



ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN
CYNTHIA S. HIBBARD
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208

J. RANDOLPH BECKER, VICE CHAIRMAN
ROBERT W. LEVY
DAVID L. GRISSINO

ZBA 2011-14
Petition of Frank & Anne Bae
36 Brook Street

Pursuant to due notice, the Special Permit Granting authority held a Public Hearing on Thursday, March 10, 2011 on the petition of FRANK & ANNE BAE requesting renewal of a Special Permit pursuant to the provisions of Section II A 8 (a) and Section XXV of the Zoning Bylaw to continue to allow the premises at 36 BROOK STREET to be used as a residence for not more than two families, which is a use not allowed by right in a Single Residence District. The Petitioner is requesting modification of Conditions #2 and #8.

On February 22, 2011, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Stanley Brooks, Esq. He said that also present at the hearing was Anne Bae (the "Petitioner").

Mr. Brooks submitted a petition of support that was signed by 24 neighbors.

The Board said that the facts were very clearly laid out in the Board's decision, ZBA 93-7, that the two-family use that once existed, probably prior to the time that Zoning came into existence, was abandoned. The Board said that it has granted a Special Permit for a two-family use in a Single Residence District.

Mr. Brooks said that the relief that is being sought is a renewal of the Special Permit for use as a two-family and a modification of Condition #2. He said that Condition #2 goes back to the original 1993 grant. He said that requires that the Bae's live in what was designated as the main house at the front part of the building and that the garage apartment be the rental unit. He said that at the time that was granted, the Bae's lived there with their four children and a niece. He said that the children are now grown and have moved on. He said that the Petitioner would like to have the condition amended to allow them flexibility to live in either the large front or smaller back unit.

The Board said that it has repeatedly asked the Bae's to provide sufficient financial information so that it can make a finding under Section II A 8 a. The Board said that Mr. Bae should submit the front page of his Federal Tax Return. The Board said that Mr. Bae could meet with one member of the Board if he is not comfortable with submitting that information. Mr. Brooks said that Mr. Bae discussed the matter with his CPA and was advised that, as a matter of privacy, he should not disclose his tax return to the Board. The Board asked how the Petitioner proposes to satisfy the Zoning Bylaw.

The Board said that the Bae's have been living in the house for approximately 30 years. The Board said that it was a single family house when they moved into it. The Board said that the Bae's kept it as a single family house for the first nine years before they came before the Board and asked for a Special Permit to make it a two-family home.

The Board said that the house is a large single family home. The Board said that if there is a financial burden, the Petitioner will have to show that. Mr. Brooks said that the Bae's submitted materials regarding their sources of income and expenses involved in supporting and maintaining the property. The Board asked if the Bae's would be willing to submit an affidavit that the materials submitted to the Board reflect their sole income.

Mr. Brooks said that there were questions regarding the Homestead Trust. He said that a schedule of beneficiaries was submitted to the Board in 2009. He said that there has been no change in that schedule. He said that the trust is for Mr. Bae's father and sister. He said that Frank and Anne Bae have no equitable interest in the trust.

The Board said that since Mr. Bae's children no longer live there, there is no need to have parking for seven vehicles. The Board said that resident parking would be reduced to five spaces.

The Board read Condition #4 in the 1993 decision regarding floor plans. The Board asked if the floor area of the garage has been expanded into the main house. Mr. Brooks said that a picture that was submitted shows what appears to be two separate structures. He said that the units are joined by a firewall and are completely separate.

The Board said that when the property is sold, the house must be converted back to a single family residence.

Mr. Brooks said that he needed to speak with Mr. Bae. He asked that the Board recess for a short period. The Board recessed the hearing on this petition at 7:52 p.m.

The hearing for this petition resumed at 8:40 p.m. Mr. Brooks said that he spoke with Mr. Bae. He said that Mr. Bae will provide an affidavit within seven days that will indicate that the income information that was submitted to the Board is accurate. He said that there is also a small amount of bank interest.

Mr. Brooks said that Condition #4 of the 1993 decision stated that the floor plans were to remain the same. He said that at the renewal hearing in 1994, the Board removed that condition. He said that when a neighbor inquired as to why that was being taken out, the Board's response was that they had been advised that it was an illegal condition.

The Board said that it did not want to see any action that might further subdivide that house. The Board said that it would add a condition that the main house may only be rented to a one family unit who are all related. The Board said that the units could not be used to rent out several rooms. The Board said that occupants of the garage unit must also be one related family. The Board said that if the Bae's cease living at the house, the Special Permit will expire.

The Board said that it would impose a condition that there be no additional kitchens or baths allowed in the main structure.

Mr. Brooks said that in 2006 the Board asked the Building Inspector to make a determination as to how many parking spaces there could be on the property. He said that on May 30, 2006, Mr. Grant submitted to the Board the results of his inspection and measurements of the property. He indicated that there were seven parking spaces, two in the garage and five outside of the garage. The Board said that in 2006 the Bae's represented to the Board that they had a couple of their children still living with them who had cars. The Board said that is no longer the situation. The Board said that a major objection of neighbors is the number of cars that are parked there. The Board said that it would impose a condition that there be no more than five resident vehicles parked on the property, regardless of the distribution.

Kit Bowry, 42 Brook Street, said that if the Board does not have any floor plans in the file, it will be unable to address the issue of changes made in the future. The Board said that a Building Permit would be required. The Board said that the Building Inspector gets a copy of the decision and it will become part of his file.

Ms. Bowry said that she will submit a copy of the 1993 floor plans for 36 Brook Street.

Debora White, 10 Marvin Road, said that she is the direct abutter at the back of 36 Brook Street. She said that she has lived there since 1998. She said that she has not had any problems with the Bae's up to this point. She said that she submitted a letter to the Board.

Ms. White said that restricting the parking to five spaces was a good idea.

Ms. White said that she was concerned about an intensification of the use of the property. She said that if the Bae's are moving to the small unit at the back, a large family could move into the unit at the front. The Board said that was the situation when the Bae family was larger. Ms. White said that the owners should live in the primary unit.

Jeffrey Stonberg, 31 Brook Street, asked about the relief being sought. The Board said that it has to determine if it would be a financial hardship for the Bae's to use the house as a single family residence. The Board read Section II A 8 (a) of the Zoning Bylaw. The Board said that it made the required finding in 1993. The Board said that it does not see any reason to change that finding. The Board said that it asked Mr. Bae for additional financial information.

Mr. Stonberg said that the Bae's bought the house in 1984. He said that his house is larger than the Bae's house. He said that the Bae's spent some money to do some kitchen/bathroom modifications. He said that his guess is that the Bae's do not have \$400,000 invested in the house. He said that he could not imagine that, unless they pulled the money out for something that had nothing to do with the house, that they would have much of a mortgage. He said that he did not believe that a fair financial return would use in the base any money at all that was used for another purpose. He said that it would seem that for the actual capital cost of the house, there would be very little debt that would be related to that actual house as opposed to money that they would pull out for another use. He said that the house today has great value and the sale of the house would probably produce a very significant amount of money that they could then

use to supplement their income. The Board said that it is beyond the scope of anything that it would consider looking at.

Peter White, 10 Marvin Road, said that the situation has evolved since 1993. He said that his concern is about allowing changes to something that has worked for 18 years. He said that the Bae's would still be able to make a fair rent on a use that is not permitted by right. He said that they have had a high financial benefit for a period of time. He asked that the language in the original decision not be changed to allow for an intensification of the use. He said that he did not want to have to come back every two years when the Special Permit is up for renewal. He said that if the decision remains the same, he does not have any issues with it. He said that there is a request to change the conditions.

The Board said that the terms of Special Permits are limited to two years to give the Board the opportunity to not renew it if problems have developed.

Mr. White said that his concern was the removal of the two conditions. He said that if the house is sold, a large family will like move in but they will be unable to rent the back property. He said that he is concerned about the intensity of use. The Board said that intensity of use concerns size not the number of people in the family. The Board said that there is nothing in the bylaw that says that the homeowner must live in the larger unit.

The Board said that it does want to protect the neighbors from intensification of use. The Board said that it is doing that by reducing the amount of parking allowed and by not allowing additional kitchens or bathrooms.

Mr. White said that he would like to see Conditions #2 & 8 left in the decision. He said that the owners should occupy the main house and rent out the back property. The Board said that the condition for owner occupancy of the larger unit may not be enforceable. The Board said that as time goes on and people's situations change, it is appropriate sometimes to change the conditions.

Statement of Facts

The subject property is located at 36 Brook Street, in a Single Residence District, on a 24,082 square foot lot. The house contains 24 rooms, including 6 bathrooms, 1 kitchen and 1 kitchenette. The dwelling was constructed in 1890 and was used as a two-family dwelling from that time until it was purchased by Pine Manor College in the 1940's. In 1947, the Board of Selectmen granted permission for its use for Educational purposes. From 1948 to 1960, the property was used as a dormitory by the Dana Hall School, and Special Permits were granted annually or biennially by the Board of Appeals for that use. In 1965, the property was purchased by John J. Dillon, who changed its use from a dormitory to a single family dwelling.

In 1984, the property was purchased by the Petitioner and used as a multi-family dwelling without benefit of a Special Permit for that use. Since 1993, the Board of Appeals has granted a Special Permit for the use of the premises as a two-family or an annual or biennial basis.

The Petitioner is requesting renewal of the Special Permit subject to modification of Conditions #2 and #8.

On March 8, 2011, the Planning Board reviewed the petition and recommended that the renewal of the Special Permit be denied. The Planning Board recommended that the Zoning Board of Appeals revise Condition #6 to reduce the resident parking from seven to five vehicles, if the Board approved renewal of the Special Permit.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The Petitioner has complied with all conditions in the Special Permit issued in 2009. It is the opinion of this Authority that the continued use of the premises as a two-family dwelling will not be injurious or offensive to the neighborhood, and that the dwelling can no longer be used or adapted at a reasonable expense and with a fair financial return without the rental income from the second dwelling unit.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing for the Petitioner to continue to use the premises as a residence for not more than two families, subject to the following conditions:

1. The premises shall contain **two and only two** dwelling units; namely the "Main House" and the "Garage Apartment"; and at no time shall additional cooking facilities of any type be installed in any room of the premises except in the two kitchens currently in existence, nor shall any bathrooms be added.
2. The property owners, Frank and Anne Bae, shall be the owner-occupants of one of the two units for the duration of the Special Permit.
3. All applicable State and local laws, ordinances and regulations shall be complied with by both the Petitioner and the tenant(s).
4. The premises shall be inspected by the Zoning Enforcement Officer within a two week period prior to the filing of a request for renewal of this Special Permit, to ensure continued compliance with Section II A 8 (a) of the Zoning Bylaw. A report of the inspection shall be submitted by the Zoning Enforcement Officer to the office of the Board of Appeals.
5. The responsibility for arranging said inspections is that of the Petitioner.
6. There shall be parking for no more than five resident vehicles on the property.
7. All parking related to the use of the premises shall be on-site, and no parking related to the use of the premises as a two-family dwelling shall be allowed on Brook Street or adjacent streets.
8. The occupants of both units must be a single family unit with all persons related.
9. There shall be no parking of boats or trailers on the property.

10. This Special Permit shall lapse, expire and be of no further effect upon the earlier of the following to occur:
 - a. Conveyance of the property by its current owners, Frank and Anne Bae, or
 - b. The expiration of this Special Permit.
11. The current property owners, Frank and Anne Bae, shall disclose to potential buyers early in the real estate process that Condition #10 of this Special Permit is in effect.
12. If any of the aforesaid conditions are breached, this Special Permit shall be revoked immediately, the second kitchen shall be removed, and court action shall be instituted.
13. The Applicant shall submit a confidential affidavit as to financial condition prior to this permit being submitted to the Town Clerk.
14. This Special Permit shall expire two years from the date time-stamped on this decision.

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

Cynthia S. Hibbard

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm