

**ZONING BOARD OF APPEALS**

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

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ZBA 2009-14
Petition of Frank & Anne Bae
36 Brook Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 5, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of FRANK & 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, which is a use not allowed by right in a Single Residence District.

On February 17, 2009 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 David Bae, who said that he was representing his parents, Frank and Anne Bae (the "Petitioner"). Mr. Bae said that the request is for renewal of a Special Permit for a two-family. He said that the materials submitted by his father outline the financial need for the Special Permit.

Mr. Bae said that in its 2004 decision, the Board said that it customarily will grant renewal of a Special Permit unless the property is no longer being properly used in a Single Residence District or if any of the conditions that the Board set are violated.

Mr. Bae said that the house was built as a two-family prior to Zoning Bylaws going into effect. He said that the footprint of the house is 24,000 square feet. He said that the house has 24 rooms, ten bedrooms, six bathrooms and six exits. He said that the tax records dating back to the early 1900's show that the house had two separate residences, 36 and 36R Brook Street. He said that prior to buying the house, the Bae's were told by numerous Town employees that the property contained two separate residences.

Mr. Bae said that there has been concern among the neighbors regarding traffic and parking. He said that the Town has stated that there are seven parking spaces. He said that there are currently four adults living at 36 and 36R Brook Street. He said that his parents live in the main house and a couple rents the residence at the back. He said that among them, there are three cars.

The Board said that one of the things that it had asked for but never received was a copy of the lease for the tenants. Mr. Bae said that there is a written lease.

The Board said that Mr. Bae, Senior, had represented that he needed to rent 36R due to a financial hardship. He said that, as Trustee of the Homestead Trust, Mr. Bae, Senior owns two other properties. Mr. Bae said that his father is a Trustee for his father's property (David Bae's grandfather).

The Board said that Mr. Bae, Senior had not responded to the Board's request for tax records for their private review. Mr. Bae said that he did not think that his father would be inclined to release his tax records.

The Board that a copy of the lease and the Homestead Trust with the beneficiaries listed must be submitted.

The Board confirmed that a single couple is living at 36R Brook Street and that Mr. and Mrs. Bae, Senior, are living in the main house. None of the Bae children live in the main house any longer.

The Board said that there had been issues with parked cars and storage of a boat in 2007. The Board said that does not appear to be an issue any longer. Mr. Bae said that the boat is a ten foot rowboat. He said that it is not on a trailer.

The Board said that there is some doubt as to whether this has been continuously used as a two-family house. The property was purchased in 1965 by John J. Dillon, who converted it from a dormitory to a single family dwelling. The Board said that although it is capable of being a two-family dwelling it is not clear that it was continuously used as a two-family. The Board previously decided to allow the continuance of the two-family use, based on demonstration of financial hardship, as long as Mr. Bae's parents are living there. The Board said that the Special Permit for the two-family cannot be conveyed or transferred to anyone else.

The Board confirmed that the Building Inspector had inspected the property and submitted his report.

There was no one present at the Public Hearing 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.

Pursuant to compliance with Condition #4 in the decision granted two years ago (ZBA 2007-12), Michael Grant, Inspector Buildings/Zoning Enforcement Officer, inspected the premises on February 10, 2009 and found no violations.

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 2007. 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 as the second dwelling 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