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TOWN OF WELLESLEY



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SHERMAN J. L. BROWN
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BOARD OF APPEAL

KATHARINE E. TOY, CLERK
TELEPHONE
CE. 5-1664

Petition of Windsor Corporation

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the first floor of the Intermediate Building at 324 Washington Street at 8:05 p.m. on December 10, 1959 upon the petition of Windsor Corporation for permission to use the premises at 325 Washington Street for business offices as provided under Section 7-C of the Zoning By-law and Chapter 40-A, Section 15 of the General Laws.

J. Haller Ramsay represented the petitioner at the hearing.

The Planning Board offered no objection in its report to a temporary variance being granted provided the petitioner seeks rezoning of the area involved and agrees to abide by the decision of the Town.

Letters favoring the granting of the request were received from Claude F. Machen, Chairman, Standing Committee, Unitarian Society of Wellesley Hills and Mrs. Frederic A. Stanwood, 323 Washington Street.

Lawrence E. Bunker, representing the owner of the property at 319 Washington Street stated his approval.

Statement of Facts

The premises involved are located within a General residence District requiring a lot area of not less than 10,000 square feet.

The building on the premises is a frame single dwelling approximately eighty years old, containing fifteen rooms, five on each of the three floors. The petitioner seeks a variance to permit the premises to be used for business offices. The property was purchased by the petitioner a little over a year ago and it was alleged at the hearing that a literal enforcement of the Zoning By-law has caused hardship to the owner as it has not been able to rent the property as a single residence and to convert the property into two apartments would be too expensive. The property is bounded on the rear by the Boston & Albany Railroad, on the west by Cliff Road and across Cliff Road by the Post Office, on the south by Washington Street and across Washington Street by Town offices and a professional building.

Decision

This is not a case as the petitioner seems to suppose upon which this Board may act on the basis of its view of the equities. The petitioner seeks a permit under Section 7-C of the Zoning By-law or a variance under the provisions of paragraph 3 of Section 15 of Chapter 40A of the General Laws as amended. But under Section 7-C we are authorized to issue only "temporary and conditional permit(s)". The section is inapplicable where the proposed non-conforming use is intended to be permanent as that here requested obviously is. Nor may we grant the requested variance under paragraph 3 of the statute. As last amended effective June 9, 1958 said paragraph provided in pertinent fact as follows:

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"A Board of Appeals shall have the following powers:

- (3) "To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon a variance from the terms of the applicable zoning ordinance or by-law where, owing to conditions especially affecting such parcel or such 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 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..."

The statutory wording makes it clear and the Supreme Judicial Court has consistently held that if any of the specified requirements is not met in a given situation a variance may not be granted. See, e.g., Atherton v. Board of Appeals of Bourne, 334 Mass. 451, 454, (1956) and Benjamin v. Board of Appeals of Swansea, 1959 Mass. Adv. Shts 7, 154 N.E. 2d, 913, 916 (1959). Thus there must be established.

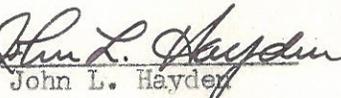
- (a) Conditions especially affecting the parcel or building involved but not affecting generally the zoning district in which it is located; and
- (b) that enforcement of the ordinance or by-law from the terms of which a variance is sought would involve a substantial hardship, financial or otherwise, to the appellant; and
- (c) that 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.

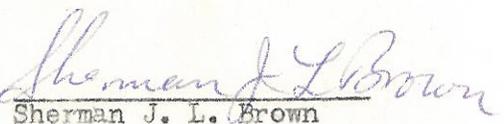
It is clear that the criterion set forth in paragraph (a) is not met in this case. There are so far as has been called to our attention no conditions affecting the premises for which the variance is sought which do not affect generally the zoning district in which it is located. The district is small and it all lies in the small triangle bounded by the railroad, Cliff Road, Washington Street, and the Clock Tower Park. Generally speaking all the factors which the petitioner alleges make the subject premises undesirable for residential purposes similarly affect the whole district in which the property lies. Inasmuch as one of the conditions of paragraph 3 fails of satisfaction our authority under the section fails completely.

If the proposed change is to be made it must be by legislation of the Town Meeting.

The petition is denied.


Garrett S. Hoag


John L. Hayden


Sherman J. L. Brown