

71-45

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Appeal of Francis T. Kinlin

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 8:35 p.m. on June 24, 1971, on the appeal of Francis T. Kinlin from the order of the Inspector of Buildings that the doors and windows in the accessory building on the premises at 144 Oakland Street, be restored immediately to the way they were prior to the alteration work performed on the building. Said appeal was taken under the provisions of Section XXIV-B and Chapter 40A, Section 15, of the General Laws. of the Zoning By-law

On June 4, 1971, the Building Inspector ordered the appellant in writing to restore immediately the doors and windows on the building involved to the way they were prior to the alteration work performed on the building.

On the same date the appellant filed an appeal with this Board, and thereafter due notice of the appeal was given by mailing and publication.

Henry D. White, Attorney, represented the appellant at the hearing.

The following persons spoke in favor of the appeal. They all felt that the new door and windows were an improvement to the building and to restore the old barn door would prove detrimental to their properties. John J. Morris, 15 Partridge Road, Edward C. Smith, 150 Oakland Street, Irving Smith, 142 Oakland Street, Paul Hegarty, 161 Oakland Street, Winifred B. Gallo, 8 Partridge Road, and Katherine W. DeMarco, 12 Partridge Road.

Albert Auburn, Attorney, represented Rudolf B. and Erna Penndorf, 148 Oakland Street, opposed the appeal. It was alleged that work went on after the Building Inspector's order had been issued to stop construction, and that the appellants had flagrantly defied the Zoning By-law of the Town. It was further alleged that the conversion of the barn into recreational purposes was a non-conforming use and it appeared from the work which had been done that the appellants proposed to use it as a dwelling house.

Statement of Facts

The property involved is located within a Single residence District, requiring a minimum lot area of 15,000 square feet. The lot contains 12,721 square feet and has on it a single-family dwelling and a large building which was originally a barn, but in recent years has been used by the owners, it was alleged at the hearing, for recreation purposes.

On May 21, 1970, the Building Inspector issued a permit to the appellants to perform miscellaneous alterations on the building involved which included replacing rotted windows, removing garage doors and replacing with windows and constructing a brick chimney. Subsequently, a permit was also issued by the Building Inspector to the appellants to construct an entrance door and deck on the side of the building. An appeal was taken to the Board of Appeal from the issuance of the permit issued on May 21, 1970, and the Board made a finding that the subject building was being altered in violation of the Zoning By-law and that said building permit was invalid ab initio.

RECEIVED
TOWN OF WELLESLEY
CLERK'S OFFICE
JUN 25 1971

The appellants now seek permission which will allow the building to remain in its present condition, will not require the appellants to replace the garage doors and windows as they were prior to the work performed under the permit issued and will permit completion of the side entrance including steps from the ground to the door.

It was pointed out by the appellants' attorney that they have no intention to use the building as a dwelling house, that it is used occasionally by the appellants and their family for get-togethers and some recreational purposes and that Mrs. Kinlin occasionally paints there as a hobby.

It was stated by the appellants' attorney that it would be a serious hardship to the appellants, who are elderly, to have to restore the garage doors and that it seems only fair and reasonable that they be allowed to leave the windows in place and provide an entrance door on the side which is now partially completed in order to facilitate acceptable accessory use of the premises.

Hardship will result, it was stated, if the petition is not granted.

Decision

The Board has made a careful study of the evidence submitted and has reviewed the case which was before it in June 1970.

At that time the Board found that a recreational building and use of the nature and scope as indicated for the building involved was not a permitted "customary accessory use" and that the building permits should not have been granted. It further concluded that the very large size of the structure involved and the nature of the work already accomplished as well as the further alterations apparently contemplated were not consistent with the limited purpose stated on the owners' application for a building permit. The Board, therefore, was of the opinion that the building permits were sought for the ultimate purpose of adapting the barn to residential use and second that such conversion was proceeding in violation of the Zoning By-law. It further found that the alterations proposed and underway were illegal and that the building permit granted on May 21, 1970, should be revoked.

At the instant hearing counsel for the Penndorfs and the Appellants entered into a verbal agreement that the Pendorfs would withdraw their opposition to the appeal provided that conditions be imposed by the Board that under no circumstances shall the barn or any part thereof be used as a dwelling and no structural changes shall be made which would adapt the barn or any part thereof for dwelling purposes. The Board requested that counsel for the parties prepare and file with the Board a written stipulation relative to the issue of restrictions on use which stipulation has recently been filed as requested.

It is the opinion of this Board that hardship will result to the petitioners if they are required to replace the old barn doors and that a new entrance should be provided as requested. The Board, however, is not in any way altering its opinion in the decision filed with the Town Clerk on October 13, 1970, relative to the use of the building. In its opinion, the uses enumerated by the petitioners' attorney at the hearing, namely, family get-togethers, family recreation and some painting done as a hobby by Mrs. Kinlin may properly be allowed and should not be objectionable if carried on with good faith consideration of the comfort of the neighbors.

The Board finds, therefore, that under the circumstances, a literal enforcement of the order of the Inspector of Buildings would involve substantial hardship to the appellants and that the requested relief is desirable and may be

RECEIVED
TOWN CLERK
OCT 20 1970
MERRILL
3097701833

granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law.

Accordingly, the requested permission is granted and the Building Inspector is authorized to issue permits for the completion of the described work under construction, subject however to the following conditions:

1. That no changes shall be made which for the purpose of adapting the barn or any part thereof for dwelling purposes.
2. The barn may be used for the general purpose of a barn or garage including occasional use for family parties and under no circumstances shall the barn or any part thereof be used for dwelling purposes.
3. This permission may be revoked by the Board if in its sole discretion, it finds that it has been used in a manner violative of the terms hereof or otherwise detrimental to the public good.

Richard C. Aldrich
 Richard C. Aldrich
Dana T. Lowell
 Dana T. Lowell

Robert T. Colburn
 Robert T. Colburn

Filed with Town Clerk _____

55 JUN 23 1955
 RECEIVED
 TOWN CLERK'S OFFICE
 25 AM 12315W