

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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

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ZBA 2004-15  
Petition of Frank S. and Anne R. Bae  
36 Brook Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 15, 2004 at 7:30 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley on the petition of FRANK S. AND ANNE R. 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 their premises at 36 BROOK STREET, in a Single Residence District, to be used as a residence for not more than two families, a use not allowed by right in a Single Residence District.

On March 29, 2004, the petitioners 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 Frank Bae, who asked for renewal of their Special Permit for a two-family house. There have been no changes, and all the conditions have been met.

The Board noted that the Planning Board had no objection to renewal under the same terms and conditions as are currently in place. Although Mr. Bae has requested that the Special Permit be renewed for longer than two years, the Board renews Special Permits for similar requests for a maximum of two years.

The Board stated that Mr. Bae's letter requested that the annual inspections be discontinued. Mr. Bae responded that it would be foolish of them not to comply with the rest of the conditions. The Board stated it would be reluctant to set aside the condition regarding annual inspections.

The Board asked if Mr. Bae had a long term tenant. Mr. Bae said they had a couple, who had been their tenants for over a year. They are very particular about their tenants.

Richard Sergel, 34 Brook Street, said he was not opposed to the Special Permit as long as all the existing conditions remain in place. The parking condition is essential. He added that the neighbors are concerned that the Board is heading toward a permanent exemption in this case. The hardship appears to be passing from the owners' finances to the building's structure.

The Board stated that there is a condition that the Special Permit shall lapse and expire if the property is conveyed or if the owners are not in residence.

Kit Bowry, 32 Brook Street, asked if this was a pre-existing nonconforming use. The Board said it had been originally, but the use had lapsed and permission had to be reapplied for the use. Ms. Bowry said

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there are many cars parked on the premises. She said the home can only be owner-occupied. The Board replied that the Bae's children can live in the house.

Peter White, 10 Marvin Road, asked what was the basis for the renewal of the Special Permit.

The Board said that unless there are other conditions that cause the property not to be used properly in a Single Residence District, or if the conditions of the permit had been violated, it would be renewed. Once a Special Permit is granted, unless there are reasons not to renew it, the Board tends to renew under the same conditions.

The Board asked how many cars are currently being housed at the property. Mr. Bae said there were 5 to 6 cars. He and his wife, and his two tenants each have cars. Most of his children still live with them, and they also have cars.

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 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 petitioners 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 dwelling on an annual or biennial basis.

The petitioners are requesting renewal of their Special Permit under the same terms and conditions as are currently in effect, with two exceptions: they request that the Special Permit be granted for longer than 2 years; and that annual inspections be discontinued.

Pursuant to compliance with Condition #4 in the decision granted two years ago (ZBA-2002-29), Edgard Phaneuf, the past Building Inspector, inspected the premises on May 30, 2003 and found no violations. On April 1, 2004, Michael Grant, the current Building Inspector inspected the premises and found no violations.

On April 13, 2004, the Planning Board reviewed the petition and had no objection to renewal on the same terms and conditions as are currently in effect assuming there has been no change in circumstances since the time of the last review.

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Decision

This Authority has made a careful study of the material submitted and the information presented at the hearing. The petitioners have complied with all conditions in the Special Permit issued in 2002. 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, the Special Permit is granted, as voted unanimously by this Authority at the Public hearing, for the petitioners to continue to use the premises as a residence for not more than two families, subject to the following conditions:

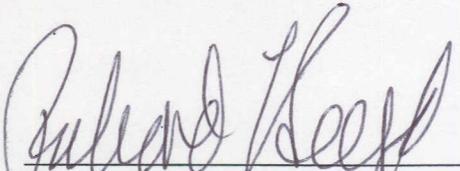
1. The premises shall contain **two and only two** dwelling units; namely the "Main House" and the "Garage Apartment"; and at no time shall additional cooking facilities of any type be installed in any room of the premises except in the two kitchens currently in existence.
2. The property owners, Frank and Anne Bae, shall be the owner-occupants of the "Main House" for the duration of the Special Permit. The "Garage Apartment" shall be considered the second dwelling unit available for rental to a second family unit.
3. All applicable State and local laws, ordinances and regulations shall be complied with by both the petitioners and the tenant(s).
4. The premises shall be inspected by the Zoning Enforcement Officer within a two-week period prior to one year from the date of this decision, and again 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 each 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. 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.
7. This Special Permit shall lapse, expire and be of no further effect or force upon the **earlier** to occur of the following:
  - a. Conveyance of the property by its current owners, Frank and Anne Bae, or
  - b. The expiration of this Special Permit.
8. 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.
9. This Special Permit shall expire two years from the date time-stamped on this decision.

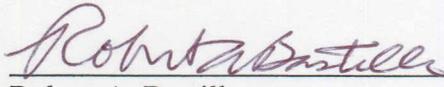
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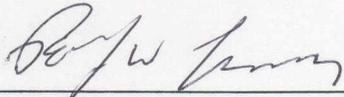
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APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN  
THE OFFICE OF THE TOWN CLERK.

Cc: Planning Board  
Inspector of Buildings  
edg

  
Richard L. Seegel, Chairman

  
Robert A. Bastille

  
Robert W. Levy

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