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ZONING BOARD OF APPEALS

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Petition of Owen Kite and Robert Watton

Pursuant to due notice the Special Permit Granting Authority held a public hearing in the hearing room on the second floor of the Town Hall at 8:05 p.m. on April 26, 1979, on the petition of Owen Kite and Robert Watton, co-owners of the property at 605 Washington Street, requesting a special permit which will allow them to continue to conduct their dental practice at 605 Washington Street, and to have not more than the equivalent of two full-time non-resident employees, pursuant to Section II 8 (h) 7, and Section XXV of the Zoning By-law.

On April 10, 1979, the petitioners filed their request for a hearing before this Authority and thereafter due notice of the hearing was given by mailing and publication.

Elizabeth Butler Heath, attorney representing the petitioners, spoke in support of the request at the hearing.

Dr. Owen Kite, co-owner of the property involved, stated at the hearing that he had resided on the premises involved and practiced dentistry there from 1958 to 1968 at which time he moved to Gloucester as his children were away at college. He continued to practice dentistry on the premises, however, as he had been assured by a lawyer that as long as he maintained a bedroom in the house, that would justify his residence and he could continue his practice. In 1974, he rented part of the house to a tenant who lived there until March 31, 1979, when he was forced to evict her so that he could move back to the house. Due to a delay in eviction procedures, he could not move back sooner, he stated, however, he is now living in the house and practicing dentistry there with Dr. Watton. He has moved some furniture into the rear of the house where he lives during the week and spends week-ends in Gloucester. He further stated that he would like to convert the house into Town Houses at some future time.

Dr. Robert Watton, co-owner of the property, spoke in support of the request and stated that he was on the staff of the Boston Children's Hospital when he first came to practice at the location involved and is still on the staff. He specializes in dental work for handicapped children and, in his opinion, there is no other location in Wellesley which has the facilities needed by him to carry on his specialized practice.

Mary E. Rich, 16 Midland Road, expressed opposition to the request, and stated that, in her opinion, the "Home Occupation" by-law adopted at the Town Meeting, referred only to one practicing in his or her "home" and it was not intended that one could have an additional doctor working with him, as is the case in this instance. She felt that no variance should be granted.

Kurt Floyd Steele, 6 Denton Road, opposed the request and stated that he lives around the corner from the house involved and passes it daily. He has given particular attention to it since April 1, 1979, when it was vacated by the last tenant. In his opinion, there has been no one living there since April 1, and no attempts have been made to move in on a permanent basis. To substantiate his allegations, he submitted a report outlining five reasons for his belief that the petitioner was not living in the house and requested that the report be made part of the record. Said report is on file with this Authority.

The following persons also spoke in opposition to the request: Edward S. Hand, Jr., Weston Road, Felicia Peltier, 24 Denton Road and John M. Sherwood, 79 Pilgrim Road.

A letter attested to by Edward C. Donlon, Notary Public, dated April 24, 1979, was submitted by Dorothy D. Randall, resident and tenant of the property involved from August 1974 to April 1, 1979, in which she gave detailed information relevant to the occupancy and use of the house during her tenancy. The letter stated in part, "This property in entirety, excepting a suite of dental offices in the north wing, was rented to me in July 1974, as my residence and also for use in the continuation of my part-time practice of Clinical Psychology." The letter further stated that she vacated the property on March 31, 1979, after Court proceedings were started for her eviction.

A letter was received from Sandra B. Carter, 14 Waban Street, outlining in detail her reasons for opposing the requested variance.

A letter was also received from Peter E. Madden, Washington Street, opposing the granting of the request.

#### Statement of Facts

The house involved, which was built in 1922, is located within a Town House District, a district in which the desired use of the property is not permitted unless a special permit is granted by this Authority. It is the desire of the petitioners to continue practicing dentistry on the premises involved; Dr. Kite to reside on the premises and Dr. Watton to be a non-resident employee. A special permit, therefore, is sought which will allow Dr. Kite to have not more than the equivalent of two full-time non-resident employees; one to be Dr. Watton and the other to be a secretary-receptionist for the doctors.

In support of the request, the petitioners' attorney stated that the premises involved have been used as a doctor's and dentist's home-office since 1923; the former owner of the property, Dr. Coleman, resided in the house and had his office there until 1958 when he sold the property to the petitioners. Dr. Kite resided on the premises and practiced dentistry there from 1958 to 1974 when he moved out but continued to practice at the location. Because he did not work on children's teeth, he employed Dr. Robert Watton as his assistant in 1962 and Dr. Watton has continuously had limited office hours for dentistry there since that time. It was further explained that Dr. Watton is one of the few dentists in the area who does dental work on handicapped children, and accessibility to the office from the street is important for patients in wheelchairs.

In the twenty years Dr. Kite has practiced dentistry in Wellesley, it was stated, he was not aware of any complaints from his neighbors or from Townspeople. The only exception was Mrs. Randall, his tenant, who notified local officials of a possible violation of the Zoning provisions the day after Dr. Kite was in Norfolk District Court to pursue court proceedings to remove her as a tenant as he wanted to move back into the house.

It was pointed out that the house involved is on a main thoroughfare adjacent to Town Houses and nearby other doctors' and dentists' home-offices, and because of this, it is the opinion of the petitioners the use requested will not change the character of the neighborhood in any way.

Decision

This is a petition seeking a special permit which will allow Dr. Kite, co-owner of the property involved to reside on the premises and continue his dentist practice; and to have not more than the equivalent of two full-time non-resident employees; one to be Dr. Watton and the other to be a secretary-receptionist for the doctors. Said request was made under the provisions of Section II 8 (h) (7) and Section XXV of the Zoning By-law.

The property involved is located within a Town House District which provides under Section IIIA that:

"In Town House Districts, no new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used, for any purpose except one or more of the following specified uses: (emphasis added)

1. Any of the purposes authorized without a special permit in Single Residence Districts (as enumerated with any restrictions thereon in Section II., Clauses 1 through 7, inclusive); (emphasis added)
2. Town houses...."

Although the petition was requested under the provisions of Section II 8 (h) 7, of the Zoning By-law, it is the opinion of this Authority that said section is not applicable in this case, and that this Authority is not empowered to grant a special permit for the requested use under the provisions of said section. No reference is made in Section III A, Town House Districts, to Section II 8 (h) 7, which is the section under which this Authority is empowered to grant special permits for Home Occupations in addition to those uses permitted under Clause 6 of Section II, providing it finds the criteria necessary. It, therefore, appears clear to this Authority that it is the intent and meaning of the By-law that Section II 8 (h) does not apply to properties located within a Town House District. The Authority notes that special reference was made to said section under Section II 8. (i) Single Residence Districts and Section IV. 5. General Residence Districts, which also leads this Authority to believe that the provisions of Section II 8 (h) were not intended to apply to Town House Districts.

Nevertheless, the Authority has made a careful study of all the evidence submitted and the application of the Zoning By-law in this case. In its opinion, the intent and purpose of Section II, Subclause 6, Home Occupations, of the Zoning By-law, is to allow a person to conduct home occupations, with restrictions, within his or her home, providing the person resides on the premises and has no non-resident employees. However, under Section II, subclause 8 (h), a special permit is required for home occupations in addition to those permitted under clause 6 of Section II.

From the study of the evidence and inquiry made by this Authority, it appears that the premises in issue is owned by the petitioners as Trustees of a real estate trust. It further appears that Dr. Kite resided in Wellesley with his family and practiced dentistry in this property from 1958 to 1968. In 1968 Dr. Kite removed himself and family from the Wellesley premises but continued to carry on his practice at this address. On his removal from Wellesley, Dr. Kite established his home in Gloucester where he is currently a resident. In 1974, the entire structure, except that portion used as a dental office, was rented as a single residence. This rental continued to March 31, 1979. Dr. Robert Watton, is a practicing dentist, who resides in Framingham, and has been associated in the practice of dentistry with Dr. Kite at the premises numbered 605 Washington Street. His practice is devoted to handicapped children. He is on the dental staff at Children's Hospital in Boston. There appears to be no professional relationship between the practices carried on by the two doctors, and it further appears that each doctor maintains his own practice.

This Authority may issue a special permit under the language and intent of the Zoning By-law, to a resident conducting a home occupation in his or her home, permitting the employment in the conduct of said occupation of not more than the equivalent of two full-time non-resident employees, assisting the resident in his or her occupation. The circumstances of this petition do not allow an interpretation of the Zoning By-law to meet the request of the petitioners.

It is the unanimous opinion of this Authority that the use to which the petitioners request a special permit does not come within the purview of the Zoning By-law, and is not in harmony with the general purpose and intent of the Zoning By-law.

Accordingly, the requested special permit is denied and the petition is dismissed.

  
Francis L. Swift

William O. Hewett  
  
William F. Cullinane

Filed with Town Clerk \_\_\_\_\_