



## BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK  
 TELEPHONE  
 235-1664

John D. and Dorothy T. Milne

The Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:45 p.m. on February 11, 1971, on the appeal of John D. and Dorothy T. Milne, being aggrieved by an order of the Inspector of Buildings to cease using the premises owned by them at 12 Abbott 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. The appellant requested that should the Board of Appeal find that the present use of the premises is in violation of the Zoning By-law, then an appeal was requested under the provisions of Section II 8 (a) and Section XXIV-E of the Zoning By-law for permission which would allow the premises to continue to be occupied by unrelated persons.

On January 15, 1971, 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 January 25, 1971, the appellant took an appeal from such order and thereafter due notice of the hearing was given by mailing and publication.

Albert Auburn, attorney, represented the appellant at the hearing.

The following persons spoke in favor of the request: David C. Wiswall, 53 Temple Road, Dorothy T. Milne, appellant and Mary Scott, sister of the appellant.

A petition signed by four persons favoring the requested use was submitted at the hearing.

Allister W. Shepherd, 30 Pine Street, spoke in opposition to the request.

Letters opposing the request were received from Irene L. Monaghan, 9 Abbott Street and Mary Wagstaff, 10 Abbott Street. Both are being disturbed by the number of cars on the street and the lawn, the noise and the unkempt appearance of the property.

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, which contains twelve rooms, is approximately sixty years old. In 1954 a special permit was granted by the Board of Appeal allowing the house to be used as a two-family dwelling.

The owner's counsel stated at the hearing that for all intents and purposes, the property involved is not within a single-residence area. He alleged that there were a number of non-conforming dwellings in the neighborhood.

RECEIVED  
 TOWN OF WELLESLEY  
 JAN 21 1971  
 CLERK'S OFFICE

with very few single-family houses. The location is in close proximity to business zoned property on Washington Street and Central Street. Property on these streets has, in this area, been developed with retail stores. The owner of the premises involved in this appeal has leased the two apartments now in the building; the larger apartment is occupied by five students and the two-room apartment by one person.

The owner's counsel further alleged that he found no definition as to what constitutes a single family under the Zoning By-law nor could he find any Massachusetts case defining "single family" or family use. He asserted, however, that he had found in Webster's New Twentieth Century Dictionary that a family was defined as, "the collective body of persons who live in one house."

In the opinion of appellant's counsel the property is not being used illegally, nor in violation of the special permit granted by the Board of Appeal for its use as a two-family dwelling, and he urged the Board to take no action relative to the Building Inspector's order until a definition of single-family has been determined relative to the Zoning By-law or a decision has been made by the Superior Court.

Decision

The members of the Board have viewed the premises and have studied the neighborhood. The neighborhood appears to be a single family residence area. The surroundings do not have any characteristics obvious to the Board which would have any significance with respect either to the appellants or the issues involved in this appeal.

The property involved is now occupied as a two-family dwelling, operating under a special permit granted by the Board of Appeal in 1954.

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 specific 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 amendment to the Zoning By-law, which took effect August 24, 1970, Clause 1 of Section II read, "Single family detached house;" and the other terms which are now defined by the amendment were not specifically defined. However, there does not appear to be any reason (and the appellants have not cited any) why the term "single family" should not be given the same construction as that given above. Therefore, the fact that the appellant entered into a lease with the present occupants of the apartment in question in August 1970, is not in the Board's view of any relevance, legally or equitably, to the issue before us. Nor does it present a "non-conforming use" situation.

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

METTS & AMES  
JOHN C. MILNE, JR.  
SHELTER

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 appear to require any further refinement or definition in respect to other possible special situations incidental to the primary two-family occupancy which might 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 five persons occupying one of the apartments are in no way related and their apparent good intentions and their personal problems are not proper mitigating considerations for this Board.

With respect to the claim, made on behalf of the owner, that for all intents and purposes the property is not within a single-residence area - to the extent, if any, that it is relevant to this appeal, the claim appears directed to the economics of continuing the property as a single residence. The Board presumably recognized this factor in 1954 when it granted a special permit for the premises to be occupied as a two-family residence. The question before the Board now is not whether "the original building can no longer be used or adapted at a reasonable expense and with a fair financial return for a use regularly permitted in the district" (Section II 8 (a) of the Zoning By-law) but whether five unrelated persons constitute one of the two families who may lawfully occupy the premises under the 1954 permit.

In reaching this decision the Board believes note should be taken of the fact that the lessees, though unrelated, are not all of the occupants, and that short of the number of occupants and their activities being such as to constitute a nuisance, or call for some action on the part of the Board of Health, there does not appear to be any limit on the number of unrelated persons who could occupy single family premises if this appeal were sustained.

The cases cited on behalf of the appellants do not appear to the Board to constitute precedents binding upon this Board, which is constituted and acts under the statutory and judicial law of the Commonwealth of Massachusetts.

That the excessive activity, noise and disturbance complained of by neighbors could under some circumstances eventuate even with legitimate two-family occupancy is not relevant. The Board realizes that the increasing incidence of unlawful multiple occupancy use in single residence districts can only exacerbate those evils which the Zoning By-law is intended to control.

The Board is unanimously of the view that the use presently being made of the premises involved is in violation of the special permit granted by the Board of Appeal in 1954 to use the property as a two-family dwelling.

Accordingly, the appeal is dismissed.

*Philip H. R. Cahill*  
Philip H. R. Cahill

*Dana T. Lowell*  
Dana T. Lowell

*F. Lester Fraser*  
F. Lester Fraser

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

DEC 11 4 17 PM '54  
RECEIVED  
TOWN CLERK'S OFFICE  
METHEN, N.H.