



BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
 TELEPHONE
 235-1664

Petition of Alan A. and Lynn G. Winslow

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 8:30 p.m. on October 1, 1970, on the petition of Alan A. and Lynn G. Winslow, requesting permission to conduct a classical ballet school in a portion of their dwelling at 50 Woodlawn Avenue. Said request was made under the provisions of Section II 8 (b), Section II 8 (g), and Section XXIV E 1 of the Zoning By-law and/or the provisions of Chapter 40A, Section 15, of the General Laws.

On August 28, 1970, the petitioners filed their request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Paul Jameson, attorney, represented the petitioners at the hearing.

The following persons spoke in favor of the request: Mary Sullivan, 81 Garden Road, Edward W. Coffey, 14 Cottage Street, Karen Mura, 15 Hillside Road, Sheila MacCrellish, 29 Croton Street, Doris W. Wilson, 129 Abbott Road, Phyllis B. Noble, 29 Jackson Road, John D. Powell, 105 Benvenue Street, Jane E. Coogan, 12 Whiting Road and Lynn G. Winslow, 50 Woodlawn Avenue.

John G. Schuler, 35 Emerson Road, Coordinator of Evening Education of the Town of Wellesley made a statement praising the program conducted by Mrs. Winslow. He stated his opinion that she has made a contribution to the evening program as she has been teaching a course of considerable value to the people of the Town.

A petition signed by seventeen persons favoring the request was submitted.

Twenty-three Letters were received which favored the granting of the request.

Another petition favoring the request was submitted which was signed by approximately 200 persons from the towns of Natick, Westwood, Weyland, Needham, Chestnut Hill, Weston, Medfield, Dover and Wellesley.

Henry D. White, attorney, representing 31 people consisting of 17 family groups, opposed the granting of the request. Of the 17 families, 15 live on Woodlawn Avenue or Woodlawn Oval and the other two are in the immediate neighborhood. All felt that the proposed use of the property would be detrimental to the value and enjoyment of their homes.

Attorney White pointed out that the so-called Ballet School involves more than just Ballet, and he submitted an advertisement from the local paper which advertised classes in exercise as well. He further suggested that such use of the property would without question increase the traffic in the area. Just such an increase in traffic actually occurred, he stated, when Mrs. Winslow held classes in her home during the past year for a special

school program. In his opinion, the "hardship" Mrs. Winslow is experiencing, because the building she is using is not suitable for her classes, is not hardship within the meaning of the General Laws since hardship under Section 15 of Chapter 40A must relate to the property and not to Mrs. Winslow and her particular intended use of the property. He also argued that even on a one-year basis, the request should not be granted because it would be unfair to the neighborhood and would not even at the outset be intended to be on a temporary basis but would look toward a continuing operation from year to year.

The following persons spoke in opposition to the granting of the request: Frank E. O'Donnell, 42 Woodlawn Avenue, William D. Stewart, 37 Woodlawn Avenue, Margaret W. Downs, Town Meeting Member from Precinct C, John Rogers, 13 Pine Ridge Road, George F. Woodley, III, 49 Woodlawn Avenue, Arthur C. Kenison, 4 Woodlawn Oval, John J. Semmler, 51 Woodlawn Avenue, Ursula C. Semmler, 51 Woodlawn Avenue, Mildred B. Clark, 53 Woodlawn Avenue, Katherine J. McDermott, 5 Hundreds Road, Edith A. Pollard, 25 Woodlawn Avenue, Elizabeth Woodley, 49 Woodlawn Avenue, and Karl Erickson, 8 Woodlawn Oval.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet, and the proposed use of the property is not one permitted unless an additional use under Section II 8, a special permit under Section XXIV-E 1 of the Zoning By-law or a hardship variance under Chapter 40A of the General Laws is granted by this Board.

The petitioners seek permission to conduct a Ballet School in their home, Monday through Saturday, with morning and afternoon classes and a possibility of some evening classes. It was alleged by the petitioners' attorney that the room in the American Legion House which Mrs. Winslow is now using is unsuitable as it lacks proper facilities for teaching ballet. A larger unobstructed room with a smooth floor and space for a large mirror is apparently needed. He also stated that Mrs. Winslow has endeavored to find a place elsewhere in the community with the necessary facilities, but has been unsuccessful. Therefore, she wishes to use the room which was recently constructed as an addition to her home and provides suitable accommodations for a large group of this type. Most of the classes would be limited to ten children with a maximum of fifteen. There is, according to Attorney Jameson, a long driveway and ample parking space on the premises to accommodate cars incident to the intended use of the facility so that there should perhaps usually be little occasion for cars delivering or picking up children to have to park in the street.

The petitioners' attorney urged the Board to grant either a special permit or a variance which would allow the school to be conducted in a manner more beneficial to the students and to the Town.

Decision

In July 1969, the petitioners made a similar request to this Board for permission to conduct a Classical Ballet School in a portion of the dwelling involved and the request was denied as a result of the negative vote of one of the Board members.

Board member Lowell now believes, as he did in respect to the earlier request, that the petitioners may properly be granted a temporary

one-year permit under Section XXIV-E 1, subject to such appropriate conditions and limitations with respect to the petitioners' ballet school and other associated operations as would insure an adequate review of the situation on the basis of actual experience, including the effect on persons, property and conditions, including traffic, in the neighborhood, before consideration was given to the granting of any subsequent temporary permit or of permission for an additional use.

Board members Aldrich and Fraser, however, are of the opinion that the evidence adduced is insufficient as a matter of law to justify the granting of a special permit under the provisions of Section XXIV E 1, for a temporary period. They cannot find the sort of "need" contemplated by the Zoning By-law. Moreover, they cannot find that the proposed non-conforming use would not substantially reduce the value of any property within the district or otherwise injure the neighborhood; to the contrary, they are of the view that the conducting of the activities proposed by petitioners would be injurious to the neighborhood and distasteful to the neighbors. They are further of the opinion that the requested non-conforming uses of the property cannot be granted under Section II 8 (b) and (g) of the Zoning By-law as they are not educational in character within the meaning of the Zoning By-Law.

Moreover, in their view they could not under the circumstances, make the finding required by Section XXIV D that the proposed uses, even if "educational" in character will not substantially reduce the value of any property in the district or otherwise be injurious, obnoxious or offensive to the neighborhood. No unique condition was shown pertaining to the property involved and therefore no hardship was shown within the meaning of Chapter 40A, Section 15, of the General Laws. They have taken into consideration the operations being performed at the rear of the property by the Town of Wellesley, Department of Public Works, and it is their opinion that such operations may well be disturbing and possibly detrimental. However, such operations, in their opinion, would affect all properties within the immediate neighborhood and not specifically the property involved. While the use of the petitioners' home might prove more beneficial both to petitioners and to those attending classes because of the better facilities which could be provided there, it is the view of Board members Aldrich and Fraser that the proposed use of the property would create an increased amount of traffic and congestion and would be substantially detrimental to the public good and would substantially derogate from the intent and purpose of the Zoning By-law.

Therefore, a variance under the terms of Chapter 40A, Section 15, of the General Laws cannot be granted. Accordingly, the petition is denied in its entirety.

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Filed with Town Clerk _____