

TOWN OF WELLESLEY



MASSACHUSETTS

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ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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86-12

Petition of Frances L. Alberice Tr.  
38A Donazette Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 27, 1986 at 8 p.m. in Room 17 of the Town Offices at the Phillips Building, 12 Seaward Road, Wellesley Hills, on the petition of FRANCES L. ALBERICE, TR. appealing the order of the Inspector of Buildings dated January 7, 1986 and requesting a Special Permit to allow the premises at 38A DONAZETTE STREET to be used as a multi-family residence, said premises being located in a Single Residence District. Said request is pursuant to Section XXIV-D, Section XXV and Section II 8 (a) of the Zoning Bylaw.

On February 7, 1986 the petitioner requested a hearing before this Authority and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case was Attorney David Kertzman. Frances Alberice was also in attendance. Mr. Kertzman stated that Ms. Alberice had been living in the house since 1936. Her parents bought 38 Donazette Street in 1920 and built 38A Donazette Street on the same lot in 1935. Ms. Alberice stated that there have always been three separate dwelling units at 38A, each with a kitchen and bath. She resides in one unit and has rented the other two units to single adults. The separate house at 38 Donazette Street is rented also. She wishes to maintain the status quo that has existed for 50 years but if that is not possible she would like to have two dwelling units at 38A Donazette Street. She relies on the income from the units as she does not work.

Other than the petitioner and her attorney, no one was present favoring or opposing the request.

#### Statement of Facts

The property in question is located at 38A Donazette Street. The petitioner is Frances Alberice, Tr., owner of 38 and 38A Donazette Street. Both houses are on one single lot containing approximately 15,401 square feet of land, located in a Single Residence District. The dwelling known as 38 Donazette Street was purchased by the petitioner's parents about 1920 and is rented to a single family, according to Ms. Alberice. Building 38A was constructed on the lot in 1935 per a building permit #4949 which was issued for the purpose of a one-family residence.

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The subject of the application before this Board is 38A Donazette Street. On December 16, 1985, Arthur LaConte, Zoning Enforcement Officer, informed Ms. Alberice by letter that a zoning violation complaint had been received by his office relative to the use of 38A Donazette Street as three separate apartments. On January 7, 1986 Mr. LaConte ordered that the unlawful use cease immediately and the dwelling be restored to a use permitted within a Single Residence District.

On February 7, 1986 the petitioner filed an appeal to the order of the Inspector of Buildings and a petition for a Special Permit to allow continuation of the use as a three-family dwelling. The petitioner claims that the building was constructed as a three-family dwelling with three separate kitchens and baths and used so continuously since 1936. The petitioner claims she has lived in the basement/first floor unit since 1936 and rented the other two units for 50 years. In the alternative, the petitioner requests a Special Permit for two-family use at 38A Donazette Street.

A memorandum supporting the application was filed by Ms. Alberice's attorney, David K. Kertzman. Floor plans of the house were also submitted.

The Planning Board, at its regular meeting of February 25, 1986, voted to recommend that the property at 38A Donazette Street be used for no more than two apartments and that a special permit be subject to annual renewal.

Decision

This Authority has made a careful study of the evidence presented. The dwelling at 38A Donazette Street, in a Single Residence District, was constructed in 1936 per a building permit issued for a one-family residence. The petitioner has indicated to this Board that the dwelling has been used since 1936 as a three-family dwelling. This Board cannot condone the illegal use of dwellings such as this one.

Section II 8 (a) of the Zoning Bylaws allows a residence for more than 2 families provided that the building so used was in existence when the Zoning Bylaw took effect. The building in question did not exist in 1925.

It is the opinion of this Board that the use of 38A Donazette Street is not in harmony with the general purpose and intent of the Zoning Bylaw. Therefore, the appeal to the order of the Inspector of Buildings of January 7, 1986 is hereby denied. The Special Permit request for continuation of the use of the property at 38A Donazette Street as a three-family residence is denied. The Special Permit request for two-family use is denied. The dwelling must be restored to single-family use within one year of the date of this decision and must be in accordance with Section II of the Zoning Bylaws. Two of the three kitchens must be removed. The Inspector of Buildings and Zoning Enforcement Officer is directed to enforce the terms of this decision and to inspect the premises and to report to this Board that the conditions of the decision have been complied with.

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.

*Stephen S. Porter*  
Stephen S. Porter, Chairman  
*Robert R. Cunningham*  
Robert R. Cunningham  
*John A. Donovan, Jr.*  
John A. Donovan, Jr.

CC: Planning Board  
Building Inspector