



BOARD OF APPEAL

RICHARD O. ALDRICH
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235-1664

Petition of Karol and Regina S. Szetela

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 March 25, 1971, on the petition of Karol and Regina S. Szetela, requesting authority to use a portion of the premises at 149 Cedar Street to conduct the business of a manufacturer's representative pursuant to variance under Chapter 40A, Section 15, of the General Laws or special permission under Section XVII B. of the Zoning By-Law.

On February 1, 1971, the petitioners filed their request for a hearing before this Board, and thereafter due notice of the hearing was given by mailing and publication.

Leo J. Hession, attorney, represented the petitioners at the hearing.

Thomas A. Kirkham, 12 Cedar Terrace, opposed the granting of the request. In his opinion, such use of the property would aggravate an already congested corner by increased traffic.

The Planning Board in its report opposed the request.

Statement of Facts

The property involved which contains 14,272 square feet, is located within a Single-residence District requiring a minimum lot area of 15,000 square feet. There is a non-conforming three-decker type dwelling on the property which was built fifty or sixty years ago, was purchased by petitioners about twenty-five years ago, and is occupied by three families who pay respectively \$100, \$100, and \$90. per month rent. The tenants also pay for all utilities. Petitioners' principal other expenses are taxes of \$929.70 per year and insurance expense of \$300. per year.

The petitioners have entered into a purchase and sales agreement but conditioned upon the obtaining of a permanent variance for the property to permit the buyer to conduct a business as manufacturer's representative therein. Said agreement provides for the sale of the property for a purchase price of \$32,900.

Petitioners' attorney stated at the hearing that because of the proximity of business property to the north and rear of the property, the petitioners cannot command rents sufficient to maintain it with proper return. They are said to have attempted to sell the property since March 1970, and to have obtained only one offer to purchase. The prospective buyer presently has one employee and contemplates a total of four individuals in his organization, one office worker, himself and possibly two salesmen. The character of the business is such that there should be no significant increase in traffic or parking since no calling customers or truck deliveries are involved in the

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business operation. It is the desire of the prospective buyer to use the first floor and possibly the second floor for the conduct of his business, and to continue to rent the second and third floors as residence apartments if unused for such business. Therefore, he claims the present appearance and character of the property would remain unchanged, since no exterior structural changes are contemplated.

It was further stated by the attorney that the value of the land itself is practically nil, since the lot size is such that it could not be used for even single residence construction in the event the present structure were destroyed without special permission. Therefore, its sole value is that of rental income property or for the desired business use. The petitioners allege that the proposed use of the property would not reduce adjacent property values or injure the neighborhood, and that unless the request is granted, they will suffer financial hardship.

Decision

The Board has taken a view of the locus and has carefully considered the evidence introduced.

In its opinion to grant the relief here requested under either Section XVII-B of the Zoning By-law or Chapter 40A, Section 15, of the General Laws, would be neither lawful nor appropriate under the circumstances in this case.

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It was alleged at the hearing that because of the proximity of the house to business properties and Route 9, it is not possible to command rentals sufficient to maintain the property adequately and to earn a proper return on the investment and that the petitioners will suffer financial hardship unless the request is granted. It was further alleged that the proposed use of the property would not increase traffic nor reduce property values or injure the neighborhood.

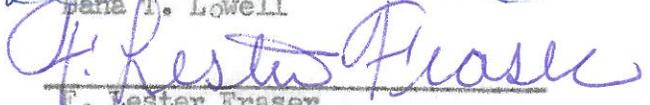
The Board does not agree with these contentions. In its opinion, the introduction of a business use within the house involved would increase traffic to some extent and reduce nearby single-family residence property values. While the house is partially surrounded by business properties, it is adjacent to a residential area, developed by one-family dwellings, and its present non-conforming use as a three-family dwelling provides at least as appropriate a buffer between the single-family residential area and the nearby business areas as would the proposed business use. The Board is of the further opinion that it is reasonable to believe that the prospective buyer's business may increase in the near future with a result of more activities in and around the premises and the need for additional space within the building. While the Board has taken into consideration the age of the house, its physical condition and its location, it recognizes that these conditions are in no sense unique so as to warrant relief under Section 15 of Chapter 40A of the General Laws. The Board is of the unanimous opinion that it is being now and can in the future be operated at a fair financial return as a non-conforming three-family dwelling and that on the basis of Petitioners' own figures, undue hardship within the meaning of the term as used in Section XVII B of the Zoning By-law and Chapter 40A, Section 15 of the General Laws, will not be sustained by the petitioners if the request is not granted. Even if relief were otherwise legally permissible under either of the invoked provisions, the Board feels on the basis of the facts and circumstances that to grant such relief would involve substantial detriment to the public good and would derogate from the intent and purpose of the Zoning By-law.

For the reasons stated, the Board is of the unanimous opinion that the requested relief is not warranted.

Accordingly, the request is denied and the petition dismissed.


Richard O. Aldrich


Sara A. Lowell


F. Lester Fraser

Filed with Town Clerk _____

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