

TOWN OF WELLESLEY



MASSACHUSETTS

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

BOARD OF APPEALS

RECEIVED  
TOWN CLERK'S OFFICE  
WELLESLEY, MASS.  
DEC 11 1972

KATHARINE E. TOY, CLERK  
TELEPHONE  
235-1664

Petition of Edward M. Levitt

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 9:20 p.m. on December 7, 1972, on the petition of Edward M. Levitt, requesting permission to construct a multi-family dwelling on the premises located at 609-611 and 617 Washington Street. The petitioner further requested an exception from the terms of Section XVIII, Area Regulations, which requires a minimum area per dwelling unit of 10,000 square feet. Said petition was made under the provisions of Chapter 40A, Section 15, of the General Laws and Section XVIII of the Zoning By-law.

On October 17, 1972, the petitioner filed his request for a hearing before this Board, and thereafter due notice of the hearing was given by mailing and publication.

Richard M. Perlmutter, a business associate of the petitioner, spoke in support of the petition at the hearing.

Frederick Glover, Architect for the project, outlined in detail the architectural features of the proposed structure as well as the development of the property and its landscaping.

Richard W. Clayton, Jr., 8 Cross Street, opposed the proposed project, as in his opinion, Wellesley needs apartments for the elderly more than it does the proposed apartments.

Barry Spacks, 16 Abbott Street, suggested that some winter screening be provided for the homeowners in the near.

The Planning Board in its report stated that regardless of the merits of the proposal, the request to construct a multi-family dwelling within a Single Residence District is, in effect, a request for a change in zoning district designation and should, therefore, be directed to the Town Meeting.

Statement of Facts

The property involved is located within a Single Residence District requiring a minimum lot area of 10,000 square feet. The combined area of the two parcels is approximately 50,790 square feet. On one parcel there was a four-story brick and stone building which was destroyed by fire in January 1972 and subsequently removed pursuant to an order of the Building Inspector. Said building, which was known as the Webb House, had been used for approximately seventy-five years for various non-conforming uses including a hospital, a college dormitory, a nursing home and a lodging house. Just prior to its being destroyed by fire, this Board granted the petitioner permission to convert the building into six apartments, however, during alterations, it was destroyed. On the adjacent parcel is a dwelling house which has been occupied for some time as a two-family dwelling. It is proposed to raze this dwelling if the requested permission is granted.

In April of 1972, the petitioner requested permission to construct

a five-story building within the height limitation of forty-five feet, which would provide thirty-nine apartments, five two-bedroom apartments and three one-bedroom apartments on each floor. If built, it would have covered 24% of the lot, leaving 76% for open green space, and was to be located 36' back from Washington Street and 30' from the side lot lines, with underground parking area for sixty cars.

The request was denied by the Board of Appeal, and in its decision, it stated as reasons for such denial, inter alia, that the proposed use was too intensive for the area, noting that the structure materially exceeded the limitations of the Limited Apartment District with respect to minimum lot area per dwelling unit, minimum lot or building site area, number of stories, set-backs and yard requirements. It further pointed out that the requirements of the Limited Residence District were also in some respects not satisfied. The Board felt that these Zoning By-law provisions, although not controlling, were entitled to consideration as a reflection to some degree of a consensus of the townspeople as to what are acceptable apartment characteristics. They were also of the view that some of the criticisms directed to the too-intensive proposed use of the area and the lack of harmony with other structures in the area had some merit.

The petitioner now seeks permission to construct a two-story, wood-frame brick-faced building which is designed to provide twenty dwelling units and his plans project a considerably less intensive development and use of the locus than that proposed in his earlier petition. The height has been reduced from five stories to two and three story sections thirty feet high at the highest point. The number of units has been reduced from thirty-nine to twenty, and the square footage of the building from 77,000 square feet to 26,000 square feet. The coverage of the lots by buildings has been reduced from 24% to 20%. Each apartment according to the plans, is to have one covered parking space (9'6" x 24') located directly below the living space and accessible by an enclosed entry stairwell. Ten additional parking spaces 9' x 20' will be provided at grade for visitors and deliveries, with room for additional spaces if required. The twenty units will consist of ten one-bedroom apartments, four two-bedroom apartments and six two-bedroom duplexes, up and down stairs.

Petitioner urged that because of the economic loss resulting from the fire and subsequent demolition and removal of the building, serious financial hardship will result if he is compelled to conform to the requirements of a Single Residence District; that the area is not suitable for development with single-family dwellings because of the numerous non-conforming uses surrounding the property. He also stated that the proposed apartment building will not be detrimental to surrounding properties but rather will have a beneficial effect on the area.

A set of architectural drawings, including elevations, floor plans and landscaping were submitted. Said plans were drawn by R. Wendell Phillips, Boston, Mass., and dated October and November 1972. A site plan was also submitted, drawn by Joseph A. Bodio, Barnes Engineering Company, Inc., C. E., Auburndale, Mass., dated October 1972, which showed the location of the proposed building on the lot as well as the proposed parking area.

#### Decision

The Board has examined the plans submitted and the locus, and has carefully considered the evidence introduced in the petitioner's presentation. No significant or meritorious arguments were advanced in opposition to the proposal.

It is clear to this Board that substantial hardship would be suffered by the petitioner as a result of a permanent literal enforcement of the use

restrictions of the Zoning By-law in respect to this locus. It is not, in the opinion of this Board, an appropriate location for a new single-family residence economically or otherwise. Petitioner's building which was raised on one of the lots had been used for a number of non-conforming uses during the past seventy-five years. The most recent use, at the time when this Board authorized conversion of the building into six apartments, was as a lodging house for 17 to 19 individuals.

The premises in question are literally surrounded by non-single family residence uses. For instance, across the street are apartment houses, lodging houses and a funeral home; a short distance down the street to the left is a business area; diagonally to the right across the street are a church and a parking lot; on both sides there are houses used for medical offices; just beyond the medical office on the corner of Weston Road and Washington Street is a recently acquired municipal parking lot, and behind the locus on Abbott Street are several single-family houses but many others are being used for two, three and four family and other multiple occupancy purposes, plus another municipal parking lot.

This situation as it affects the locus is a result of a number of factors including the natural aging and obsolescence of old residences, the gradual expansion and encroachment of business and business related uses and the increased incidence of legal and illegal non-conforming multiple residence uses, in some cases as a result of action by the Town Meeting and in other instances by sufferance of other agencies of the Town.

The Board again takes note of the fact that there is an obvious need within the Town of Wellesley for accommodations of the type here proposed.

There can be no serious argument about the inappropriateness of the locus for new single-family residence development; this has been recognized officially on a number of occasions by the Planning Board and others. The principal difference of opinion between this Board and the Planning Board appears to be the latter's frequently-expressed position that the Board of Appeal does not legally have the power or authority to grant the relief requested in these circumstances, a view which is clearly incorrect in the opinion of this Board.

The pertinent statute (Mass. G.L. (Ter Ed.), Chapter 40A, Section 15, authorized this Board to grant a variance from the Zoning By-law with respect to a particular parcel of land... "where, owing to conditions especially affecting such parcel or building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law, but not otherwise." It is the opinion of this Board that all of the foregoing conditions precedent to its granting the requested variance are present or have been satisfied and it so finds.

We find that the conditions which affect this parcel and give rise to hardship are not conditions which affect generally the zoning district. The inappropriateness of the locus for single-family residence development derives not only from its surroundings but also from its unique size, shape and location. The area, frontage and side yard requirements of the Zoning By-law would dictate as a practical matter a single-family residence subdivision of four elongated parcels with frontages of 60 feet and depths of approximately 210 feet and areas of about 12,600 square feet, and in an area where the residential lots generally have an area of 5,000 to 8,000 square feet rather than the 10,000 square feet required by the Zoning By-law. Such a use of this land would not only be

economic madness but also a great disservice to the taxpayers of the Town. The parcel's location on a very heavily travelled through way is another condition not generally applicable to the zoning district.

We find that the financial hardship incident to literal enforcement of the Zoning By-law would be substantial and that it is of a type contemplated by the applicable provision of law.

We also find that the relief proposed is desirable and may be granted without nullifying or substantially derogating from the intent or purpose of the by-law. Petitioner has presented a well-conceived and attractive plan for development of the locus, one which is generally in keeping with standards previously accepted by the Town for apartment type structures. No concern about possible adverse effects on other properties in the area was expressed at the hearing and the Board is of the opinion that the structure can only enhance the aesthetic and economic values of the area.

The Board, therefore, feels that a variance should appropriately be granted for the construction of the proposed units as authorized under the provisions of Chapter 40A, Section 15, of the General Laws. The Board is of the further opinion that an exception can be granted from the requirements of Section XVIII of the Zoning By-law which requires at least 10,000 square feet of land for each dwelling unit. In its opinion, the areas adjoining this land have previously been generally developed by the construction of houses on lots generally smaller than is prescribed and neither the standard of the neighborhood so established nor the requirements applicable to multiple residence districts under the Zoning By-law, reasonable requires 10,000 square feet for each dwelling unit contained in the proposed building.

Accordingly, the requested variance and exception are granted and the Building Inspector is authorized to issue a building permit for the proposed building in accordance with the plans submitted and on file with this Board and subject to the following conditions:

1. That all work shall be performed in accordance with the plans heretofore or hereafter filed with and approved by the Board and in compliance with all other requirements of local and State laws.
2. That petitioner shall promptly file such additional detailed final plans and specifications for the proposed construction as the Board shall require showing the locations and elevations of buildings and their exterior materials and incorporating such provisions for off-street parking facilities, interior roads and driveways, drainage, landscaping, screening and exterior lighting and other appurtenances as the Board shall in its sole discretion require, which final plans shall be subject to the Board's approval.
3. That the landscaping shall be maintained to the satisfaction of this Board for the life of the building and subject to such changes as the Board may by regulation from time to time prescribe.
4. That upon completion of the building a complete set of architectural plans, including a complete set of mechanical plans, shall be submitted to this Board at least ten days prior to occupancy of the building.

5. That a surety performance bond running to the Town shall be provided in the amount of \$20,000. in form satisfactory to Town Counsel and the Board of Appeal which shall be posted with the Treasurer of the Town of Wellesley before commencement of the work. Said bond shall be conditioned on the completion of the work in accordance herewith and signed by a party or parties satisfactory to Town Counsel and this Board.
6. That provision satisfactory to this Board for sewage, drainage and other utilities shall be made at no expense to the Town of Wellesley.
7. That the owner of subject premises shall make such additional or other provisions for off-street parking and screening thereof and otherwise administer the project as the Board may by regulation from time to time prescribe.

\_\_\_\_\_  
Richard G. Aldrich

\_\_\_\_\_  
Dana T. Lowell

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

\_\_\_\_\_  
F. Lester Fraser

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION

NO. 109730

BEVERLY OTTAWAY, et al, Plaintiff(s)

v.

Richard Aldrich, et al, Defendant(s)

JUDGMENT

This action came on for (trial) (hearing) before the court, MORSE, J. presiding, and the issues having been duly (tried) (heard) and findings having been duly rendered,

It is Ordered and Adjudged: that the decision of the defendant Board appears to be and hereby is annulled.  
(that the Plaintiff ..... recover of

the defendant ..... the sum of \$ ..... with interest thereon from ..... in the sum of \$ ..... as provided by law, and his costs of action.)

(that the plaintiff ..... take nothing, that the action be dismissed on the merits, and that the defendant ..... recover of the plaintiff ..... his costs of action.)

Dated at Dedham, Massachusetts, this 21st day of

November, 1974.

[Signature]  
CLERK

A TRUE COPY  
Attest: [Signature]  
DEPUTY ASSISTANT CLERK

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT  
In Equity  
No. 109730

BEVERLY F. OTTAWAY  
JOHN R. VERANI  
DONALD P. BABSON  
LAURENCE H. STONE  
MARY ELLEN FRASER  
as they are the Planning Board  
of the Town of Wellesley,  
Plaintiffs

v.

RICHARD O. ALDRICH  
DANA T. LOWELL  
F. LESTER FRASER  
as they are the Board of Appeal  
of the Town of Wellesley,

and

EDWARD M. LEVITT,  
Defendants

FINDINGS AND ORDER

This is an appeal from the granting of a variance authorizing the construction of an apartment building on the northwesterly side of Washington Street in Wellesley. The Plaintiffs are the Wellesley Planning Board. The Defendants are the Board of Appeals and the petitioner for the variance, Edward M. Levitt. I find the following facts:

1. Pursuant to proper notice, the Board of Appeal of the Town of Wellesley held a public hearing on December 7, 1972, on the petition of Edward M. Levitt, requesting a variance to construct a multi-family dwelling on the premises located at

609-611 and 617 Washington Street. The petitioner further requested a variance from the terms of Section XVIII, Area Regulations, which requires a minimum area per dwelling unit of 10,000 square feet. Said petition was made under the provisions of Chapter 40A, Section 15, of the General Laws and Section XVIII of the Zoning By-law.

On October 17, 1972, the petitioner filed his request for a hearing before the Board, and thereafter due notice of the hearing was given by mailing and publication.

The decision of the Board of Appeal granting the petition was filed with the Town Clerk on May 4, 1973.

The property involved is located within a Single Residence District requiring a minimum lot area per dwelling unit of 10,000 square feet. The combined area of the two parcels involved is approximately 50,790 square feet. On one parcel (#611), consisting of 22,377 square feet, there was a four-story brick and stone building which was destroyed by fire in January 1972 and subsequently removed pursuant to an order of the Building Inspector. This parcel was acquired by Levitt by deed dated October 8, 1968. On August 21, 1971, the Board of Appeal granted the petitioner a variance to convert the building into six apartments. On the adjacent parcel (#609), consisting of 28,413 square feet is a dwelling house which has been occupied for some time as a two-family dwelling. This parcel was acquired by Levitt by deed dated October 7, 1971.

The dimensions of each parcel are as shown on plan No. 124 of the Town Plans of the Town of Wellesley, which is Exhibit 4A. Levitt was the owner of both parcels in question at the time of his petition to the Board of Appeal. At the time the decision of the Board was filed with the Town Clerk, namely, May 4, 1973, both parcels were owned by said Edward M. Levitt and Arlene Levitt as Trustees under a Declaration of Trust dated March 12, 1973, by virtue of a deed filed and registered March 15, 1973.

2. The Town of Wellesley is principally zoned in single residence districts and in these districts the minimum lot size varies from 10,000 to 40,000 square feet as indicated on the zoning map (Exhibit 4) by the numerals "10", "15", "20", "30" and "40". The next largest district is the educational district, which is color coded in brown on the zoning map. Material to this case are, in addition: business districts (red); Business "A" (pink); general residence (yellow); limited residence (orange); and limited apartment (also orange). The color codes of these last two are not consistent on Exhibits 4 and 4A.

3. The locus is zoned for single residence with a 10,000 square foot minimum lot size. This particular single residence district is in a pocket southwesterly of Wellesley Square bounded easterly and westerly by educational districts and, northerly principally by business districts. The locus is in the northeasterly end of this district and about 1000 feet

from the center of Wellesley Square, where Grove, Central and Washington Streets intersect. This "pocket" is irregular in shape, but looks something like a right hand mitten, palm up, with the thumb side of the mitten along Grove Street. Between the "thumb" and forefinger of the "mitten", a mixture of uses are permitted; business, educational, limited residence and limited apartment. This area is westerly of Grove Street, southerly of Washington and westerly of Denton Street. Most of these districts were established in 1925, with modifications in 1962, and 1969.

4. The locus is almost completely surrounded by less restrictive zoning. Time and <sup>the</sup> resulting pressure of these other uses has caused non-conforming uses to exist in the immediate residentially zoned neighborhood, viz: apartments, lodging houses and two-family houses. Washington Street is a state highway, Route 16, and carries a large volume of traffic. Weston Road which runs northerly from Washington Street and is only two lots southwesterly of the locus is also heavily travelled. There is a municipal parking lot on the northwesterly corner of Weston Road and Washington Street to serve the business uses in Wellesley Square. On the southerly side of Washington Street, easterly of the easterly portion of Denton Road are brick apartments which are housing for the elderly and some huge mansions which are now lodging houses having some connection with Wellesley College. Across from the westerly portion of the locus, between the easterly and westerly portion of Denton Road is a church, parsonage, and church

parking lot. On the northerly side of Washington Street, the buildings at 605 and 619 Washington Street, on either side of the locus, contain offices for a dentist and two doctors. The residences at 599 and 603 Washington Street are large, old houses in somewhat decayed condition, as are the houses on Wiswall Circle. The business district begins about 60 feet easterly of Wiswall Circle.

5. Behind (northwesterly) the locus is Abbott Street and the back yards of the houses at #12, 14, 16 and 18 abut the backyard of the locus. #5, 7, 8, 9, 10, 11, 12, 14 and 15/have <sup>Abbott Street</sup> apartments or more than one family occupancy, although they and the remaining seven houses on Abbott Street appear to be single or two-family frame dwellings from the street.

6. The houses at 629 Washington Street, at the corner of Weston Road, and at 14, 18, 19 and 25 Weston Road are occupied by two or more families and are frame dwellings that appear to be one or two-family houses. On the other hand, there are thirty single family homes on Denton Street, southwesterly of the church.

7. The apartments for which the petitioner sought a variance is an "L" shaped structure which is shown on Exhibits 2, 3 and 9. The exterior is to be brick. The building varies from two to three stories and is about 30 feet in height. It is of a modern, attractive design. 20 units are proposed, each to have a covered parking space, below grade, behind the building. The proposed building will cover 22% of the locus. The resulting

density of 17 units per acre is only slightly more than the density of the housing for the elderly at 608 Washington Street which is in the limited residence district. The nearest end of the "L" to Washington Street is set back 30 feet. There is a 40 foot minimum rear yard.

8. No detriment, substantial or otherwise, to the public good will result from the proposed variance. The use is residential in character. No significant increase in traffic will result, nor will any other aspect of the proposed use affect the public good.<sup>1</sup>

9. The particular conditions which affect the locus and do not effect the zoning district in which it is located are these: It is located in a particular part of the zoning district which is partially enveloped by business and other uses which are inconsistent with single family residential development, and in a corner of the district which has changed in considerable degree to two-family and multiple family occupancy. The locus is on a heavily travelled state highway. It is one lot away from a municipal parking lot. The shape of the lot is such that single family residential development would probably mean four long, narrow lots containing about

<sup>1</sup>The decision of the Board of Appeals is deficient in this regard in that it makes only a cursory reference to this required finding and leaves to inference the reasons for it. See Planning Board of Northborough v. Board of Appeals of Northborough, 356 Mass. 732.

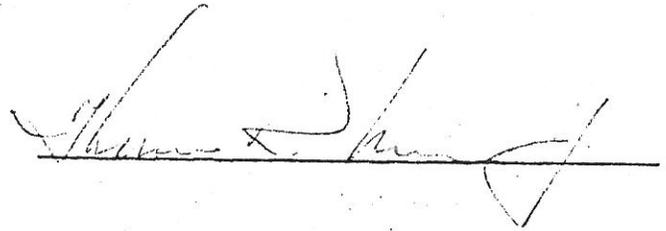
12,600 square feet in a district in which most of the neighboring lots in fact have less than the 10,000 square foot minimum. The resulting "hardship" to the petitioner is requiring that he make an economically impractical use of the locus. More specifically, it is likely that the petitioner will make less money and probably lose money if he develops the locus for one or more new, single family houses, or sells the land for single family residence use.

10. I rule, nevertheless, as a matter of law, that the evidence does not warrant the required statutory finding of "hardship" resulting from any conditions especially affecting the locus which do not generally effect the zoning district. The petitioner can build up to four single family dwellings on the locus. There is nothing about the topography to prevent it. No expensive demolition is involved. The "hardship" which the petitioner advances is more like that found wanting in Sullivan v. Board of Appeals of Belmont, 346 Mass 819 and Coolidge v. Board of Appeals of Framingham, 343 Mass 742, than it is like that found sufficient in Kairis v. Board of Appeals of Cambridge, 337 Mass 528 and Dion v. Board of Appeals of Waltham, 334 Mass 528. From a planning point of view, the petitioner's proposal is sound, and the existing zoning is unsound, but that is a matter for the town meeting and not this Court.

11. I find that that proposed use would not substantially derogate from the intent and purpose of the

by-law because of the same factors previously found. The residential use of the two parcels for apartments in this particular neighborhood and on this street in close proximity to similar uses and business uses would have no appreciable effect on the zoning purpose of the single residence district generally or that section of the zoning district in which the locus lies.

Because of the ruling in Paragraph 10 above, I am obliged to order that judgment be entered annulling the decision of the Defendant Board of Appeal.

A handwritten signature in cursive script, appearing to read "Thomas J. King", is written over a horizontal line.

A TRUE COPY

Attest: Maya Parker  
DEPUTY ASSISTANT CLERK