

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF APPEAL

THEODORE C. MERLO  
F. LESTER FRASER  
WILLIAM O. HEWETT

KATHARINE E. TOY  
Administrative Secretary  
Telephone  
235-1664

Petition of George C. McMichael

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 8:45 p.m. on October 24, 1974, on the petition of George C. McMichael, requesting a modification of the original variance granted by the Board of Appeal in 1954 and a further variance granted in 1972, in connection with the dwellings located at 600 Washington Street and 600 Rear Washington Street, located within an Educational District. Said modification would allow the petitioner to raze both of the above-mentioned buildings and in place to erect one building with twenty condominium units and an accessory parking shelter. The variance is sought because multifamily dwellings (except for faculty or employees of educational institutions) are not permitted in an Educational District.

The petitioner further requested an exception from the terms of Section XX of Zoning By-law which will allow the proposed building to be constructed four stories in height (rather than the permitted three stories), and from Section XXI of the Zoning By-law, which governs Off-street Parking.

Said petition was made under the provisions of Chapter 40A, Section 15, of the General Laws and Sections XX and XXI of the Zoning By-law.

74-41  
OCT 28 1974  
TOWN OFFICE

On October 8, 1974, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Paul Jameson, attorney, represented the petitioner at the hearing.

Francis E. Stanley, Architect, submitted an architect's rendering of the proposed project, and stated that he had tried to introduce the feeling of the old building in the newly designed building. The six columns have been retained as well as the iron fence. He also stated that he had examined the existing building and found that it was not feasible to retain this building.

Edwina Giese, member of the Board of Selectmen and representing the majority of the Board, opposed the proposed project. She stated that the nature of the proposal is of such magnitude that it should be brought before the Town Meeting; and that the replacement of one lodging house by twenty units would create an excessive density. Also, she felt that the parking area to be provided was insufficient.

Beverly Ottaway, Chairman of the Planning Board, also felt that the proposal should be brought before the Town Meeting as a zoning change.

The following persons also spoke in opposition to the request: Cynthia Kelly, 20 Dean Road; J. Fink, 603 Washington Street; Norman Myers, 115 Dover Road; Richard Clayton, 8 Cross Street; John B. Carney, Chairman, Wellesley Historical Commission; David Gunner, Museum Operations and Historical Society; John Boyle, Trustee of

Wellesley Green; Ellen M. Staelin, 14 Tappen Road; Mary Ellen Fraser, member of the Planning Board; and Karin McDonough, 16 Upland Road.

A letter opposing the request was received from the Historical Commission, which stated that it felt that the destruction of the building involved would be a serious historical loss to the town and urged all parties to work for a solution that would preserve the present architectural character of the building and site.

A letter opposing the request was also received from Marguerite Hasbrouck, 74 Elmwood Road, in which she stated that she felt the proposed change should be accomplished through rezoning by the Town Meeting vote.

Statement of Facts

The property involved is located within an Educational District requiring a minimum lot area of 10,000 square feet, a District in which the above-mentioned use is not permitted unless a special permit is granted by the Board of Appeal.

The premises at 600 Washington Street and those at 594 Washington Street constitute one parcel for the purposes of these proceedings. The combined parcel contains 64,460 square feet. On this site stands the building involved, which is known as the "Washington House," along side of it another building known as the, "Little House" which contains six apartments, operating under a variance granted by the Board of Appeal, and two small dwelling houses in the rear, one a one-family dwelling and the other a two-

APR 13 8 33 AM '22  
TOWN CLERK'S OFFICE  
RECEIVED

family dwelling, also operating under a special permit granted by the Board of Appeal.

The house involved was built approximately seventy years ago, as a single-family dwelling, and was used as such until about 1920 when it was purchased by Wellesley College and used as a dormitory for Wellesley College students until about 1950.

In 1954, the Board of Appeal granted permission to a former owner to use the house involved as a two-family dwelling and in 1957, the Board granted a limited and conditional permit allowing it to be used as a lodging house. Such use has been carried on since then.

In 1954, the Board of Appeal also granted permission to the former owner to convert the "Little House" from a dormitory to a six-apartment dwelling. Subsequently, one of the small houses in the rear was converted to a two-family dwelling under a special permit granted by the Board of Appeal.

In 1960, the petitioner acquired the entire property, including the four buildings, and now seeks permission to demolish the "Washington House" as well as the one-family dwelling in the rear, and to construct in their place, a four-story building containing twenty apartment units, intended to be divided into condominium units.

It was stated by the petitioner's attorney, that age has taken its toll on the large house and while the petitioner has spent a great deal of money to repair and maintain it, now it is at a point where it is not economically feasible to continue with the expenses

1973 JUN 12  
RECEIVED  
POLICE

involved. It was also stated that the building was professionally inspected recently, and it was found to be in serious condition. The deterioration of the roof has caused severe water damage to the interior of the building, especially to the plaster walls and ceilings. More significantly, it was found that there is structural damage of a serious nature as indicated by sagging floors on all levels as well as deflection of interior bearing walls. This damage to the timbers is believed to have been caused by termites, carpenter ants, or both.

It was stated that the only solution is to tear down the building and construct in its place the proposed 20-unit as shown on the plans submitted.

It was pointed out that the petitioner has tried to comply as nearly as possible with the requirements of the Limited Residence District with respect to location of the building, off-street parking, percentage of land covered by buildings, unused open space, etc.

It is the opinion of the petitioner that the proposed use of the property will not make a substantial impact upon the traffic on Washington Street, nor will it prove detrimental to the neighborhood or the Town. It is felt that there is a great need for such units within the Town which the proposed building will provide, and due to the serious condition of the building now and the large sum of money which the petitioner has spent to maintain it in the past, a severe hardship will result unless the requested permission is granted. The area is not conducive for the construction of single-

APR 15 8 33 AM '32  
722  
POLICE

family dwellings, it was stated, which is the only use allowed other than one of an educational nature.

A plan drawn by Francis E. Stanley, Architect, dated 3/26/74, Revised 4/8/74 and 4/15/74, was submitted, which showed the elevations of the proposed building as well as the layout of the units, and its proposed location.

Decision

The Board denies the requested variance and the petition is dismissed.

Under General Laws, Chapter 40A, Section 15, Clause 3 there are four prerequisites that must be satisfied before a Board of Appeal may grant a variance. They are (paraphrased) as follows:

First, there must be conditions especially affecting the parcel or building but not affecting generally the zoning district in which it is located.

Second, because of these conditions, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise.

Third, desirable relief may be granted without substantial detriment to the public good.

Fourth, such relief may be granted without nullifying or substantially derogating from the interest or purpose of such ordinance or by-law.

APR 11 1974  
POLICE

As to these four prerequisites, "a failure to establish any one of them is fatal": Blackman vs. Board of Appeals of Barnstable, 334 Mass 446, 450 (1956).

We do find hardship. We find that desirable relief may be granted without substantial detriment to the public good and that such relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law. However, we do not find conditions especially affecting the parcel or building which do not affect generally the zoning district.

CONDITIONS ESPECIALLY AFFECTING THE PARCEL OR BUILDING

Number 600 Washington Street is in an Education<sup>4</sup>District comprising three parcels numbered (with more than one number in two cases) from northeast to southwest as follows: 59<sup>4</sup> and 594A; 600; and 604, 604A, 606, 606A. These three parcels together contain a total of 88,954 square feet. (Map of Town of Wellesley, Mass. prepared by the Wellesley Planning Board, Wellesley Assessors Plans, and Zoning Map of the Town of Wellesley, Massachusetts, on file with the Town Clerk). Therefore, it is necessary to find that there are conditions affecting 594-600 Washington Street which do not affect the remaining land in the district.

We do not so find from the evidence offered at the hearing. All the land in the district is similar in topography. We have no evidence of any physical feature unique to the land comprising 594-600 Washington Street.

NOV 15 2 33 PM '52  
TOWN CLERK'S OFFICE

In the case of Rodenstein vs. Board of Appeal of Boston, 337 Mass 333 (1958) there was evidence that under the surface of the lot in question there were large quantities of "pudding stone" so that the lot could not reasonably be developed for residential purposes. The Court upheld a variance to permit the use of the lot as a parking lot. In Dion vs. Board of Appeals of Waltham, 344 Mass 547 (1962) the Court upheld a variance permitting a business use of a lot in a single residence district where there was evidence of conditions especially affecting the lot but not generally the district, namely: a high tension power line, a gas transmission pipe easement, the substreet level of the land, its proximity to an industrial plant, and the presence of peat deposits.

We find no special conditions affecting 594-600 Washington Street.

Petitioner McMichael has offered convincing evidence that it is not economically feasible to continue the present use of the property due to the advanced deterioration of Washington House. However, the structure could be razed and the land devoted to a permitted use. It may well be that such a use could not afford the owner as large a return on his investment as the use petitioned for. However, this would be equally true for the remaining land in the district. In Coolidge vs. Zoning Board of Appeals of Framingham, 343 Mass 742 (1962), the petitioners owned residentially zoned land abutting a business zone and demonstrated that it was financially impossible to

100-13 0 73 11.12  
722  
OFFICE

develop it residentially. The Framingham Board's grant of a variance was reversed because there was no showing that such financial factors were unique to the petitioners' particular lot. See also Bouchard vs. Ramos 346 Mass 423 (1963).

While the Board is in sympathy with the plight of the petitioner occasioned by his ownership of a large, obsolete, and deteriorating structure, such a predicament is unique to this petitioner and the buildings which he wishes to raze. It is not a condition especially affecting the land. It may be said that it is a condition especially affecting the existing building at 600 Washington Street; however, the existing building is not the subject of the variance.

OTHER PREREQUISITES UNDER CHAPTER 40A, SECTION 15

Since the Board has not found in evidence any conditions especially affecting the petitioner's property, it cannot grant the variance. Therefore, this decision will not discuss the Board's findings as to the other prerequisites.

QUESTIONS UNDER SECTIONS XX AND XXI OF THE ZONING BY-LAW

Since the Board is not able to grant the requested variance it makes no report as to the height and parking exceptions.

Other Comments

We note that the Wellesley Historical Commission and the Wellesley Historical Society have objected to the petitioner's stated intention of razing Washington House. While the demolition of the structure might constitute a loss to the Town from the point of view of historic preservation, the Board has no authority to enjoin such an action.

NOV 15 3 13 PM '62  
RECEIVED  
TOWN OFFICE  
WELLESLEY  
MASS

We also note that the Educational District in which the petitioner's property is located once was much larger. It included at one time the property now known as the Wellesley Green condominiums. When Wellesley Green was rezoned to a Limited Apartment district the three lots at 594-606 Washington Street were excluded from the rezoning, leaving a small district of about two acres surrounded by other zoning districts. It may be that the petitioner's predicament is an example of so-called "spot zoning" by reason of the fact that petitioner's land was similar in characteristics to the Wellesley Green land, yet was excluded from the rezoning. However, this Board is not the proper forum for seeking relief from "spot zoning".

F. Lester Fraser  
F. Lester Fraser,

William O. Hewett  
William O. Hewett

Henry H. Thayer  
Henry H. Thayer

Filed on March 17, 1975  
with the Town Clerk

MAR 19 8 33 AM '75  
TOWN CLERK'S OFFICE  
450

Miss T & G

March 24, 1975

Mr. Leo J. Hession  
P. O. Box 375  
Wellesley, Mass. 02181

Dear Mr. Hession:

Today I received a letter relative to Petition of George G. McMichael. Enclosed is a copy of same, together with copies of original Board of Appeal Petitions.

Copies of Complaint are being mailed to each member of the Board of Appeal.

Yours very truly,

*Alice L. Mann*

Town Clerk

Enclosures

Copy to: F.L.Fraser  
W.O.Hewett  
H.H.Thayer

deb

PAUL JAMESON  
DAVID H. LOCKE  
JAMES C. FULLERTON  
A. ARNOLD LUNDWALL

RECEIVED  
CITY CLERK'S OFFICE  
WELLESLEY, MASS.

LAW OFFICES OF  
JAMESON, LOCKE & FULLERTON  
EIGHT GROVE STREET  
WELLESLEY, MASSACHUSETTS 02181  
(617) 235-7000

VINCENT V. R. BOOTH  
COUNSEL

MAR 21 4 40 PM '75

March 21, 1975

Mrs. Alice L. Mann  
Town Clerk  
Wellesley Town Hall  
Washington Street  
Wellesley, Massachusetts 02181

Dear Mrs. Mann:

In compliance with General Laws Chapter 40A, Section 21, as Amended, I am delivering to you herewith a copy of a Complaint in which George C. McMichael is Plaintiff and F. Lester Fraser, William O. Hewett and Henry H. Thayer as members of the Wellesley, Massachusetts Board of Appeals are Defendants.

Very truly yours,

  
Paul Jameson

PJ:jf  
Enclosure

~~CERTIFIED MAIL~~  
~~RETURN RECEIPT REQUESTED~~

*Hand Delivered*

RECEIVED  
TOWN CLERK'S OFFICE  
COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

MAR 21 4 40 PM '75 Superior Court  
Docket No. \_\_\_\_\_

GEORGE C. McMICHAEL

Plaintiff

V.

COMPLAINT

F. LESTER FRASER, WILLIAM O. HEWETT  
AND HENRY H. THAYER,  
AS THE BOARD OF APPEALS FOR THE  
TOWN OF WELLESLEY

Defendants

1. The Plaintiff is the owner of the premises known and numbered 594, 594A, 600, and 600A Washington Street in the Town of Wellesley, and is a person aggrieved within the meaning of G.L. Chap. 40-A, Sec. 21 by the decision of the Board of Appeals of the Town of Wellesley in denying a variance to the Plaintiff.

2. The Defendants, F. Lester Fraser, William O. Hewett, and Henry H. Thayer are the duly constituted and regular members of the Board of Appeals of the Town of Wellesley and all reside in the Town of Wellesley as follows:

F. Lester Fraser  
5 Richland Road, Wellesley

William O. Hewett  
27 MacArthur Road, Wellesley

Henry H. Thayer  
9 Sunset Road, Wellesley

3. On October 8, 1974 the Plaintiff filed with the Board of Appeals of the Town of Wellesley a petition for a variance from the zoning by-law applicable to the premises known and numbered 600 and 600A Washington Street, and for modification of a variance previously granted and filed by the Board of Appeals of the Town of Wellesley on June 19, 1954 and as subsequently modified by a decision of the Board of Appeals of the Town of Wellesley on May 26, 1972. Said petition sought permission to raze the buildings known and numbered 600 and 600r Washington Street in the Town of Wellesley, located within an Educational District and to erect on the situs one building containing 20 condominium units and an accessory structure to be used as a parking shelter. The petition also sought an exception under Section XX of the Zoning By-law of the Town of Wellesley so as to permit the proposed building to be constructed to a height of four stories but not in excess of 45' in height and an exception under Section XXI of the said Zoning By-law so as to permit off street parking to serve the proposed building.

4. Thereafter the petition for variance was properly advertized, and notice of a public hearing was duly mailed to abutters, and published in the Wellesley Townsman; and pursuant to said notice, a hearing on said petition for a variance was held at the Town Hall on October 24, 1974.

5. In a decision dated March 17, 1975 and filed with the Town Clerk on the same date, the Board of Appeals denied the variance sought by the Plaintiff. In denying the variance the Defendant members of the Board of Appeals made the following findings:

"We do find hardship. We find that desirable relief may be granted without substantial detriment to the public good and that such relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law. However, we do not find conditions especially affecting the parcel or building which do not affect generally the zoning district." (Decision of Board of Appeals - George C. McMichael, Petitioner, March 17, 1975, Page 7)

In the said decision the Defendant members of the Board of Appeals advanced as reasons for their finding the following:

MAR 21 4 40 PM '75  
RECEIVED  
PLANNING OFFICE  
TOWNSHIP

"All the land in the district is similar in topography. We have no evidence of any physical feature unique to the land comprising 594-600 Washington Street." (Decision of the Board of Appeals, supra Page 7)

6. The Plaintiff says the finding of the Defendant members of the Board of Appeals with respect to the conditions affecting the parcel or building is inconsistent with the facts and evidence produced at the hearing. The locus is one of three abutting parcels of land within the Educational District. The first parcel, 594 Washington Street consists of 30,200 square feet, contains two wood frame buildings dedicated to multifamily apartment occupancy under a variance granted by the Board of Appeal of the Town of Wellesley, and is owned by the Plaintiff. The second parcel, the subject of the petition, consists of 34,260 square feet, contains two wood frame buildings, one of which is dedicated to use as a lodging house under a variance granted by the Board of Appeal of the Town of Wellesley, the second building is dedicated to multifamily use under a variance granted by the said Board of Appeal, and is owned by the Plaintiff. The third parcel consists of 24,494 square feet, contains two brick and frame buildings dedicated to multifamily apartment use as nonconforming structures, and is owned, now or formerly, by the Estate of Margaret Bancroft. The Plaintiff's parcel at 600 Washington Street is the only parcel within the Educational District not permitted to be used for apartment use.

7. The Plaintiff further says that the Educational District including the Plaintiff's parcel is abutted by a Limited Residence District to the South and West in which apartments are permitted and exist, by a Limited Apartment District (formerly within the Educational District) to the East in which apartments are permitted and exist, by a Business District to the North and East in which apartments are permitted, and the said parcel fronts on Washington Street (also numbered as State Route 16), a principal thoroughfare of the Town of Wellesley.

8. The Plaintiff further says that the Defendant members of the Board of Appeals have erred by not finding that there were conditions expecially affecting the parcel and the building of the Plaintiff but not affecting generally the zoning district in which it is located inasmuch as the evidence reported states:

"Petitioner McMichael has offered convincing evidence that it is not economically feasible to continue the present use of the property due ~~to the~~ advanced deterioration of Washington House." (The Building known and numbered 600 Washington Street) (Decision of Board of Appeals - supra Page 8)

RECEIVED  
JAN 12 1964

"It may be said that it is a condition especially affecting the existing building at 600 Washington Street; however, the existing building is not the subject of the variance." (Decision of Board of Appeals - supra Page 9)

9. The Plaintiff further says that the application of the existing Educational District classification to the Plaintiff's locus constitutes an unreasonable and arbitrary exercise of the zoning power by the Town of Wellesley inasmuch as the Town of Wellesley, acting by and through its duly constituted Town Meeting, and the Defendant members of the Board of Appeals, acting upon various petitions for variance have so changed the Educational District in which the Plaintiff's property was originally located by permitting apartment use that the Plaintiff is being deprived of the fair use and value of his property by denying him the right to dedicate his property for similar apartment use, and further the Plaintiff says that the Defendant members of the Board of Appeals have erred by not rectifying this matter despite the recognition of these factors.

"We also note that the Educational District in which the Petitioner's property is located once was much larger. It included at one time the property now known as the Wellesley Green condominiums. When Wellesley Green was rezoned to a Limited Apartment district the three lots at 594-606 Washington Street were excluded from the rezoning, leaving a small district of about two acres surrounded by other zoning districts. It may be that the petitioner's predicament is an example of so-called 'spot zoning' by reason of the fact that petitioner's land was similar in characteristics to the Wellesley Green land, yet was excluded from the rezoning. However, this Board is not the proper forum for seeking relief from 'spot zoning'." (Decision of Board of Appeals - supra Page 10)

10. The Plaintiff further says that the use sought by the Plaintiff is permitted in Educational Districts of the Town under the Zoning By-law of the Town of Wellesley under Section VII, Subparagraph 4 which reads as follows:

"Multifamily dwellings for the housing of faculty, staff and/or employees of the educational institution and such accessory uses as are customary; provided, however, that town houses shall conform in all respects, with the exception of off-street parking, to the provisions of SECTION IIIA. TOWN HOUSE DISTRICTS and apartments shall conform in all respects, with the exception of off-street parking, to the provisions of SECTION VIA. LIMITED APARTMENT DISTRICTS."

RECEIVED  
CITY OFFICE

And the Plaintiff further says that to restrict the plaintiff to providing apartments for faculty, staff and for employees of an (the) educational institution is arbitrary, unreasonable, and unconstitutional as applied to the Plaintiff's property.

11. The Plaintiff attaches hereto a copy of a decision of the Appeals Board bearing the date of the filing thereof certified by Alice L. Mann, Town Clerk, with whom the decision of the Board of Appeals was filed.

WHEREFORE the Plaintiff seeks:

1. That the findings and rulings of the Defendant members of the Board of Appeals of the Town of Wellesley denying the petition of the Plaintiff, George C. McMichael, for a variance on the land and building known and numbered 600 Washington Street, heretofore previously described, be annulled.

2. That the Court make a finding that the Plaintiff is entitled to the variance sought and to the exceptions petitioned for under Sections XX and XXI of the Zoning By-law of the Town of Wellesley.

3. That this Court declare the Education District of the Zoning By-law of the Town of Wellesley as applied to the Plaintiff's property a nullity, and that this Court further order that the Plaintiff be permitted to use his parcel in conformity with all applicable provisions of the Zoning By-law of the Town.

4. For such other and further relief as to this Court may seem just and proper under the circumstances.

By his attorneys

JAMESON, LOCKE & FULLERTON

By: \_\_\_\_\_

Jameson, Locke & Fullerton  
8 Grove Street  
Wellesley, Massachusetts 02181  
235-7000

RECEIVED  
TOWN CLERK'S OFFICE  
WELLESLEY, MASS.  
MAY 21 4 40 PM '75

TOWN OF WELLESLEY



MASSACHUSETTS

74-41  
Examine file

ALBERT S. ROBINSON, TOWN COUNSEL

P. O. BOX 375  
47 CHURCH STREET  
WELLESLEY, MASS. 02181  
(617) 235-1020

February 22, 1980

Katherine E. Toy, Executive Secretary  
Wellesley Zoning Board of Appeals  
Town Hall  
Wellesley, Massachusetts 02181

Re: George C. McMichael v. F. Lester Fraser, et als.  
Norfolk Superior Court  
No. 115065

Dear Miss Toy:

The Norfolk Superior Court has entered Judgment of Dismissal without prejudice in the referenced action on account of the lack of prosecution of the Plaintiff in this Appeal.

The effect of this Judgment is to conclude the Appeal, in the Board's favor, and therefore the Board's decision is now enforceable.

I am closing my file. Feel free to call me if you have any questions.

Very truly yours,

Albert S. Robinson

ASR/jf  
File: WJ-136