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ZONING BOARD OF APPEALS

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Appeal of Gregory G. Stone

Pursuant to due notice, the Permit Granting Authority held a public hearing in the hearing room on the second floor of the Town Hall at 8:05 p.m. on January 18, 1979, on the appeal of Gregory G. Stone, from the order of the Inspector of Buildings to correct the violations created by the construction of an addition, without a building permit, on the dwelling located at 21 Woodside Avenue.

The reason for such order was that said dwelling now stands in violation of Section XIX of the Zoning By-law which requires a twenty-foot side yard be provided for each such dwelling and further that living quarters have been established in the garage in violation of Section II of the Zoning By-law. Said appeal was made under the provisions of Section XXIV-C of the Zoning By-law.

On November 24, 1978, the Inspector of Buildings notified the appellant in writing that an addition had been constructed to the house involved, without a permit, and in violation of Section XIX of the Zoning By-law which requires that there shall be provided a side yard not less than twenty feet in width on each side of every building or structure (other than an accessory building not over one and one-half stories in height and not used for habitation) hereafter erected or placed upon any lot in a Single Residence District; and no building or lot shall be so altered as to reduce the size of the existing yard unless the resulting yard complies with the requirements of this section.

On December 27, 1978, the appellant took an appeal from such order and thereafter due notice of the hearing was given by mailing and publication.

The appellant spoke in support of the appeal at the hearing.

Marc J. Alterio, 2 Colby Road, and Ferdinand Civetti, 21 Upson Road, both appeared at the hearing. Mr. Alterio stated that he would go along with anything that would make the property more saleable. Mr. Civetti, however, felt that it is now a non-conforming eye-sore.

A letter was received from John W. Frenning, 3 Colby Road, in which he expressed concern as to the procedure followed by the appellant.

The Planning Board in its report opposed the granting of any variance to legalize the present situation.

A letter was received from the Wellesley Conservation Commission, calling attention to the possibility that plumbing fixtures in the basement of the garage may be connected to a septic tank in part on the property involved and in part on the adjacent lot.

A letter was received from the Board of Health, in which it advised that an inspection had been made of the property by its Sanitarian, on January 17, 1979, which indicated the following:

- (1) "The main house is connected to the Town Sewer service according to Department of Public Works.
- (2) The sewer service of the garage unit that leads to a cesspool located at 83 Woodside Avenue has been disconnected according to Mr. Charney, owner of said property.
- (3) To our knowledge there is no sewer service at the present time serving the garage unit.
- (4) At no time was the Board of Health requested to inspect the garage unit or to approve an occupancy permit for it to be used as a living unit."

Statement of Facts

The house and garage involved are located within a Single Residence District, requiring a minimum lot area of 10,000 square feet. The lot involved contains 12,584 square feet. Prior to the appellant acquiring the property the house and garage were not connected and both buildings were in compliance with the requirements of the Zoning By-law as to location.

At the hearing Mr. Stone stated that after purchasing the property involved, he constructed the connection between the dwelling and garage so that his two children could get to the converted space in the garage without going outside. He explained that the garage, which stands six feet from the side and rear lot lines, was in compliance with the set-back requirements for a detached garage prior to it being connected to the house; however, it now has become part of the house and requires a twenty-foot side yard.

He stressed the hardship which will result to him if the requested variance is not granted, and urged the Authority to grant the request.

Decision

This is an appeal from an order of the Inspector of Buildings directing the appellant to take immediate steps to correct the above-mentioned violations. The Authority has reviewed all the evidence submitted and has taken a view of the locus.

Section XXIV-D of the Zoning By-law provides that, the Permit Granting Authority shall have the power, after a public hearing for which notice has been given pursuant to the applicable section of the Zoning By-law and by mailing to all parties in interest, to grant upon appeal or upon petition, with respect to particular land or structures, a variance from the terms of the Zoning By-law where the Permit Granting Authority specifically finds that:

- a. Literal enforcement of the provisions of the Zoning By-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, especially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created:

AND

- b. "Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning By-law."

After making a careful study of all the evidence submitted, this Authority cannot find that the above criteria required can be established in this case, as it must be Before a variance can be granted.

Although the appellant emphasized that substantial hardship will result to him if he is required to comply with the order of the Inspector of Buildings, especially because he has moved out of State and now desires to sell the property, he submitted no evidence to establish that hardship would result owing to circumstances relating to soil conditions, shape, or topography of the land or structures, especially affecting such land or structures, but not generally affecting the zoning district in which it is located, nor that the connection constructed would not be of substantial detriment to the public good.

This Authority noted in a copy of a letter written by the appellant to the Wellesley Conservation Commission on July 19, 1977, in which he requested the Commission to consider a joint purchase of the Richardson property, part of which is the property involved, that it is apparent he was aware of the fact that by connecting the two buildings, it would create a violation of the twenty-foot side yard requirement.

The letter in part states..."A joint purchase would allow me to purchase at least enough property from the parcel to allow the garage (which conforms to existing town by-laws for detached garages) to conform to town by-laws requiring a 20 foot side yard, should we decide to attach or otherwise change the use of the garage."

The Authority feels that the connection constructed has created an over-crowding on the lot and would prove detrimental to the public good, if allowed to remain. The violations were self-created and in the opinion of this Authority, any hardship resulting from the enforcement of the By-law is not "hardship" within the meaning of the above-mentioned sections of the Zoning By-law.

Therefore, it is the unanimous opinion of this Authority, that sufficient reasons do not exist for granting the requested variance and accordingly the appeal is dismissed.

Francis L. Swift
 Francis L. Swift

William O. Hewett
 William O. Hewett

William F. Cullinane
 William F. Cullinane

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Filed with Town Clerk

Copies of the decision and all plans referred to in the decision have been filed with the Planning Board and with the Town Clerk.