



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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82-44

Petition of Robert Terwilliger

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing in the second floor hearing room of the Town Hall at 8 p.m. on Thursday, October 14, 1982, on the petition of Robert Terwilliger, requesting a Special Permit under Section IV and Section II 8 (a) and Section XVIII of the Zoning Bylaw which will allow the premises located at One Waban Street, in a General Residence District, to be used as a two-family dwelling, and a lodging house with a common kitchen. Said request is made pursuant to Section XXV of the Zoning Bylaw.

On September 28, 1982, the petitioner filed a request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Robert Terwilliger, who read a prepared statement which he then presented to the board to be placed in his file. He stated that he had recently purchased the property from Mr. Gerstmar and wishes to use the dwelling as a two-family house and lodging house. He presented a booklet to the Board which he had prepared for the Building Inspector, dated May 15, 1982, entitled "A Short History of the Building at Number One Waban Street, Wellesley, Ma." in which he attempted to document the continuous use of the property as a rooming house with two apartments.

Mr. Terwilliger stated that there are presently four dwelling units on the three floors and in the basement plus several lodging rooms, and there is presently a total of eight people residing on the premises. Some bathrooms are shared by apartments and roomers. He stated that the third floor contains one apartment with two bedrooms, living room, kitchen and bath. The second floor contains: 1) one dwelling unit with two rooms and a kitchen, 2) two separate rooms, 3) a common bath off the hallway for use by all second floor occupants. The first floor contains: 1) two rooms and a kitchen, 2) one bedroom, 3) bathroom shared by 1 and 2, 4) bedroom and bath. The basement contains one dwelling unit with a bedroom, living room, kitchen, and bath.

Mr. Terwilliger stated that he has signed affidavits from every owner of the property from 1941 to the present, documenting apartments and lodgers. Sometime between 1965 and 1972 the basement was converted to an apartment. Mr. Terwilliger stated that he has six parking places plus a one-car garage, but some tenants do not have autos, so he rents out extra parking spaces to area residents. Mr. Terwilliger stated that he lives in Cambridge but spends three days a week at One Waban Street, working on the property. He presented letters from fifty-five persons, including owners and tenants within 300 feet of the property, all in support of his request. He stated that his intent is to upgrade the property and thus attract good tenants.

cc Al Robinson

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Present at the hearing and speaking in opposition to the request was William Moynihan, 9 Waban Street, who objected to parking, fire safety, noise and specifically a truck parked on the property for six months. He expressed concern about properties nearby that have been recently purchased and are not now owner occupied. He was concerned that a decision by the Board of Appeals would be precedent setting and he appealed for caution.

Present at the hearing and speaking in favor of the petition was Maureen Lane, 7 Cross Street, who stated that Mr. Terwilliger has improved the property physically since he has owned it and she reported no noise disturbance. Robert Maloney, resident of 9 Crestwood Drive, and owner of 10 Waban Street, expressed support for the petition.

Statement of Facts

The property involved is located at One Waban Street, in a General Residence District, containing 8,272 square feet of land. Robert Terwilliger has recently purchased the property from Kenneth and Nancy Gerstmar. The dwelling was constructed in 1902 and has been used over the years as a rooming or lodging house and a multi-family dwelling.

Arthur LaConte, Zoning Enforcement Officer and Building Inspector, in a letter dated June 28, 1982, ordered the petitioner to discontinue the illegal non-conforming use of One Waban Street and revert the dwelling back to a permitted use allowed in a General Residence District. Another letter was sent to Mr. Terwilliger by Arthur LaConte on August 9, 1982, requesting a response to his letter of June 28, 1982. Mr. Terwilliger subsequently filed a petition with the Board of Appeals, requesting permission for a two-family dwelling and a lodging house with a common kitchen. Mr. Terwilliger submitted a floor plan of One Waban Street in response to the Board's request. The third floor contains:

- 1) One apartment with 2 bedrooms, living room, kitchen, bathroom.

The second floor contains:

- 1) One dwelling unit with two rooms and a kitchen
- 2) Two separate rooms
- 3) One bathroom off hallway for use by all second floor occupants.

The first floor contains:

- 1) One dwelling unit with two rooms and a kitchen
- 2) One bedroom
- 3) One bathroom shared by 1) and 2)
- 4) One bedroom with bathroom.

The basement contains:

- 1) One apartment with a bedroom, living room, kitchen, bath.

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Decision

This Authority has made a careful study of the evidence submitted. The dwelling, in its present configuration, appears to contain at least four dwelling units plus at least three rooms for lodgers, with lodgers and apartment dwellers sharing bathrooms and hallways on the first and second floors. The petitioner has stated that he wishes to use the premises for two apartments and a rooming house section with a common kitchen.

The Zoning Bylaw defines dwelling unit as follows: "A room, group of rooms, or dwelling forming a habitable unit for one family with facilities for living, sleeping, cooking, and eating, and which is directly accessible from the outside or through a common hall without passing through any other dwelling unit."

The Zoning Bylaw defines family as follows: "(A) One (1) or more persons related by blood, adoption, or marriage and not more than two (2) additional persons (exclusive of household servants) all residing together as a single housekeeping unit."

Lodging is defined in Webster's dictionary as: "a room in the house of another used as a place of residence." A lodging house is defined as "a house where lodgings are provided and let".

Section IV of the Zoning Bylaw (General Residence District) allows one or more of the following specified uses:

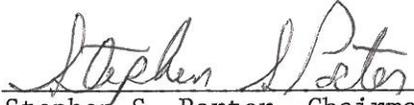
- "1. Any purpose authorized in Single Residence Districts.
2. Two-family dwelling, town house;
3. Boarding or lodging house, but not a restaurant;
4. Such accessory uses as are customary in connection with any of the uses enumerated in clauses 1, 2, and 3, and are incidental thereto, including a private garage and a private stable;"

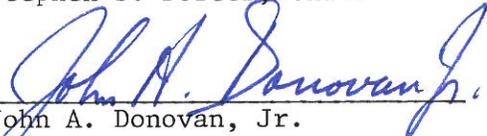
This Authority interprets Section IV to mean that a two-family dwelling is allowed in a General Residence District, but that a lodging house section independent of it would constitute a third family which is not permitted by the Zoning Bylaw. "One or more" means as long as the limits of the bylaw are not exceeded. "Rooming or lodging house" means a single family unit with lodgers. An additional separate lodging unit would go beyond the limits of the bylaw. The basement dwelling unit would also clearly violate the two-family restriction and the building code. However, as part of a family unit, two additional persons would be allowed to reside together as a single housekeeping unit.

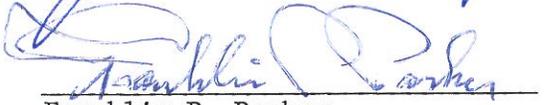
It is the opinion of this Authority that the petitioner is entitled by right to have a two-family dwelling with "two additional persons" to the related family members per family unit.

The petitioner's request for a Special Permit under Section II 8 (a) must be denied since the Special Permit under that section cannot provide for a two-family and lodging house. Furthermore, any petition for a Special Permit which would result in renovation work must be accompanied by detailed plans showing various aspects of the renovation work and the petitioner has failed to produce such plans and show clearly what it is that he intends to do with the premises.

The Special Permit requested by the petitioner is denied and the case is hereby dismissed.


Stephen S. Porter, Chairman


John A. Donovan, Jr.


Franklin P. Parker

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