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TOWN OF WELLESLEY



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BOARD OF APPEAL

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RICHARD O. ALDRICH
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235-1664

Appeal of Carmen J. and Laura M. Surro

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 8:15 p.m. on February 23, 1967, on the appeal of Carmen J. and Laura M. Surro from the refusal of the Inspector of Buildings to issue a permit for the construction of an addition to a business building now existing at 999 Worcetsers Street. The reason for such refusal was that said proposed addition would violate Section II of the Zoning By-law because it would project into a residentially zoned piece of land, that it would violate Section XIX of the Zoning By-law which requires that there shall be provided for every such building a front yard at least thirty feet in depth and side yards at least thirty feet in width on yards next to the streets, and that it would also violate the requirements of Chapter IV, Section 1(a) of the Building Code which requires that all such buildings shall be placed at least thirty feet from the center line of a public or private street. Said appeal was taken under the provisions of Chapter I, Section 11 of the Building Code, and Chapter 40A, Section 15, of the General Laws.

Attorney Paul R. Collanton represented the appellants in this hearing.

The objectors who appeared in opposition to the petition of Carmen J. and Laura M. Surro for an amendment of the Board's prior decision relating to off-street parking in a residential zone objected on substantially similar grounds to any extension of the existing building

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into the residential zone. Reference is made to that decision for a summary of their objections.

The Planning Board in reporting on this appeal, suggested that the appellants investigate alternatives which would allow the addition to be constructed entirely within the business zoned land.

Statement of Facts

The property involved, which contains an area of 29,420 square feet, is located on the northerly side of Worcester Street between Overbrook Drive and Edgemoor Avenue. The front portion of the property, varying in depth from approximately 100' to 150' is located within a Business District and the balance is within a Single-residence District with a special permit granted by the Board of Appeal allowing it to be used for off-street parking in connection with a restaurant business.

The appellants seek permission to construct an addition 40' x 50' at the rear of the existing building, which addition would extend into the residentially zoned area. The proposed addition, if built, would lie 7.3' from Edgemoor Avenue at the nearest point, within the Business District, and approximately ten feet from Edgemoor Avenue at the point where the side line of the building passed into the Single-residence District.

It was stated that the property has been used as a restaurant for the past five years, and that due to the architectural design of the building as presently constructed, it was not conducive to many other uses. The appellants in the past five years have operated the restaurant themselves at various times and at other times have leased the property out for the same use. The restaurant business at this location has been an unprofitable venture both for the appellants and for their lessess. The appellants

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profess to believe that the sale of the property is the only solution to their problems, and claim they have been unsuccessful in their attempts to sell for restaurant use because of the unusual and unique characteristics of the structure. They state that they now have a buyer who is willing to purchase the property for the purpose of operating a new car agency provided the requested exemptions or variances from the Zoning By-law are obtained. The appellants contend that if their appeal is not granted undue hardship will result, that there are conditions affecting this parcel of land which do not generally affect other parcels in this area, and that the granting of the variances requested would not derogate from the intent and purpose of the Zoning By-law.

Decision

The Board has examined the plans submitted and the locus and has carefully considered the evidence introduced. In the opinion of the Board the appellants must be deemed to have been aware of the limited amount of business-zoned property available at the location when they built their building in its present unique form and to have known that they would be limited in the future with respect to expansion beyond the business-zoned area. It is further the opinion of the Board that the proposed extension would be likely to prove detrimental to the nearby residential neighborhood as a new and different source of noise would result if the property is used for the demonstration, repair and testing of new and used automobiles and motorcycles. The Board cannot find the criteria required under the provisions of Chapter 40A, Section 15, of the General Laws, to grant a variance as it appears that the building in its present state can be and has been used for a purpose permitted within a Business District without

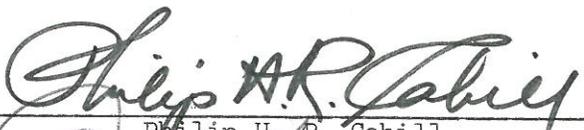
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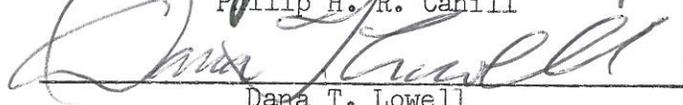
the desired addition and it appears to the Board that it would derogate from the intent and purpose of the By-law to permit the use of the residentially zoned portion of the property for an additional and different business use than that permitted under previous decisions of the Board. While the proposed addition may be considered desirable or even necessary by a purchaser proposing to operate an automobile sales agency, it is the opinion of this Board either that the building can be used for business purposes within its present dimensions, or, as the Planning Board suggests, an addition may be made in a manner which will not violate the Building Code and the Zoning By-law.

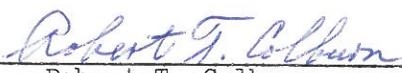
It should be noted that there are other factors weighing against the allowance of this appeal: the proposed addition would require a substantial exception to the minimum side-yard requirements established by Section XIX of the By-law as well as from the requirements of Chapter IV, Section 1(a) of the Building Code.

The Board is unable to find that undue hardship will result if the requested variance is not granted and that conditions exist especially affecting this parcel of land but not generally affecting other parcels in this area.

Accordingly, insofar as the appeal requests a variance under General Laws Chapter 40A, Section 15 it is denied, and insofar as it seeks an exception to the applicable provisions of Chapter IV, Section 1(a) of the Building Code and Section XIX of the Zoning By-law it is dismissed.


 Philip H. R. Cahill


 Dana T. Lowell


 Robert T. Colburn