



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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83-16

Petition of Wellesley Properties Realty Trust, Robert B. Maloney, Trustee

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing in the second floor hearing room of the Town Hall at 8 p.m. on Thursday, May 19, 1983, on the petition of WELLESLEY PROPERTIES REALTY TRUST, ROBERT B. MALONEY, TRUSTEE, requesting a Special Permit under the provisions of Section XXV and Section II 8 of the Zoning Bylaw which will allow him to use the premises located at 10 WABAN STREET as a three-family residence, said property being in a Single Residence District.

On May 2, 1983, the petitioner filed a request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Lincoln Passmore, attorney for the petitioner. He stated that the property is currently a two-family under a "grandfather" clause and that Mr. Maloney wishes to expand it to a three-family dwelling. Mr. Passmore referred to the Planning Board's Comprehensive Plan, Section 2.230 and 2.231, of which he passed out copies to the Board of Appeals members. He distributed an 8 page document which he had mailed to the homes of each ZBA member prior to the hearing. He stated that his client would use the additional revenue to upgrade the property.

Robert Maloney, owner of the property, who lives elsewhere in Wellesley, stated that the additional revenue would allow him to upgrade the property. He objected to the Planning Board comments regarding the petition. He stated that the property does exist economically as a two-family, but that it could be improved. He stated that he has recently hired a landscape service to take care of the yard.

Opposed to the petition were the following: William and Terry Moynihan, 9 Waban Street, Sandra Carter, 14 Waban Street, Susan Hand, 26 Weston Road, Jerome Carr, 17 Waban Street, Thomas Porter, 9 Abbott Street, George Byers, 25 Weston Road. Objections centered around parking problems, traffic, retaining the character of the neighborhood, maintenance of the property, conforming to Historic District Commission regulations, ownership by an absentee landlord.

No one was present, other than the petitioner and his wife, in favor of the petition.

Statement of Facts

The property involved is located at 10 Waban Street, in a Single Residence District, in a Historic District, containing 10,882 square feet of land. The dwelling was constructed in about 1898.

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The Board of Appeals, in a decision dated April 8, 1959 (Case #59-16), gave permission to Eunice Allan to use the premises at 10 Waban Street as a residence for not more than two families. Mrs. Allan resided on the premises. Prior to 1959 the property had been used as a two-family dwelling, although the non-conforming use may have been abandoned at intervals during the years from 1918 to 1959.

Robert B. Maloney and Paula C. Maloney, Trustees of Wellesley Properties Realty Trust, have recently purchased the property from Eunice Allan. The Maloneys reside at 9 Crestwood Drive and lease 10 Waban Street to tenants. Mr. Maloney now proposes to use the premises at 10 Waban Street for a three-family residence. He claims that the Town, by construction and operation of a municipal parking lot in the adjacent lot, has created a condition which prevents the subject premises from being economically utilized as a two-family dwelling.

An 8 page document was presented at the Public Hearing, describing the lot and building, including floor plans, a mortgage survey plan, and a parking plan.

The Planning Board, in a letter dated May 12, 1983 stated the following:
"The Planning Board strongly believes that this petition should be dismissed. The applicant indicates that the proximity of the Town parking lot has created a situation whereby the house cannot be economically utilized as a two-family residence. The parking lot has been in its present location since before the current owner purchased the property. The house has been used and well maintained as a two-family residence for more than 30 years. The Planning Board sees no justification for converting this house to a three-family house. There is limited parking available on the lot. We do not believe sufficient parking can be properly provided on the lot to serve a three-family house. Finally, the Planning Board is not aware of any provision in the Zoning Bylaw which would allow conversion of a house in a single residence zoning district to a three-family house."

Decision

This Authority has made a careful study of the evidence submitted. The applicant requests a Special Permit and proposes to use the premises at 10 Waban Street, in a Single Residence District, as a three-family dwelling. He has made application pursuant to the provisions of Section XXV and Section II 8.

The Board of Appeals, in 1959, granted Eunice Allan permission for a two-family use, with Eunice Allan occupying one unit and renting the second unit.

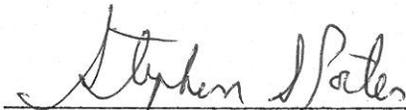
The Zoning Bylaw states that in a Single Residence District, under Section II 8 (a), a Special Permit could be granted for the following: "Residence for not more than two families, or boarding lodging house, but not a restaurant; provided, however, that the building so used was in existence when this By-Law took effect; and provided further that the Board of Appeal make a written finding that the original building can no longer be used or adapted as a reasonable expense and with a fair financial return for a use regularly permitted in the district."

The Zoning Bylaw does not contain any provision for allowing a three-family dwelling in a Single Residence District. Therefore, it is the opinion of this Authority that the permitted use for the premises at 10 Waban Street would include use for no more than two families.

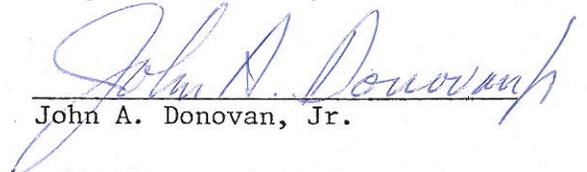
The Zoning Bylaw defines "family" as follows:

- (A) One (1) or more persons related by blood, adoption, or marriage and not more than two (2) additional persons (exclusive of household servants) all residing together as a single housekeeping unit.
- (B) A number of persons but not exceeding three (3) (exclusive of household servants) residing together as a single housekeeping unit where such persons are not related to one another by blood, adoption or marriage.

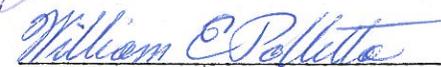
It is the unanimous decision of this Authority that the requested Special Permit for a three-family residence at 10 Waban Street, in a Single Residence District, be denied, and the case is hereby dismissed.



Stephen S. Porter, Chairman



John A. Donovan, Jr.



William E. Polletta

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