. The house is a nine-room single-family dwelling 40 to 50 years old.

Owner's counsel stated at the hearing that the house was leased to three students in June of this year, prior to receiving the notification from the Building Inspector of the alleged violation. He also said that prior to leasing the property, the owner investigated the Zoning By-Laws of the Town of Wellesley, and concluded that the occupancy by three persons was a permissive use within a Single-residence District. He cited a definition of a rooming house which allegedly spoke in terms of four or more unrelated people living together under the same roof. The implication in his view, therefore, was that three persons would be permitted in a single-family dwelling under Section II of the Zoning By-Law. Not to allow such use of the property would, in counsel's opinion, be depriving the owner of his rights guaranteed by the Constitution of the United States and the Massachusetts Bill of Rights. Counsel stated that his client was receiving \$285.00 per month rent from three unrelated tenants.

Decision

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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 appellants allege that they entered into leases with the present occupants in June 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 domestic servants, if any, engaged on the premises in the domestic service of the basic family unit.

JAN 25 4 15 PM '71

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Appeal of Malcolm C. and Elaine  
T. Oliver

-3-

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 sole motive for the multiple occupancy is the non-resident landlord's desire for economic gain 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 three persons occupying the premises are in no way related and their apparent good intentions and their personal problems are not proper mitigating considerations for this Board.

The Board has viewed the premises and the Chairman of the Board on October 12, 1970, saw six automobiles parked on and about the premises, one in the back yard, three in the driveway and two in the front of the house; also a cot-bed and chairs on the front lawn. We are aware that occupancy by young single adults all having one or more cars and friends can more often than not involve a great deal of activity, noise and disturbance to nearby neighbors. We also take cognizance of the physical and aesthetic environmental pollution which frequently accompany a plethora of automobiles, non-owner occupancy and lodging house habits and attitudes. None of these problems on the scale implicit in acceptance of appellant's position are reasonably within the contemplation either of the Zoning By-Law or of the residents of single-family districts in Wellesley.

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.

Although appellant did not request relief under Section II 8 (a) or XIV-E of the Zoning By-Law, it should be noted that it is the Board's view that the facts in this case do not furnish a proper basis for relief under either provision.

Accordingly, the appeal is dismissed.

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

*[Signature]*  
Richard O. Larrich  
TOWN CLERK  
*[Signature]*  
Sara E. Lovell  
TOWN CLERK  
*[Signature]*  
Lester Fraser

*Jan 20, 1971. A true copy  
Attest: Mary C. Clark  
Town Clerk*

OLIVER, MALCOLM C. & ELAINE T.  
APPELLANT  
BOARD OF APPEALS  
TOWN OF WELLESLEY

JOHN M. MULLEN  
COUNSELLOR AT LAW  
100 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110  
TELEPHONE 617 - 357-9680

24 Lurdall

70-48

December 12, 1974

Leo J. Hession, Esquire  
47 Church Street  
Wellesley, Massachusetts 02181

Re: Oliver v. Aldrich, et als - Norfolk 102230

Dear Leo:

The above-entitled case was dismissed at the call  
of the equity list on December 11, 1974.

Very truly yours,

  
John M. Mullen

JMM/lrp

cc: Harry E. Warren, Esquire  
Miss Katherine Toy