


 ZONING BOARD OF APPEALS  
 TOWN HALL WELLESLEY, MA 02181

 RECEIVED  
 ZONING BOARD OFFICE  
 WELLESLEY, MASS.  
 DEC 31 8 42 AM '87

 JOHN A. DONOVAN, JR., Chairman  
 ROBERT R. CUNNINGHAM  
 KENDALL P. BATES

 ELLEN D. GORDON  
 Executive Secretary  
 Telephone  
 431-1019

 WILLIAM E. POLLETTA  
 FRANKLIN P. PARKER  
 SUMNER H. BABCOCK

 ZBA 87-102  
 Petition of Erika C.M. Hampe  
 18 Maugus Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, December 17, 1987 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley, on the petition of ERIKA C.M. HAMPE requesting a Special Permit, pursuant to Section II 8(a) and Section XXV of the Zoning Bylaw to allow the premises located at 18 MAUGUS AVENUE to be used as a lodging house for eight lodgers, said premises being in a Single Residence District.

On November 30, 1987 the petitioner filed a request for a hearing before this Board and thereafter due notice of the hearing was given by mailing ad publication.

Presenting the case was Erika C.M. Hampe who requested a one-year renewal of the Special Permit. Mrs. Hampe stated that the house has over 20 rooms and 8 1/2 baths and that she has lived in her home for more than 20 years.

No others were present expressing favor or opposition to the request.

#### Statement of Facts

The property in question is located at 18 Maugus Avenue on a 20,610 square foot lot, in a Single Residence District. The house involved is a three-story wooden structure over one hundred years old, containing twenty rooms and eight and one-half baths. In 1925, the effective date of the Zoning Bylaw in the Town of Wellesley, it was occupied by a family who had several lodgers and also served meals to Babson students. This use continued for several years. From 1938 to 1942, the house was unoccupied. In 1942 the property was sold and operated as a lodging house with apartments until 1967 when it was sold to Mr. and Mrs. Hampe, who occupied it with their eight children. In 1975, Mr. and Mrs. Hampe requested Board of Appeals permission to use the house as a combination lodging and apartment house.

In the Board of Appeals decision of October 15, 1975, (ZBA 75-28), the Board granted permission for the dwelling to be used as a lodging house for not more than five roomers with only one kitchen on the first floor. The petitioner appealed the decision to the Norfolk District Court, which court affirmed that part of the Board's decision denying the use of the property as an apartment house and remanded the case back to the Board of Appeals. A ZBA decision of September 20, 1977 (ZBA 77-34) reinstated the decision of October 15, 1975, after which the Hampe's filed an appeal which was subsequently withdrawn. Mrs. Hampe became the sole owner of the property, and in 1982 and yearly thereafter, the Board of Appeals has granted Special Permits to allow no more than eight lodgers subject to certain conditions.

Accompanying Mrs. Hampe's application is a letter from Edward C. Donlon, Esquire, requesting that the Special Permit be granted for more than one year, and stating that conditions have not changed since last year.

The Planning Board, at its Regular Meeting on December 8, 1987, voted to offer no objection to the request except that the renewal should be made on an annual basis.

Decision

This Authority has made a careful study of the evidence presented and has reviewed the history of the use of the property in question.

It is the opinion of this Authority that the continued use of the twenty room dwelling as a lodging house under Mrs. Hampe's supervision for eight roomers will not reduce the value of the property within the area, that the use does not disturb or disrupt the neighborhood and that the use will allow the petitioner to have a reasonable income from the property. It is the belief of this Board that the property in question cannot be used or adapted at a reasonable expense and with a fair financial return for a use regularly permitted in the district due to the size of the building and the number of rooms herein.

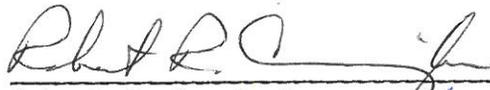
Therefore, a Special Permit is granted to Erika C.M. Hampe for the premises at 18 Maugus Avenue subject to the following conditions:

1. That no more than eight (8) lodgers may occupy the dwelling at any one time.
2. That off-street parking shall be provided on the property.
3. That all applicable laws and ordinances and State and local building and fire codes and regulations shall be fully complied with.
4. That this Special Permit shall expire two years from the date of this decision.

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.

cc: Planning Board  
Inspector of Buildings

edg

  
Robert R. Cunningham

  
Kendall P. Bates

  
William E. Polletta

RECEIVED  
TOWN CLERK'S OFFICE  
MIDDLEBURY, MASS.  
DEC 31 8 42 AM '87

TOWN OF WELLESLEY



MASSACHUSETTS

ALBERT S. ROBINSON, TOWN COUNSEL

September 23, 1993

40 GROVE STREET  
WELLESLEY, MA 02181  
(617) 235-3300

Arthur LaConte  
Building Inspector  
Town Hall  
Wellesley, MA 02181

Ellen Gordon, Executive Secretary  
ZONING BOARD OF APPEALS  
Town Hall  
Wellesley, MA 02181

Re: Laconte et al v. Hampe  
Superior Court C.A. No. 90-3084

Dear Ellen and Arthur:

Enclosed is the Appeals Court's Memorandum and Order in the referenced matter, entered yesterday, which affirms the Building Inspector's determination that the use of the premises as a boarding house for up to two lodgers is as a matter of right, and that for more than that number is subject to the granting of a special permit. The Court thus remands the matter to the Board for consideration of whether to grant a new permit (for up to eight lodgers), and for what period, all as the Board and the Building Inspector have suggested since the day Mrs. Hampe's counsel first came onto the scene.

The Court's opinion addresses the flavor, too.

The appellant has the right to request further appellate review, absent which final Judgment will enter, remanding the matter back to the Board for the purpose expressed above. I will let you know when that procedural step becomes timely.

Very truly yours,

Albert S. Robinson

jch  
File: WB-117-A  
cc: R. Arnold Wakelin, Jr., Executive Director  
w/enclosure  
(1704C)  
Enclosure

COPY

COMMONWEALTH OF MASSACHUSETTS.

APPEALS COURT FOR THE COMMONWEALTH,

At Boston, September 22, 1993

IN THE CASE OF

BUILDING INSPECTOR OF WELLESLEY & another

vs.

ERIKA C. M. HAMPE.

pending in the Superior

Court for the County of Norfolk

ORDERED, that the following entry be made in the docket; viz.,—

As to the determination that a lodging house use at the locus was lawful because it was a nonconforming use, the judgment of the Superior Court is affirmed. The judgment requiring the defendant to apply for a special permit annually is modified to require Hampe to apply for a special permit. The case is remanded to the board of appeal of Wellesley for consideration of an application by Hampe for a special permit to accommodate eight lodgers, such permit to be issued on a reasonably long-term basis as permitted by the zoning by-law.

BY THE COURT,

*Karen Tucker Foley*, CLERK.

September 22, 1993.

NOTE:  
The original of the within rescript will issue in due course, pursuant to M.R.A.P. 23  
APPEALS COURT

OVER

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

92-P-877

BUILDING INSPECTOR OF WELLESLEY & another <sup>1</sup>✓

vs.

ERIKA C. M. HAMPE.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Nothing in the exceptionally hyperbolic appellant's brief of the defendant points to specific portions of the record which cause us to regard as clearly erroneous, see Mass.R.Civ.P. 52(a), 365 Mass. 816 (1974), the trial judge's findings of fact that in 1925, when Wellesley first adopted a zoning by-law, the locus was occupied by two lodgers.<sup>2</sup>✓ At that time, as the judge found, the premises were occupied by its owners and the two lodgers.

Based on those findings, the judge correctly ruled that the locus was a nonconforming use in which a lodging house, to the limit of two lodgers, was allowed as matter of right and that action of the local board of appeal

---

<sup>1</sup>✓ Board of Selectmen of Wellesley.

<sup>2</sup>✓ Hampe presented evidence of advertisements placed by a previous owner of the locus in a local Wellesley newspaper during 1922 and 1924. One advertised only meals available. The other advertised the Waukeena Inn, "[d]elightfully situated on the hillside" and containing twenty-one rooms, four private baths, and a large bathroom on each floor, and encouraged "[m]ak[ing] reservation[s] for Sunday dinner." It takes a fairly attenuated inference to arrive at a finding that the premises were in fact used for a particular number of lodgers. The judge was not required to make that inference.

will be required to authorize a substantially greater number. See Mendes v. Board of Appeals of Barnstable, 28 Mass. App. Ct. 527, 531 (1990).

There was uncontroverted evidence that at least as early as 1975, the defendant Hampe<sup>3</sup> had received a special permit authorizing habitation by five lodgers on the first and second floor of the locus. In 1977 the board of appeal again issued such a permit. Midway during a seemingly endless course of litigation, a judge of the Superior Court issued a preliminary injunction ordering that occupancy in the locus not exceed eight lodgers on the first and second floors, plus occupancy by the members of the Hampe family. On August 30, 1979, the parties, in connection with that action, entered into a stipulation by Hampe to bring the premises into compliance with the preliminary injunction.

From 1982 to 1989, the use of the premises to accommodate eight lodgers was regularized through successive authorizations by special permits granted by the board of appeal of Wellesley. The zoning by-law authorized this. Wellesley Zoning By-law, §§ II(A)(8) (a) and XXV. The board of appeal made findings that such an expansion of the nonconforming use was reasonable; that it would not affect adversely property within the area;

---

<sup>3</sup> During this period, applications for special permits were submitted by Hampe's husband, from whom she is now divorced.

that the use did not disturb the neighborhood; and that such a use of the house or the premises was more reasonable than single family use (the use permitted as matter of right in the zoning district). Zoning by-law, § II(A) (8) (a). The premises are in a so-called transition area, proximate to commercial areas, public transportation, and other services.

It is not clear what caused counsel for Hampe to draw a false line in the sand and to make the insupportable claim that the nonconforming use status allowed habitation for ten or twelve lodgers. The only evidence that the house may be so used was the physical capacity of the building itself, but there was no evidence that the structure ever was so used. For example, the defendant did not proffer evidence of a license to operate a lodging house in 1925, although the statute requiring such licenses was then in effect. See St. 1918, c. 259, now appearing as G. L. c. 140, §§ 22-32. See also Newbury Junior College v. Brookline, 19 Mass. App. Ct. 197, 203-204 (1985).

Although the judge correctly decided that Hampe, as owner of the locus, was not entitled to more than two lodgers as matter of right, the judgment entered was unduly restrictive in allowing only the alternative of a one-year special permit. It is necessary neither under G. L. c. 40A, § 6, nor the by-law to put the owner, the town, and, indeed, the neighborhood, through an annual

ordeal. It is open to the board of appeal to grant a special permit for up to three years. Zoning by-law, § II(A)(8). The last several actions by the board disclose a considered conclusion by the board that eight lodgers are appropriate for the locus and that so using the locus is sustainable by the immediate neighborhood without harm. That conclusion warrants a finding that the extension of the use to eight lodgers from the "as of right" nonconforming use of two lodgers would not be more detrimental to the neighborhood than the lawful nonconforming use. Powers v. Building Inspector of Barnstable, 363 Mass. 648, 653 (1973). Cape Resort Hotels, Inc. v. Alcoholic Licensing Bd. of Falmouth, 385 Mass. 205, 212 (1982).

As to the determination that a lodging house use at the locus was lawful because it was a nonconforming use, the judgment of the Superior Court is affirmed. The judgment requiring the defendant to apply for a special permit annually is modified to require Hampe to apply for a special permit. The case is remanded to the board of appeal of Wellesley for consideration of an application by Hampe for a special permit to accommodate eight

Post-It™ brand fax transmittal memo 7671 # of pages > 2

To <i>Robbi Alacero</i>	From <i>Jee</i>
Co.	Co.
Dept.	Phone #
Fax # <i>239-1043</i>	Fax #

lodgers, such permit to be issued on a reasonably long-term basis as permitted by the zoning by-law.

So ordered.

By the Court (Brown, Kass  
& Laurence, JJ.),

*Nancy Ann Foley*  
Clerk

Entered: September 22, 1993.