



ZONING BOARD OF APPEALS

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ZBA 2002-97
 Appeal of Paul Chalifoux
 6 Wellesley Avenue

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, November 7, 2002 at 7:30 p.m. on the appeal of PAUL CHALIFOUX pursuant to the provisions of Section XXIV-C and Section XXIV-D of the Zoning Bylaw to the decision of the Temporary Building Inspector, which directed the appellant to immediately remove all parking installed over the previously unpaved portions of his lot at 6 WELLESLEY AVENUE, in a General Residence District.

On October 10, 2002, the appellant filed the appeal with the Town Clerk. The appeal was scheduled to be heard by this Authority at the Public Hearing to be held on November 7, 2002 and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Leslie Shea, counsel for the appellant, Paul Chalifoux, who was also present. Prior to his presentation, Mr. Shea submitted background material to the Board consisting of a letter from Dr. Chalifoux to the Board of Selectmen requesting a circular driveway and a parking lot; letter to Town Engineer, Steve Fader, from the Board of Selectmen asking for review of the request; a letter from Mr. Fader stating the request for the curb cut and driveway apron could not be approved, but the parking area could be implemented; and letter from the Board of Selectmen to Dr. Chalifoux relaying that information.

Mr. Shea explained that at the time Dr. Chalifoux was conducting a dental practice at the premises, the Town was restructuring Wellesley Avenue. Patients who had been parking in front of his office could no longer park there because of the newly installed curbing. Noticing the dangerous situation, Dr. Chalifoux went to the Town Hall to investigate receiving permission for a curb cut to install a driveway apron and creation of a parking area on the side of his home to alleviate the dangerous situation. As evidenced in the submitted letters, the request for the curb cut was denied, but the construction of the parking area was allowed. Dr. Chalifoux built the parking area. They were before the Board on an appeal to the enforcement of the parking regulation.

The Board stated that it is acknowledged that Dr. Chalifoux never sought approval to conduct a home occupation on his premises, but was conducting a home occupation that he thought was legal. He then constructed the parking lot on his property, which was a violation of the bylaw.

Mr. Shea said that could well be, but Dr. Chalifoux's request for the parking area was approved. He did not know he was in violation of the home occupation bylaw when he installed the parking area. Dr. Chalifoux has conducted a dental practice on the premises since 1983. The premises had been used for a dental practice for about 60 years.

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The Board said it is very clear that the parking area constitutes a violation of the Zoning Bylaw. Dr. Chalifoux has been cited for this violation by the Temporary Building Inspector. Dr. Chalifoux has appealed the action of the Temporary Building Inspector, who was correct in his action.

Dr. Chalifoux said he did not intend to do anything that was incorrect. The letter from the Selectmen said the parking area was approved. He did not know he had to go to the Zoning Board, as there was no mention of this requirement in the Selectmen's letter. The parking may be in violation, but he did not know it at the time the area was paved.

The Board stated that Dr. Chalifoux's lack of information has no bearing on the appeal. The issue is a very narrow one. The Temporary Building Inspector cited the property for a violation. Dr. Chalifoux has appealed this action to the Board, which is his right. The Board must find whether or not there was a violation to be cited. The Board has no discretion beyond that issue.

Statement of Facts

The subject property is located at 6 Wellesley Avenue in a General Residence District. In 1983, Dr. Chalifoux purchased the property from Dr. Pollina, a dentist, who had conducted a home occupation; namely a dental practice, on the premises for many years. Dr. Chalifoux, believing that he also could conduct his dental practice on the premises, has done so from about 1983 to the present date.

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On October 5, 2001, the Planning Board requested the Building Inspector to determine whether the property and use being conducted thereon was in compliance with zoning, particularly with respect to the limitations on home occupations.

On October 18, 2001, the Building Inspector requested Albert Robinson, Town Counsel, to make a determination as to whether the newly paved "parking area" on the premises was allowed. The letter stated that the owner operated a dental practice and resided on the premises, which were previously owned by a dentist.

On December 21, 2001, Town Counsel wrote to the Building Inspector as follows:

... "If Dr. Chalifoux qualifies for a home occupation as a matter of right, it would nevertheless seem that his recent work, as you have described it, would be in violation of subparts (f) and (g) of subsection 6 (home occupation as a matter of right) because the work has resulted in a change in the outside appearance of the premises, including building and grounds, and because the change has resulted in additional parking, which is prohibited under subpart (g)."

On March 19, 2002, the Building Inspector wrote to Dr. Chalifoux, stating that upon investigation, he found that Dr. Chalifoux did not have a Special Permit for a Home Occupation to conduct business on his premises. He advised Dr. Chalifoux to apply to the Board of Appeals for the Special Permit.

On July 9, 2002, the Planning Board requested the Building Inspector to enforce the Zoning Bylaw, as the use of the premises for a home occupation at 6 Wellesley Avenue appeared to be in violation of Section II A 6, subsections (f) and (g), which provide that "there shall be no change in the outside appearance of the premises, including building and grounds" and that "there shall be no additional parking permitted". The paving of the entire yard on the premises appeared to be a violation of both subsections.

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On August 23, 2002, the Planning Board filed an Appeal with the Town Clerk to the failure of the Building Inspector to enforce Section II A 6 Subsections f. and g. in regard to the paving and striping of the entire yard at 6 Wellesley Avenue for use a parking lot for patients of the property owner.

On September 16, 2002, in a letter to Dr. Chalifoux, the Temporary Inspector of Buildings stated that

“...Upon review of all the facts available to me, I conclude that within the past eighteen months, you, or others under your direction, did pave over certain portions of the landscaped areas at 6 Wellesley Avenue in direct contravention of Section II A 6 and/or Section II A 8 (h) of the Wellesley Zoning Bylaw.

You are hereby directed to immediately cease said violation, to wit: remove all paving installed over previous unpaved portions of the lot.”

At the Public Hearing of the Board of Appeals on September 19, 2002, the Planning Board, satisfied that the enforcement of the Zoning Bylaw by the Temporary Building Inspector had and would continue to occur, withdrew its appeal.

On October 10, 2002, Paul Chalifoux filed an appeal with the Town Clerk to the decision of the Temporary Building Inspector directing the appellant to remove all parking installed over unpaved portions of the lot.

On October 15, 2002, pursuant to Section XXIV-C2. of the Zoning Bylaw, the Executive Secretary of the Board of Appeals requested the Inspector of Buildings to transmit to the Board copies of all documents and papers constituting the record of the case in which the appeal was taken. Copies of all of the aforementioned documents were transmitted to the Board by the Inspector of Buildings.

The appellant submitted a copy of the letter of September 16, 2002 from the Temporary Inspector of Buildings to the appellant, which he filed with the appeal.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the Public Hearing and makes the following findings:

- Dr. Chalifoux has continued to conduct a home occupation; namely a dental practice, from 1983 to the present date in violation of Section II A 8 (h) of the Zoning Bylaw, although aware of the violation since receipt of the letter of March 19, 2002 from the Inspector of Buildings.
- On or about September, 2001, Dr. Chalifoux paved over landscaped areas on his property to provide additional parking for his dental patients in violation of Section II A 6 subsections (f) and (g), which state as follows:

“(f). There shall be no change in the outside appearance of the premises, including building and grounds;

“(g). There shall be no additional parking permitted.”

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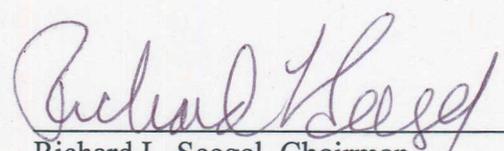
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- Regardless of approval by the Town Engineer and the Board of Selectmen, Dr. Chalifoux was aware of this violation before, or was made aware shortly after the filing of the Appeal by the Planning Board on August 23, 2002 and continues to be in violation.
- The enforcement action taken by the Temporary Inspector of Buildings in regard to the violation of Sections II A 6 subsections (f) and (g) by the appellant was appropriate and necessary.

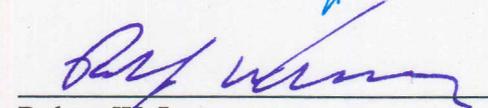
Therefore, as voted unanimously by this Authority at the Public Hearing, the appeal of Paul Chalifoux is denied and this case is dismissed.

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
Board of Selectmen
edg


Richard L. Seegel, Chairman


David G. Sheffield


Robert W. Levy

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