



ZONING BOARD OF APPEALS

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ZBA 2007-12
Petition of Frank & Anne Bae
36 Brook Street

Petition of FRANK AND ANNE 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 to be used as a residence for not more than two families, a use not allowed by right in a Single Residence District.

On February 21, 2007, 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 were Frank and Anne Bae (the "Petitioner"), who said that they have complied with the conditions in the previously granted Special Permits. Mr. Bae said that there have been no substantial changes other than the fact that he has retired.

The Board confirmed that there are only two kitchens in the combined house and garage apartment.

Mr. Bae said that the tenant has been living in the garage apartment since last summer. The lease expires in the summer of 2008.

Mr. Bae said that his car and the tenant's car are parked in the garage at night. Mrs. Bae's car and their two children's cars are parked on the property.

The Board said that the original Special Permit was allowed for economic reasons. The Petitioner's Explanation of Request for renewal of the Special Permit had no supporting statements that addressed why the original building could no longer be used or adapted at a reasonable expense as a single-family dwelling. The Board asked if Mr. Bae would be willing to submit copies of three years of federal income tax returns for private review. The Board asked that a copy of the lease be submitted.

Mr. Bae said that the house was used as a two-family since 1925. The Board said that no proof of the two-family use in 1925 had been submitted.

Deborah White, 10 Marvin Road, said that she was present on behalf of the abutters. She said that the abutters have concerns regarding point #2 in the Petitioner's Explanation of Request.

Jeffrey Stonberg, 31 Brook Street, said that he and his wife live across the street. He said that an issue has always been the number of vehicles parked on the site. He said that it affects the character of the neighborhood. The Board said that there could be a number of cars parked there if it was a single-family residence.

The Board voted unanimously to continue the petition to the April 5, 2007 Public Hearing.

April 5, 2007 Public Hearing

The Board stated that the petition would be heard "de novo".

Presenting the case at the hearing was David Bae, who said that he was representing his parents, Frank and Anne Bae (the "Petitioner"). Mr. Bae said that his parents had come before the Board on March 8, 2007.

Mr. Bae said that the Petitioner is requesting a two-year Special Permit for a two-family residence in a Single Residence District. He stated that none of the conditions set forth in the 2006 Special Permit have been violated. He said that there have been no violations of State or local laws and that the required inspections have been done.

David Bae said that Frank and Anne Bae live in the main house. The house has 24 rooms, ten of which are bedrooms. There are five people residing there.

Mr. Bae said that the Building Inspector's Report listed one kitchen in the main house and one kitchen in the garage apartment. He said that the Building Inspector had determined that there are seven parking spaces on the property.

Mr. Bae said that a packet of financial information was submitted to the Board. He said that his father had made several improvements to the house and now has financial liens against the house. He said that the monthly fees to upkeep the house total \$6,500. He said that the combined income of Mr. and Mrs. Bae is \$6,235. He said that the income from the rental property totals \$2,700. He said that there is a financial need for the two-family use.

There was no member of the public present who wished to speak to the petition.

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 was 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 Petitioner 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 or an annual or biennial basis.

The Petitioner is requesting renewal of the Special Permit under the same terms and conditions as are currently in effect, with one exception: that the Special Permit be renewed for a period of two years.

Pursuant to compliance with Condition #4 in the decision granted one year ago (ZBA 2006-25), Michael Grant, Inspector Buildings/Zoning Enforcement Officer, inspected the premises on February 14, 2007 and found no violations.

On March 27, 2007, the Planning Board reviewed the petition and had no objection to granting the request.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The Petitioner has complied with all conditions in the Special Permit issued in 2006. 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, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing for the Petitioner 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 Petitioner and the tenant(s).
4. The premises shall be inspected by the Zoning Enforcement Officer 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 the 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. There shall be no more than seven vehicles parked on the property, exclusive of the driveway, in the available spaces determined by the Zoning Enforcement Officer.
7. 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.
8. Parking for the "Garage Apartment" shall be limited to two vehicles.
9. There shall be no parking of boats or trailers on the property.
10. This Special Permit shall lapse, expire and be of no further effect upon the earlier of the following to occur:
 - a. Conveyance of the property by its current owners, Frank and Anne Bae, or
 - b. The expiration of this Special Permit.
11. The current property owners, Frank and Anne Bae, shall disclose to potential buyers early in the real estate process that Condition #10 of this Special Permit is in effect.
12. 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.
13. This Special Permit shall expire two years from the date time-stamped on this decision.

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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.

Richard L. Seegel, Chairman

Cynthia S. Hibbard

David G. Sheffield

cc: Planning Board
Inspector of Buildings

lrm

cc: Planning Board