

**ZONING BOARD OF APPEALS**

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ZBA 2005-08

Petition of Darshini Kumarasena
30 Yarmouth Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, January 13, 2005 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of DARSHINI KUMARASENA, requesting a Special Permit pursuant to the provisions of Section II A 8 (h) and Section XXV of the Zoning Bylaw to allow her to use a portion of her premises in a Single Residence District for the purpose of a home occupation, namely, Pediatrician's Office, for up to 10 patients a week from 5:00 p.m. to 7:00 p.m., Mondays through Fridays and 10:00 a.m. to 12:00 p.m. on Saturdays and Sundays. There are no nonresident employees and all parking is on the premises.

On December 28, 2004, the petitioner 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 Darshini Kumarasena, who said that she is a pediatrician. Her office is on Washington Street and she is the sole practitioner. She provides care for her patients every day. During the off hours, she is on call. She would like to have the flexibility to see patients at her home, on occasion.

Dr. Kumarasena said that she picked a random number of 10 patients per week when she applied for the Special Permit. She said that is not what she intends to schedule. She said that the purpose of the Special Permit would be to allow her to see a patient who would rather not go to the emergency room or when she is unable to go to her office. It will more likely be a few patients a year. There will be no signs or lines of cars.

The Board asked what the impediment of going to her office would be. Dr. Kumarasena said that there have been a couple of situations during off hours when she did not have a car or was unable to get child care. She said that in one situation a mother of four children, one with an earache, did not want to bring all of the children to the emergency room.

The Board asked what special things Dr. Kumarasena would have to do in her house to make it constitute an office. Dr. Kumarasena said that she would need an examining table. She already has a set of portable equipment.

The Board asked what consumables Dr. Kumarasena would use during those activities and what sort of medical waste would be generated. Dr. Kumarasena said that the consumables would include table paper, tongue depressors, and disposable earpieces from the otoscope. She said that there would be no body fluids. The Board asked if she would be using any syringes. Dr. Kumarasena said that there would be no syringes used as that would be something that should be taken care of in the emergency room.

The Board asked what Dr. Kumarasena anticipated as the maximum number of patients on a weekly or monthly basis. Dr. Kumarasena said that this was not a service that she planned to advertise to her patients. She is a mother and wants to be able to spend time with her children after work hours.

The Board asked why the Saturday and Sunday hours were needed. Dr. Kumarasena said that was because she is on call 24 hours a day, seven days a week. The Board said that it is charged with protecting the neighborhood by enforcing the requirements in the Zoning Bylaw. If people show up at 4:00 in the morning, there is a different impact on the neighborhood than if they are showing up at 10:00 in the morning. The Board would need to know what the plan is so that it can determine if the use is compatible with the Zoning Bylaw.

Dr. Kumarasena said that she has to draw the line somewhere as to the hours. Emergency situations belong in the emergency room. In non-emergency situations she is able to use her own discretion as to whether she should see a patient. She said that she will not see a patient at 10:00 at night in her home. That would not be compatible with the neighborhood or her lifestyle.

The Board questioned if a Special Permit was required since there would be no scheduled hours. Because the patients are billed, what Dr. Kumarasena proposed would be classified as a home occupation.

Cynthia and Rob Benneck said that they live around the corner from Dr. Kumarasena, at 8 Falmouth Road. Ms. Benneck said that the neighborhood has a lot of winding roads. There is virtually no access except through those narrow winding roads. She said that she is concerned because the neighborhood has a lot of children who play on the street. There is a dead end where Falmouth and Yarmouth Roads meet where children are often out playing. She said that when her child has an ear infection or other medical issue, she doesn't always obey the speed limit. If the child is screaming, she wants to get to the doctor as soon as possible. She said that it is commendable that Dr. Kumarasena wants to be able to treat her patients but the proposed situation would be difficult to monitor. It would be uncertain how many patients Dr. Kumarasena would see in a week. There is the potential to stretch the limits. Mr. Benneck said that he is not aware of any other professional offices in a home in the neighborhood.

The Board said that it grants Special Permits based on fixed hours. There should be a plan that shows the driveway so that the Board can determine that the fixed patient flow is equal to the available parking.

Dr. Kumarasena said that she expects to see only about two patients a year at her home and that there is ample parking. She would not have anyone come to her house with a life-threatening condition.

Debbie Isaacs, 34 Yarmouth Road, said that it is a residential neighborhood. She is concerned about the randomness of the number of patients that are being suggested for seven days a week. She does not want to be put in the position of having to monitor her neighbor's business.

Jennifer Sleeper, 20 Yarmouth Road, said that as a parent wanting to go to the pediatrician's office, she would rather go after hours to the pediatrician's home. She is concerned about what will happen once the word gets out that Dr. Kumarasena will see patients in her home after hours.

John Carey, 14 Yarmouth Road, said that he is concerned about the precedent that would be set. He said that they live in a residential neighborhood and the proposal is for a professional office. He asked who would there be to deny the next neighbor who wants to set up a tax advisory service, law office or some

other home enterprise. He said that he is also concerned about having to monitor his neighbors. He said that his wife is a physician who shares his concerns. The Board said that it regulates home occupations.

Louise Grossman, 9 Yarmouth Road, said that she is concerned with the 5:00 to 7:00 weekday hours and the weekend hours. She said that you should go to the hospital if you need to see a doctor. She would be more comfortable taking a child to a facility where they have the equipment for treatment. Dr. Kumarasena's office is not too far. Ms. Grossman said that she did not see the hardship for Dr. Kumarasena to take a five minute drive to see a patient at her office. She said that she is also concerned about the safety of the children in the street.

Thusitha Kumarasena said that he is Dr. Kumarasena's husband. He said that he was hearing concerns about what can potentially happen. He said that Dr. Kumarasena will not be seeing a lot of patients at home. She is asking for the freedom to see an occasional patient at home. She has office hours on Saturday and Sunday mornings. If she had to go back to the office in the evening, it would be inconvenient. He said that he does not feel that this will affect the quality of the neighborhood. He said that if that was the concern, the neighbors should be concerned about pizza, UPS or FEDEX delivery to the neighborhood. Dr. Kumarasena will not be handling emergency situations at home, so there should not be concern about people driving too fast through the neighborhood.

The Board said that many people would be surprised to know how many home offices there are in the community without their realizing it. The Board has to consider the seven requirements under the Zoning Bylaw, Section II A 8 (h). Deliveries are one of the things that the Board has to look at.

The Board said that it has to consider whether the proposal would disrupt the customary character of the neighborhood. There will not be any type of pickup, delivery or signage. Parking will be on site.

The Board said that it was concerned with disposal of medical waste. Dr. Kumarasena said that there is medical waste pickup daily at her office, which is where all of the medical waste would go. Dr. Kumarasena said that she will be transporting the medical waste to her office. She said that she will not be performing any tests in her home. She said that she would only be doing examinations and writing prescriptions in her home.

The Board said that it could put limitations on the Special Permit for activities conducted, and times and days of operation. The petitioner would be required to keep a log of the activity so that the Board could review it to see what the actual history is.

The Board asked what Dr. Kumarasena's hours are at the Washington Street office. She said that she currently sees patients in her office between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, and in the morning on weekends. The Board said that it could limit the Special Permit so that patients could only be seen in the home when it is impractical for Dr. Kumarasena to get to her office. The Board said that the Saturday and Sunday hours should be excluded.

The Board asked that a plan showing the property be submitted so that it can conclude that the seven conditions of the bylaw are met.

Statement of Facts

The subject property is located at 30 Yarmouth Road, in a Single Residence District.

The petitioner is requesting a Special Permit to allow her to use a portion of her premises in a Single Residence District for the purpose of a home occupation, namely, Pediatrician's Office, for up to 10 patients a week from 5:00 p.m. to 7:00 p.m., Mondays through Fridays and 10:00 a.m. to 12:00 p.m. on Saturdays and Sundays. There are no nonresident employees and all parking is on the premises.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the Public Hearing.

It is the opinion of this Authority that the requested use of a portion of the premises at 30 Yarmouth Road for the purpose of conducting a pediatric practice is in compliance with the requirements of Section II A 8 (h) of the Zoning Bylaw and shall neither disturb nor disrupt the customary character of the neighborhood.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, subject to the following conditions:

1. There will be no signs or advertising.
2. All patient parking will be on site.
3. The number of patient visits will be limited to two per month.
4. The hours of operation will be limited to 5:00 p.m. to 7:00 p.m., Monday through Friday, with no more than one patient per day.
5. Allowed uses are examination and writing prescriptions. There are no procedures allowed.
6. Medical waste is to be removed from the premises within 24 hours.
7. The petitioner will keep a log of dates and times of actual use.
8. The Special Permit will be reviewed by the Zoning Board of Appeals after six months from the date time-stamped on this decision.
9. A site plan will be submitted for the file.

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.

David G. Sheffield, Acting Chairman

Randy Becker

Robert W. Levy

cc: Planning Board
Inspector of Buildings
lrm