



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 88-28
Petition of Felizardo Villarino
26 Abbott Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 21, 1988 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 FELIZARDO VILLARINO requesting a Special Permit under Section II 8 (a) and pursuant to Section XXV of the Zoning Bylaw which will allow the premises at 26 ABBOTT ROAD to be used as a two-family dwelling, said residence being located in a Single Residence District.

On April 4, 1988 the petitioner filed a request for a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case was Felizardo Villarino who said that the property has been vacant since November, 1987. The house has been listed for rental and for sale with no results.

The Board asked if the home had been remodeled to which Dr. Villarino replied that cosmetic repairs had been made and that if the special permit were granted, he would remodel the house for two-family use. The Board questioned Dr. Villarino's economic ability to afford the conversion costs while claiming economic hardship in maintaining the home as a single family dwelling. No figures have been presented on maintenance, repairs or rent to support Dr. Villarino's claim, nor has any evidence as to efforts made to rent or sell the property been presented. The Board questioned if the property had been bought as a business venture or as a home. Dr. Villarino said that originally he had intended to house relatives attending colleges in the area, but due to neighborhood problems, this option had become impossible.

Dr. Villarino submitted a flyer which described 26 Abbott Road as a rental property, which he said he had distributed to the consulates and to companies along Route 128 with no success. The house is presently livable and ready for occupancy.

The Board asked if the property was mortgaged, and if so, the amount of the monthly mortgage payments. Dr. Villarino said that there was a mortgage with monthly payments of \$3,800.00 without taxes. He is asking for a monthly rental of \$2,500.00 per month, as he is not interested in making a profit. He is not interested in selling the property now, but wants to build equity for the future.

Edwina Fraser, 17 Caroline Street, strongly objected to the request. She said that the single residence area should be maintained as single residence. She could not understand the problem in selling or renting the property, as it is in a prime location.

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Paul Rutledge, representing James Rutledge, 7 Bemis Road, submitted a written objection with exhibits. He stated that the use would not be "in harmony" with the neighborhood, and questioned the availability of the driveway for parking as it is a right-of-way to the property at 28 Abbott Road. If 28 Abbott Road were sold, the driveway is an easement to the property and could not be used for parking.

Mr. Rutledge stated that proof of economic hardship in maintaining the property as a single residence is the heart of the issue. He felt it is possible to maintain the property as a single family residence with a fair financial return. In order to determine a "fair return", the purchase price would have to be considered. In 1984, the property which included both 26 and 28 Abbott Road, was purchased for \$210,000.00. (Exhibit C-1) No purchase money mortgage was secured. It appears that Mr. Villarino assumed the seller's mortgage in the amount of \$88,000.00 (Exhibit C-2), although there is no mention of this transaction in the deed. However, a year later, this mortgage was discharged (Exhibit C-2-A).

Mr. Rutledge said that prior to the purchase, the property, which included both 26 and 28 Abbott Road, was assessed at \$374,000.00. Following the purchase, Dr. Villarino requested and received an abatement based on the purchase price of \$210,000.00, which was not the total price paid for the property. Subsequently, Dr. Villarino divided the property into two separate parcels. In 1986, the appraised value on both properties was \$200,000.00 or \$100,000.00 for each parcel.

Mr. Rutledge stated that the most recent occupants of 26 Abbott Road signed a three-year lease in July, 1987 for rental at \$2,500.00 per month, or a rate of return of 27% on the original investment without deductions for maintenance, taxes or insurance. Due to a landlord-tenant dispute, the tenants moved out in November, 1987. Presently, the property is listed at a rental of \$3,000.00 per month, or a rate of return of 32%.

Mr. Rutledge said that the present mortgage for 26 Abbott Road is for \$335,000.00 (Exhibit D-2), which was granted by the First National Bank of Boston in April, 1987, although the purchase price in 1984 was \$110,000.00. The appraised value of the property for 1988 is \$394,000.00 and the present asking purchase price is \$600,000.00.

The Board questioned Dr. Villarino's monthly mortgage payment of \$3,800.00. Mr. Rutledge stated that said payment is not related to a purchase money mortgage, and therefore should not be considered a cost to the property in determining economic hardship. Although there have been cosmetic changes, no building permits have been issued for 26 Abbott Road, so the mortgage money does not appear to have been spent on major improvements to the property.

Caroll Stewart, 29 Abbott Road, opposed the request, stating the importance of retaining the neighborhood as a single family residence area. She also cited present parking problems. Jean Bryant, 23 Abbott Road, also opposed the request, stating that parking is a problem which was severe when the property was leased to Babson students.

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Linda Zukowski, 16 Abbott Road, was also opposed, citing traffic congestion, parking problems and concern with the possibility of having 6 unrelated people living in two apartments. When the property was used as a rooming house for students, noise and parking problems resulted from student occupancy.

Margaret Grimes, 23 Abbott Road, and Christine Lanigan, 19 Abbott Road, were also concerned about the parking and felt that the use of the driveway for parking six cars was unrealistic. People would park illegally in the street rather than in the driveway where egress could be a problem.

William Mone, 75 Abbott Road, was concerned that an unwanted precedent of commercial intrusion of a two-family residence would be established in a single residence area.

Dr. Villarino said that in regard to the parking, the use of the driveway as a right-of-way to 28 Abbott Road was not a problem, as he had obtained a curb cut from the Board of Selectmen in 1985 for access from Seaward Road.

In response to the Board's question regarding the current mortgage, Dr. Villarino said that it was not a purchase mortgage. The Board asked why the mortgage should be considered a burden on 26 Abbott Road in determining economic hardship, when the mortgage was not needed to purchase the property, nor had any evidence been submitted that the mortgage money had been used to improve the property. Dr. Villarino said that approximately 25% of the mortgage money had been used for 26 Abbott Road.

The Board asked if there had been an original mortgage on the property. Dr. Villarino said he had been given financing by the seller, and asked if this type of questioning was routine. The Board responded that financial information is needed in order to determine economic hardship on which the granting of the Special Permit is based. In no way is the questioning to be considered as personal harrassment.

Statement of Facts

The property in question is located on a 10,017 square foot lot at 26 Abbott Road in a Single Residence District. The property was built around the turn of the century and contains 12 rooms; 6 bedrooms and 2 and 1/2 bathrooms. The property consisting of both 26 and 28 Abbott Road, was purchased by Dr. Villarino in July, 1984 without a purchase mortgage. The property was subsequently subdivided into two separate parcels with the driveway at 26 Abbott Road maintained as an easement for 28 Abbott Road.

Prior to purchase by Dr. Villarino and for a time thereafter, the property was used as a rooming house for Babson students, although a Special Permit had never been granted for this use. From July to November, 1987 the property was leased to a single family, but has been vacant since that time. The property is not owner-occupied, as Dr. Villarino resides at 28 Abbott Road. The petitioner is requesting a special permit to use the single family dwelling as a two-family residence in a Single Residence District on the grounds that continued use as a single family dwelling is an economic hardship.

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The Planning Board, on April 11, 1988, voted to recommend that the petition not be approved unless the Board of Appeals is satisfied that the conomic conditions warrant favorable consideration; that all tenant parking be required to be provided on the property; that the use be subject to annual review and renewal; and that not more than 3 unrelated individuals occupy each dwelling unit.

Decision

This Authority has made a careful study of the evidence presented. The petitioner has requested a Special Permit to create a two-family dwelling in a Single Residence District under Section II 8 (a).

Section II 8 (a) of the Zoning Bylaw states:

"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 Appeals made 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 building at 26 Abbott Road was in existence when the bylaw went into effect.

The petitioner was not specific or detailed enough as to what his costs, expenses and potential financial return are at 26 Abbott Road.

It is clear that similar single family residences in the neighborhood are used and sold as single family homes. The petitioner's evidence with respect to his effort to sell or rent the property as a single family residence is sketchy at best.

The fact that the petitioner claims his nieces and nephews do not wish to occupy the house because of disputes he has had with neighbors does not support the petitioner's application. The petitioner himself occupies 28 Abbott Road, an adjacent property, as a single family residence.

In 1987, the petitioner had the property at 26 Abbott Road rented as a single family residence on a three-year lease at \$2,500.00 per month. The tenant was lost through a dispute with the petitioner, but the Board does not know if the tenant remains responsible for the rent or whether \$2,500.00 per month does not represent a fair return because it has not before it evidence of the monthly costs and expenses.

Following the petitioner's purchase of 26 Abbott Road, he obtained a \$335,000.00 mortgage on 26 Abbott Road, but states that only one-fourth of the money was used on 26 Abbott Road and that the remainder was used on 28 Abbott Road. Because no building permits were taken out for 26 Abbott Road, and because the petitioner stated he did only cosmetic fix-up at 26 Abbott Road, this Board is unable to find that \$83,750 was put into the property and should properly be ascribed as an expense at 26 Abbott Road.

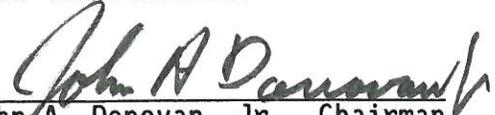
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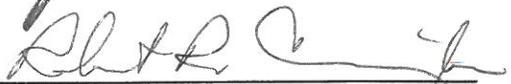
It is the opinion of this Authority that there is insufficient evidence that the original building can no longer be used or adapted at a reasonable expense and with a fair financial return, and that the creation of a two-family dwelling in this location would establish a use which would not be in harmony with the neighborhood or with the general intent and purpose of the Zoning Bylaw.

Therefore, the request for a Special Permit to allow 26 Abbott Road to be used as a two-family dwelling is hereby denied and the petition is dismissed.

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


John A. Donovan, Jr., Chairman


Robert R. Cunningham


Kendall P. Bates

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