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Francis L. Swift
F. Lester Fraser
William O. Hewett

BOARD OF APPEAL

KATHARINE E. TOY, CLERK
TELEPHONE
WE. 5-1864

Petition of A. Eric Hampe

The Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:20 p.m. on July 24, 1975, on the petition of A. Eric Hampe, requesting permission to use the dwelling owned by A. Eric and Erika C. M. Hampe at 18 Maugus Avenue as a combination lodging and apartment house, as provided under Section 15, Chapter 40A, of the General Laws.

On June 13, 1975, the petitioner filed his request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

A. Eric and Erika Hampe both spoke in support of the request at the hearing.

Mary Ellen Laak, 34 Seaward Road, stated that she had been at the house involved a number of times and at no time did she feel that the use of the property was creating any increase in traffic in the area.

Stephen Rabin, 30 Eaton Court, owner of the property abutting the dwelling involved, stated that he purchased his property three years ago and at that time he inquired from the Town as to the Zoning of the property in the neighborhood and found that the house involved was being used as a rooming house with several apartments as well. He inquired at the Town and could not find that any permits had been issued for such use of the property. He did find, however, that in 1966 a lodging house license had been denied to the previous owner of the subject property by the Board of

Selectmen. Mr. Rabin stated that in his opinion, the property as it is being used now, is detrimental to his property; is out of character with the neighborhood, and if the request is granted, it will further devalue his property as well as other properties in the area. He also called attention to the excessive number of cars parked on the property on the side adjacent to his property and stated also that there have been some problems with the tenants as well. He strenuously opposed the granting of the request.

The following persons also spoke in opposition to the request: John L. Fox, 12 Mangus Avenue, William C. Sprong, 28 Eaton Court, and Carla Leonette, 60 Mangus Avenue. All felt that the requested use would aggravate the present traffic problem in the area, and that any change in zoning would prove detrimental to their properties.

A letter was received from Nina King Lavin and Raymond W. Lavin, 10 Mangus Avenue, in which they stated that if any apartment variance is granted to the petitioner, it will set a precedent for others in the neighborhood. While they would not oppose Mr. Hampe continuing, they felt that some means should be provided whereby the neighbors would have some control over any changes he might make in the future. They are concerned about the number of cars now being parked on the property incidental to apartments and lodgers in the house as the traffic on the street has become increasingly busy and very dangerous at that section.

A letter was received from Richard J. Gleason, 19 Eaton Court, in which he stated that he felt a variance which would allow six unrelated people to occupy the house would be reasonable, providing it is granted on a very temporary basis.

The Planning Board stated in its report that the multiple residence usage should be decided by Town Meeting vote rather than by variance.

STATEMENT OF FACTS

The house involved, which is over a hundred years old, is a three-story wooden structure, containing twenty rooms and 3 1/2 baths. In 1925, the effective date of the Zoning By-law in the Town of Wellesley, it was occupied by a family who had two or three lodgers and also served meals to Babson Institute students. This use continued for several years; from 1938 to 1942, the house was unoccupied. In 1942 the property was sold to a previous owner, who it is alleged, operated it as a lodging house with apartments as well, until 1967 when she sold it to the petitioner. From a research of the Town records, it appears that the conversion of the house into apartments and rooms with cooking facilities, was made during the years of the fifties without any permits or approval from any Town department.

In 1966, the Board of Selectmen refused the then owner of the property a license to conduct a lodging house and in the Board's letter to the owner, it stated that ... "We cannot act on this application, as we have been informed that the proposed use

is in violation of the Town Zoning By-laws." Correspondence within the Building Department records reveals that on several occasions the Building Inspector notified the owners of the property that the house was being used in violation of the Zoning By-law and on at least one occasion, ordered that the illegal use cease immediately.

At the hearing the petitioner stated that he purchased the house eight years ago and at that time believed it to be a legal non-conforming combination lodging house and apartment house with several single rooms containing cooking facilities. He now seeks permission to continue the present use of the dwelling and does not propose to make any changes in the house.

The petitioner submitted a layout of the house indicating the location and number of apartments and separate rooms on each floor. Said layout showed a single room in the basement, a five-room apartment on the first floor, which is occupied by the petitioner and his family, six rooms with kitchen facilities plus 2 sleeping rooms on the second floor, and one three-room apartment and one room with cooking facilities as well as two sleeping rooms on the third floor.

The petitioner stated that although he has a large family with eight children, the house is too large for his needs, and in his opinion, due to its size and number of rooms, it is too large generally to be used as a single-family dwelling. It does, however, lend itself particularly well to the utilization of the

rooms with light housekeeping units as it is being used. In his opinion, to have the rooms used as sleeping quarters only would be wasteful and therefore impractical. It is his further opinion, that there is a need for light housekeeping rooms in Wellesley and that the continued use of the property as it is will not prove detrimental to the neighborhood. During the time he has owned the property, he has made considerable improvements to the house, including an investment of a considerable sum for seven refrigerators, two gas ranges and several hot-plates. He urged the Board to grant the requested use of the property as a denial of it will result in severe hardship to him.

The Board has made a careful study of the evidence submitted, and has taken a view of the locus. It has also researched the records and correspondence in the Town offices relative to the property and is unable to find the criteria required under the provisions of Chapter 40A, Section 15, of the General Laws, to grant permission to the petitioner as a matter of law for the continued use of the house with apartments and separate rooms containing cooking facilities. The evidence submitted to this Board by the petitioner to establish the house as a legal non-conforming building in 1925, the effective date of the Zoning By-law in Wellesley, was not conclusive. It appears clear, however, from a further research made by this Board of the Town Records that the present use of the house is and has been, since

the introduction of Zoning By-laws, in violation of the Town of Wellesley Zoning By-laws governing permitted uses of property within a Single Residence District. In the opinion of this Board, to allow the continued use of the house as outlined above with a number of rooms being used as small apartments and equipped with hot plates and other cooking facilities, would present a serious fire hazard in view of the age and construction of the building and would be completely out of character with other properties in the neighborhood, the great majority of which are large single-family homes.

Although the petitioner stated that the house is too large for his needs and too costly to maintain without the income he is deriving from it, however, he stated that he purchased the property with knowledge that the house was located within a Single Residence District and had made inquiries as to its legal status.

DECISION

It is the judgment of this Board, that the subject matter of this petition has been the cause of much and repeated inquiry as to the use to which the subject property may be put on the part of the successive owners, as well as the present owner, and the owners of adjacent and abutting owners over the years, going back at least as far as 1925, without any of the persons concerned receiving a definitive answer to the inquiries made.

It is the opinion of this Board that the present uses to which the subject property is being put, namely, a combination of individual residence, lodging house, and apartment house, is not in conformity with the Zoning By-laws.

However, having in mind the course followed by the present and prior owners of said property, and in order that justice and equity be effected in the uses to which this property are or may be put in the future, the decision of this Board is:

A. The uses to which the property are presently being put, may continue, on the following conditions and for the stated periods of time:

1. The petitioner obtain from the Building Inspector a written certification that the wiring and the plumbing within and attached to the structure and the structure itself are in such condition as do not constitute a fire or safety hazard. Such request for said certification to be made in or within five (5) days of the filing of this decision with the petitioner, and the certification to be made, and a copy thereof filed with this Board not later than fifteen (15) days following filing of the decision with the petitioner;

2. The petitioner be allowed an opportunity to present an Article to the next regular Town Meeting for the purposes of presenting to that body, a request to change, modify or otherwise alter the zone in which said parcel herein involved is located;

3. Should the petitioner fail to present an Article to the Town Meeting in accordance with paragraph (2) above, or if presented and the Town Meeting vote is in the negative, or if an affirmative vote on said Article is appealed to any Court of competent jurisdiction, including appeal to the Supreme Judicial Court of Massachusetts, and said appeal is upheld by the Courts overturning said affirmative vote, then, following the statutory time limitations:

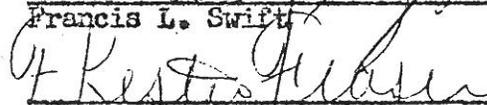
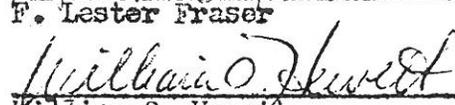
B. The Board grants permission for the dwelling to be used as a lodging house subject to the following conditions:

1. That not more than five (5) roomers may occupy the dwelling involved in addition to the petitioner and his family at any one time.
2. That the first and second floors only may be occupied by the roomers.
3. That additional exits shall be installed to the satisfaction of the Board of Appeal, if it is found to be necessary.
4. That not more than six cars shall be parked on the premises at any one time incidental to occupants of the house.

5. That except for the kitchen on the first floor, which is incidental to the petitioner's apartment, all kitchen facilities, including sinks, refrigerators, stoves and hot plates, shall be removed from the premises immediately.
6. That a lodging house license shall be obtained from the Licensing Board in the Town and a copy filed with the Board of Appeal.
7. That the Building Inspector shall notify this Board when the kitchen facilities have been removed and capped off, or shall report to this Board in the event the work has not been completed within six (6) weeks following the earliest time under A3 above.
8. That said permit shall expire one year from said date, as set forth in paragraph 7 above, or revoked earlier, if any of the above-mentioned conditions are violated.

It is the opinion of this Board, that subject to the above conditions, the use of the petitioner's dwelling for a limited number of roomers, without kitchen facilities, will not substantially reduce the value of any property within the District, and will not be otherwise injurious, obnoxious or offensive to the neighborhood and will enable the petitioner to a reasonable income from the property.

C. If the request and certification as set forth under A1 is not made in the time set forth therein, said petition is denied.


 Francis L. Swift

 F. Lester Fraser

 William O. Hewett

Filed with Town Clerk _____

Board of Appeal



BOARD OF APPEAL

F. LESTER FRASER
WILLIAM O. HEWETT
FRANKLIN P. PARKER
FRANCIS L. SWIFT
HENRY H. THAYER

KATHARINE E. TOY
Administrative Secretary
Telephone
235-1664

Petition of A. Eric and Erika C. M. Hampe

Pursuant to due notice the Board of Appeal held a hearing in the hearing room on the second floor of the Town Hall at 3:45 p.m. on July 7, 1977, to continue the case heard by the Board of Appeal on July 24, 1975, on the petition of A. Eric and Erika C. M. Hampe, requesting permission to use their dwelling at 18 Maugus Avenue as a combination lodging and apartment house, as provided under Chapter 40A, Section 15, of the General Laws. The case was remanded to the Board of Appeal for further proceedings, hearings and findings regarding the use of the property involved as a lodging house.

Aaron K. Bikofsky, Attorney, represented the petitioners at the hearing.

The following persons spoke in favor of the request: A. Eric and Erika C. M. Hampe, 18 Maugus Avenue, Nicolas Juliani, 19 Maugus Avenue, Robert McGuinness and Lucille McGuinness, 31 Atwood Street, Patricia Start, 64 Overbrook Drive, Samuel Mandell, 9 Rockland Street, Ray Peterson, 14 Eaton Court, Mary Ellen Laak, 34 Seaward Road and Barbara Horan, 21 Brook Street.

William Frederickson, 37 Jackson Road, questioned how long the property had been vacant in the forties and whether such a non-conforming use could be allowed to continue legally.

Stephen Rabin, 30 Eaton Court, abutting property owner and Robin L. Blanchard, 28 Eaton Court, also an abutting property owner, both opposed the use of the property as a combination lodging and apartment house. In their opinion, such use was depreciating to the value of their properties as well as noisy and disturbing.

Letters favoring the request were received from: Sherry Dietz Mills, 13 Cypress Road, Mary Curtin, 47 Maugus Avenue, Walter E. and Mary F. Beevers, 15 Maugus Avenue, and Carleton D. Greely, tenant at 18 Maugus Avenue.

Letters opposing the request were received from: Nina King Lavin and Raymond W. Lavin, 10 Maugus Avenue and Richard J. Gleason 19 Eaton Court.

266 50 11 31 Statement of Facts

The house involved, which is over a hundred years old, is a three-story wooden structure, containing twenty rooms and 8 1/2 baths. In 1925, the effective date of the Zoning By-Law in the Town of Wellesley, it was occupied by a family who had two or three lodgers and also served meals to Babson Institute students. This use continued for several years; from 1938 to 1942, the house was unoccupied. In 1942 the property was sold to a previous owner, who it is alleged, operated it as a lodging house with apartments as well, until 1967 when it was sold to the petitioner. From a research

of the Town records, it appears that the conversion of the house into apartments and rooms with cooking facilities, was made during the years of the fifties without any permits or approval from any Town department.

In 1966, the Board of Selectmen refused the then owner of the property a license to conduct a lodging house and in the Board's letter to the owner, it stated,...."We cannot act on this application, as we have been informed that the proposed use is in violation of the Town Zoning By-law." Correspondence within the Building Department records reveals that on several occasions the Building Inspector notified the owners of the property that the house was being used in violation of the Zoning By-law and on at least one occasion, ordered that the illegal use cease immediately.

On July 24, 1975, the petitioners requested permission to use the house involved as a combination lodging and apartment house. In the Board of Appeal's decision, filed with the Town Clerk on October 15, 1975, it found, after making a careful study of all the evidence submitted and a research of the records and correspondence in the Town offices relative to the property, that it was unable to find the criteria required under the provisions of Chapter 40A, Section 15, of the General Laws, to grant permission to the petitioners as a matter of law, for the continued use of the house as requested. However, it stated in its decision,"in order that justice and equity be effected in the uses to which this property are or may be put in the future, the decision of this Board is:

"A. The uses to which the property are presently being put, may continue, on the following conditions and for the stated periods of time.

1. The petitioner obtain from the Building Inspector a written certification that the wiring and the plumbing within and attached to the structure and the structure itself are in such condition as do not constitute a fire or safety hazard. Such request for said certification to be made in or within five (5) days of the filing of this decision with the petitioner, and the certification to be made, and a copy thereof filed with this Board not later than fifteen (15) days following filing of the decision with the petitioner;

2. The petitioner be allowed an opportunity to present an Article to the next regular Town Meeting for the purposes of presenting to that body, a request to change, modify or otherwise alter the zone in which said parcel herein involved is located;

3. Should the petitioner fail to present an Article to the Town Meeting in accordance with paragraph (2) above, or if presented and the Town Meeting vote is in the negative, or if an affirmative vote on said Article is appealed to any Court of competent jurisdiction, including appeal to the Supreme Judicial Court of Massachusetts, and said appeal is upheld by the Courts overturning said affirmative vote, then, following the statutory time limitations:

"B. The Board grants permission for the dwelling to be used as a lodging house subject to the following conditions:

1. That not more than five (5) roomers may occupy the dwelling involved in addition to the petitioner and his family at any one time.

Hampe

2. That the first and second floors only may be occupied by the roomers.
3. That additional exits shall be installed to the satisfaction of the Board of Appeal, if it is found to be necessary.
4. That not more than six cars shall be parked on the premises at any one time incidental to occupants of the house.
5. That except for the kitchen on the first floor, which is incidental to the petitioner's apartment, all kitchen facilities, including sinks, refrigerators, stoves and hot plates, shall be removed from the premises immediately.
6. That a lodging house license shall be obtained from the Licensing Board in the Town and a copy filed with the Board of Appeal.
7. That the Building Inspector shall notify this Board when the kitchen facilities have been removed and capped off, or shall report to this Board in the event the work has not been completed within six (6) weeks following the earliest time under A.3 above.
8. That said permit shall expire one year from said date, as set forth in paragraph 7 above, or revoked earlier, if any of the above-mentioned conditions are violated."

The Board further found that subject to the above conditions, the use of the petitioner's dwelling for a limited number of roomers, without kitchen facilities, would not substantially reduce the value of any property within the District, and will not be otherwise injurious, obnoxious or offensive to the neighborhood and will enable the petitioner to a reasonable income from the property.

On November 4, 1975, the petitioner appealed the decision of the Board of Appeal to the Norfolk District Court, and on January 25, 1977, the appeal was heard. The Court affirmed that part of the Board's decision denying the use of the property as an apartment house and remanded the case to this Board for further proceedings, hearings and findings in regard to the use of the property as a lodging house.

In compliance with the Court order, this Board scheduled this meeting to make further findings regarding the use of the property as a lodging house.

At the hearing, the petitioners' attorney reviewed the history of the house since 1900 and referred to an advertisement which appeared in the local paper prior to 1925 advertising the Sharon Restaurant at the location involved. He pointed out that when the petitioners purchased the property in 1967, it was being occupied exactly as it is now.

The attorney maintained that the presence of refrigerators and cooking facilities in some of the rooms does not mean that the building is an apartment house, rather that a lodging house is a place where meals may

be prepared, and in his legal opinion, there are no apartments on the premises. He stated further that the petitioners have twelve tenants presently in the house, mostly single males and have provided off-street parking space to accommodate 17 vehicles. The petitioners with their eight children also live in the house.

In response to questions asked relative to the safety of the house, it was stated that the house is equipped with fire and smoke detectors and fire extinguishers as well as three fire escape ladders.

Decision

The Board again has reviewed the details of this case and is of the same opinion it was when it rendered its decision on October 15, 1975.

In its opinion, the present use to which the subject property is being put, namely, a combination of individual residence, lodging house, and apartment house, is not in conformity with the Zoning By-law.

No new evidence was introduced at the hearing to convince this Board that the facts are any different from those upon which the Board based its decision in 1975. It appears to this Board that the petitioners have deliberately and defiantly continued to operate the subject premises in violation of the directive within the Board's decision.

The Board did not receive from the Building Inspector a written certification, as requested, that the wiring and plumbing within and attached to the structure itself were in such condition as do not constitute a fire or safety hazard. The petitioners did not present an article to the Town Meeting requesting a rezoning of the property nor did they comply with any of the conditions imposed in the Board's decision.

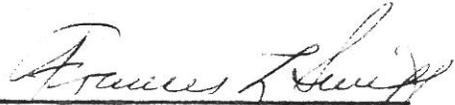
It is the unanimous opinion of this Board, therefore, that it would be unsound and inappropriate to allow the house involved to continue to be occupied as outlined in this decision and confirmed by the petitioners' attorney at the hearing.

Accordingly, the Board unanimously reinstates its decision filed with the Town Clerk on October 15, 1975, and hereby grants permission for the subject premises to be operated, subject to conditions herein imposed and referred to on Page 2 and Page 3, as a lodging house, namely, A. 1. and B. 1., 2., 3., 4., 5., 6., 7., 8.; condition A.2 is no longer a condition imposed in this decision of this Board.

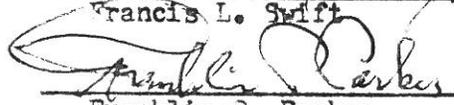
The Board also imposes the conditions that all local and State laws be complied with which may have become effective since the date of the Board's previous decision, and that compliance with the conditions imposed shall become effective upon the effective date of this decision and that the petitioners shall diligently pursue the conversion of the premises to conform

Petition of A. Eric and Erika C. M. Hampe

with this decision, and the conditions contained herein. Otherwise, this Board reserves the right to rescind this permission, if in its opinion, the petitioners do not proceed in good faith.



 Francis L. Swift



 Franklin P. Parker



 William E. Polletta

Filed with Town Clerk 9/20/77

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RECEIVED

TOWN OF WELLESLEY



MASSACHUSETTS

LEO J. HESSION, TOWN COUNSEL

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

February 7, 1977

Wellesley Board of Appeals
Town Hall
Wellesley, Massachusetts 02181

Re: A. Eric Hampe
vs: Francis L. Swift, et ali

Gentlemen:

Enclosed please find a copy of the decision of Judge Richardson in the above matter. I am advised that counsel for Mr. Hampe is not going to appeal the second portion of this decision and I assume that you will be taking the necessary action with respect to his order of remand.

If I can be of any assistance please advise.

Very truly yours,

Leo J. Hession

Leo J. Hession

LJH/dd Enclosure
file: WBA-105
cc: Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

DISTRICT COURT OF
NORTHERN NORFOLK
No. 04823

A. ERIC HAMPE

Plaintiff

VS.

FRANCIS L. SWIFT, F. LESTER FRASER
WILLIAM O. HEWETT, AS THEY ARE MEMBERS
OF THE ZONING BOARD OF APPEALS OF THE
TOWN OF WELLESLEY

Defendants

DECISION OF JUSTICE

This matter came on for a hearing before this Court. Upon a review of the decision of the Zoning Board of Appeals of the Town of Wellesley and upon hearing arguments of counsel it is adjudged that, in dealing with the use of the property as a lodging house, the Board of Appeals did not make all of the findings as required by Massachusetts General Laws, Chapter 40A, Section 15. As a consequence, it is hereby ORDERED, ADJUDGED and DECREED that so much of the decision of the Board of Appeals relative to the use of the property as a lodging house be annulled and that the case be and hereby is remanded to the Zoning Board of Appeals for further proceedings and hearings and findings in accordance with said Chapter 40A of the General Laws.

To the extent that the decision of the Board of Appeals denied permission to use the property as an apartment house, the decision is hereby affirmed.


Maurice H. Richardson,
Special Justice

February 2, 1977.