



## BOARD OF APPEAL

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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 8:45 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 Moran, 91 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. Greeley, 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.

Statement of Facts

The house involved, which is over a hundred years old, is a three-story wooden structure, containing twenty rooms and 8½ 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

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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.

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

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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 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-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

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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*  
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 Francis L. Swift

*Franklin P. Parker*  
 \_\_\_\_\_  
 Franklin P. Parker

*William E. Polletta*  
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 William E. Polletta

Filed with Town Clerk 9/20/77

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