

TOWN OF WELLESLEY



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ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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STEPHANIE J. GOSSELIN  
Executive Secretary  
Telephone  
235-1664

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### Petition of Nancy Allen

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing in the second floor hearing room of the Town Hall at 8:00 PM on Thursday, June 18, 1981 on the Petition of Nancy Allen, requesting a Special Permit under the provisions of Section II 8(a) and Section XXV of the Zoning Bylaw which will allow the petitioner to use her premises at 7 Cross Street as a two family home. This use having been previously granted by this Board over a period of approximately 10 years from 1956 to 1962. Said dwelling being located in a Single Residence District.

On May 27, 1981 the petitioner filed her request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Present at the hearing and speaking on behalf of this request was Nancy Allen. Ms. Allen explained that she has owned the property since May 1981, having purchased the property aware that the rental apartment needed a Special Permit. Ms. Allen stated that the apartment has been rented since 1956 with variances granted up to 1962. The present tenant has lived there for one year, in the three room unit within the house. The tenant is a disabled 26 year old victim of a form of muscular dystrophy who was placed in this apartment one year ago by the Wellesley Housing Authority. Ms. Allen further stated that due to unsteady fuel costs, high mortgage rates and the cost to maintain this property that the extra income is essential. Ms. Allen stated further that the surrounding houses are multiple dwellings.

Richard Clayton of 8 Cross Street spoke in favor of this request.

### Statement of Facts

The property involved is located at 7 Cross Street in a Single Residence District.

The petitioner seeks the approval of this Authority to continue to rent the three room apartment to Ms. Patricia Stafford, a 26 year old victim of a form of muscular



dystrophy. Ms. Stafford has been renting this apartment for the past year, having been placed at this location by the Wellesley Housing Authority. Both Ms. Stafford and the Wellesley Housing Authority were unaware that a Special Permit was needed to continue to rent the three room apartment.

A letter dated June 12, 1981, was received from the Planning Board which states that at its "Regular meeting of June 8, 1981, the Planning Board moved, seconded and voted to offer no comment on this petition."

In a letter dated June 10, 1981 received from the Wellesley Housing Authority, the Housing Authority points out that Ms. Stafford is disabled and that her walking condition is poor due to side effects of the steroids she takes for the kidney transplant, so searching for another apartment would be difficult. Further, the close proximity to stores is an important reason in letting her continue to rent at 7 Cross Street.

Decision

This Authority has made a careful study of the evidence submitted noting that variances have been granted between 1956 and 1962, allowing the requested use under the then existing Zoning Bylaw, but the variance has not been renewed since it was last granted in 1962. This Authority also notes that the petitioner stated at the hearing that she was fully aware, when she purchased the residence in May, that the property and residence did not conform to the Zoning Bylaw in that it was a single family residence containing two residential units and that she would require either a variance or a Special Permit in order to have the residence conform to the existing Zoning Bylaw.

At least one member has taken a view of the locus. Section II A of the Zoning Bylaw states:

- A. In Single Residence 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 or reconstructed or used, and no land shall be used, for any purpose except one or more of the following specified uses:
  - 1. One-Family Dwelling;
  - 2 - 7
  - 8. Any of the following additional uses upon the granting of a Special Permit as provided in SECTION XXV:

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- (a) Residence for not more than two families, or boarding or lodging house, but not a restaurant; provided, however, that the building so used was in existence when this Bylaw took effect; and provided further that the Board of Appeal make a written finding that the original building can no longer be used or adapted at a reasonable expense and with a fair financial return for a use regularly permitted in the district.

The petitioner provides no information to show that this home cannot be economically operated as a single family residence.

The occupant of the "second" living unit is a victim of a form of muscular dystrophy called "Dermatomyocitis" along with severe Diabetes which has caused her to have a kidney transplant some two years ago and treatment for the Dermatomyocitis at the New England Medical Center in Boston for the past 14 years, as stated in the letter dated June 10, 1981 from the Wellesley Housing Authority. This is a most unfortunate situation, however, such a situation cannot be the governing factor in this case or in any other case for a request to use a single family house for two family use in a Single Residence District.

The Zoning Bylaw, as stated before, is quite clear on the proposed usage. Also, the most recent Town Meeting proposal to allow multi-family usage within Single Residence Districts under certain conditions was decisively defeated. To ignore the Zoning Bylaw and Town Meeting in this case would allow arguments for future cases; however, compassion dictates that this Authority cannot completely ignore the physical condition and needs of the "tenant" who is an innocent party.

It is the unanimous opinion of this Authority that the granting of a Special Permit for the requested use would not be in harmony with the general purpose and intent of the Zoning Bylaw and would derogate from the public good. However, it is the further opinion of this Authority that because of the nature of the "tenant's" illness that the petitioner have until July 1, 1982 to comply with this decision and upon the condition that the Building Inspector be allowed to inspect the premises inside and outside within thirty (30) days after July 1, 1982 and at other such times he shall deem necessary to ensure the premises are brought into compliance as a single family residence in a Single Residence District.

William F. Cullinane  
William F. Cullinane, Chairman

John A. Donovan, Jr.  
John A. Donovan, Jr.

Stephen S. Porter  
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