

TOWN OF WELLESLEY



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67-17

BOARD OF APPEAL

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

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Appeal of Agnes E. Ahern, Trustee
Preferred Realty Trust

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 8:25 p.m. on March 29, 1967, on the appeal of Agnes E. Ahern, Trustee of Preferred Realty Trust, pursuant to Section XXIV of the Zoning By-law, from the refusal of the Inspector of Buildings to issue a permit to alter the existing sheds at 21 Pine Ridge Road. The reason stated by the Inspector of Buildings for such refusal is that the proposed use of such sheds does not constitute an accessory use under the Zoning By-law, Section II, subsection 7. The appellant contends that as a matter of law the use for which it is proposed to alter such sheds does constitute an accessory use. In the event that the appellant's contention is not sustained, the appellant requests a variance to permit such use, pursuant to the provisions of General Laws Chapter 40A, Section 15.

On March 13, 1967, the Inspector of Buildings notified the appellant in writing that a permit could not be issued for the proposed alteration to the existing sheds for the above-mentioned reasons. On the same date the appellant took an appeal from such refusal and thereafter due notice of the hearing was given by mailing and publication.

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

Thomas J. Carens, attorney, representing Horace A. and Marion W. Mann, opposed the granting of the request. On behalf of Mr. and Mrs. Mann, Attorney Carens took the position that the existing buildings, formerly used as chicken houses, represent a non-conforming use which it would be contrary to the provisions of the Zoning By-law to allow to be altered and converted into the specific uses described by the appellant. In addition, Mr. Carens took the position that the proposed use of the altered buildings would prove detrimental to surrounding properties.

The following persons also appeared, and spoke in opposition to the granting of the request: John A. Rogers, 13 Pine Ridge Road, Thomas R. P. Drummy, 21 Montvale Road, Fern Kerns, 37 Pine Ridge Road and Alexander D. MacLellan, 36 Pine Ridge Road.

Letters opposing the request were received from Robert C. Miner, 37 Glen Road, and Glen and Marion A. MacLeod, 43 Glen Road.

Statement of Facts

The property involved is located within a Single-residence District requiring a minimum lot area of 10,000 square feet.

The appellant seeks permission to join together under one roof three small buildings on the property which were formerly used as chicken houses and storage sheds, and to construct the easterly wall of the reconstructed building out of cement block. The appellant proposes to use the reconstructed

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building for storage, growing of plants, recreation for children, the appellant's painting and sculpturing, and storage of a sail boat.

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A plot plan was submitted drawn by Cheney Engineering Co., Inc. and dated March 15, 1967, which showed the buildings on the property which are the subject of this appeal, as well as an existing dwelling and garage. This plan showed the existing buildings as joined together to be 35.3' x 20.1', and situated three feet from the side line of the appellant's lot at the front corner of the reconstructed building and eight feet at the rear corner.

It was pointed out on behalf of the appellant that the buildings involved are in poor condition and are not being used presently. The appellant lives in the dwelling on the property and wishes to make the alterations and repairs alleged to be necessary to the former chicken houses, in order to use them for her present needs. It is the appellant's position that the proposed uses are incidental and accessory to a single-family dwelling.

Decision

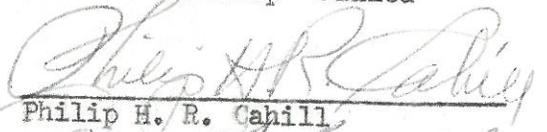
A majority of the Board are of the opinion that the proposed use of the reconstructed building for storage of property including a sail boat, growing of plants, painting and sculpturing and as sort of playhouse for children, will not constitute an "accessory use" within the meaning of Section II, subsection 7 of the By-law, and that on this ground the decision of the Building Inspector should be sustained.

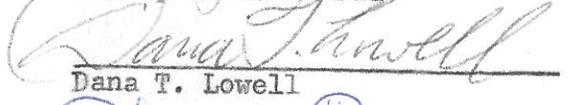
In addition, the Board is of the opinion that the decision of the Building Inspector should also be sustained on the ground that the buildings formerly used as hen houses are no longer entitled to be benefits of a "non-conforming use" because it would appear that they have not been used as such for more than one year, and since they are in any event not to be reconstructed to serve as hen houses they are not entitled to the benefits of a foundation located without a sufficient front yard and may not be entitled to the benefits of a foundation which does not comply with the side-yard requirements.

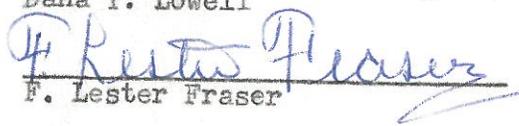
Specifically, the 30-foot front-yard requirement appears to apply. The 24.3 feet of frontage occupied by a non-conforming garage cannot be deemed to provide part of the necessary front-yard for a new building, whatever may have been the case as long as it was a hen house. See in "Section XIX - Yard Regulations" - the definitions of and requirements for a front yard.

Insofar as the appellant petitions under the provisions of Chapter 40A, section 15, of the General Laws of the Commonwealth of Massachusetts, the Board is of the opinion that there are no conditions especially affecting the appellant's parcel and not affecting generally the zoning district within which it is located. The Board is further of the opinion that a literal enforcement of the Zoning By-law will not create a substantial hardship as observation of the parcel of land in question and the plan thereof submitted to the Board indicates that the appellant owns a parcel of land of sufficient area and dimensions to accommodate any structures reasonably permissible in a Single-residence District under the provisions of the Zoning By-law. In substance, it appears to the Board that the appellant wishes to construct on the site of a series of old, abandoned hen houses, a new building to be used for a variety of other purposes, and to use this location, close to the side line of the appellant's

lot, in order to make use of the old hen house foundation. This does not appear to the Board to represent the sort of "substantial hardship" called for by Section 15.


Philip H. R. Cahill


Dana T. Lowell


F. Lester Fraser

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