



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

JOHN A. DONOVAN, JR., Chairman
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ZBA 90-44
Petition of John R. Leggat
1 Washburn Avenue

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, May 24, 1990 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 JOHN R. LEGGAT appealing the decision of the Inspector of Buildings that his dwelling at 1 WASHBURN AVENUE, in a Single Residence District, contains two separate dwelling units in violation of Section II of the Zoning Bylaw and that all kitchen facilities in the second dwelling unit must be removed to bring said dwelling unit into conformance with Section II of the Zoning Bylaw. Said Appeal is pursuant to Section XXIII-E and Section XXIV-C 2 of the Zoning Bylaw.

On May 7, 1990, the petitioner filed an Appeal with the Town Clerk's office and requested a hearing before this Board. Thereafter, due notice of the hearing was given by mailing and publication.

Presenting the appeal at the hearing were John and Ann Leggat. Mr. Leggat requested the Board to clarify the definition of "kitchen facilities". He stated that the area in question is a recreation area and an entertainment area with an adjacent terrace area. A cabinet, a sink, an under-the-counter refrigerator, a microwave oven and a toaster oven are located in this area.

The Board stated that according to the Building Inspector, the new second-story study, solarium and bedroom area is being unlawfully rented as a second dwelling unit which contains separate cooking facilities. The second dwelling unit is not allowed in a Single Family Residence nor in a Single Residence District. The Board said that it will decide whether or not a violation exists on the basis of whether or not the area constitutes a second dwelling unit with the appliances being an important part of that dwelling unit.

Mr. Leggat stated that there are ten different entryways. The area in question is served by three entrances with one common entrance to the main house.

David Falwell, 9 Washburn Avenue, spoke for a group of neighbors who were present. He requested that the Board affirm the order of the Building Inspector that a second residence exists on the premises. He said that the group bought homes in the neighborhood as a single family residence area and would like it to remain that way. He added that the building plans for the new construction showed the area in question as a solarium to be used by the family as a personal residence. The area above the garage is rented to two students whose behavior has been very disruptive.

Mrs. Leggat responded that the appliances were more of a convenience for the students, who also used the kitchen facilities of the owners as well as their television, VCR and washer/dryer.

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Paul Maloney, 7 Tennyson Road, said that the unit is accessed by a separate entrance and is used as a separate dwelling unit.

Statement of Facts

The subject property is located at 1 Washburn Avenue, in a Single Residence District, on a 21,005 square foot lot.

On November 24, 1986, Building Permit #22,479 was issued to D. Ann Cooke Leggat authorizing construction of a one story family room addition, two story garage and study, solarium with bedroom over, extend porch and relocate dining room. The application and plans did not make mention of or reflect an area that might have been construed to be used as future kitchen space.

In response to neighborhood allegations that the Leggat construction, when completed would be used as a second dwelling unit for rental purposes, the Inspector of Buildings requested and received a notarized affidavit dated October 10, 1989, signed by D. Ann Cooke Leggat, that the home at 1 Washburn Avenue would be used in conformance with the Town of Wellesley Zoning Bylaws.

On October 16, 1989, pursuant to a final on-site inspection, the Inspector of Buildings issued a Certificate of Use and Occupancy containing the following conditions:

"Not to be used as a second dwelling unit, nor to contain separate cooking facilities."

On March 23, 1990, in response to complaints from neighborhood residents alleging the illegal second dwelling use of a single family residence, the Inspector of Buildings conducted an on-site inspection of the newly constructed addition. He found the first floor level over the garage to contain a large ell-shaped room with a TV area, a dining table and chairs; upper and lower wooden cabinets usually found in kitchens; formica counter-top with single bowl sink installed; undercounter refrigerator; toaster oven; microwave oven; two separate entrances directly accessible from the outside and isolated from the main living areas occupied by the Leggat family; one bathroom; and a staircase leading to a second story in which two bedrooms with closet areas are located.

In a letter to Mr. and Mrs. Leggat, dated April 3, 1990, the Inspector of Buildings concluded that in his opinion "the newly constructed addition meets the requirements of a dwelling unit as defined in Section IA of the Zoning Bylaw"; and ordered that, as two separate dwelling units are not allowed on a lot located in a Single Residence District without permission from the Zoning Board of Appeals, the Leggats were to remove all kitchen facilities within thirty days in order to bring their single residence unit into compliance with the Zoning Bylaw.

In a letter appealing the decision of the Inspector of Buildings, dated April 28, 1990, Mr. Leggat bases his appeal on the grounds that a second dwelling unit does not exist on his property. He states that the area over the garage is used as a rec room, a study, a wet bar and a sleeping area for two foreign language students. The sleeping quarters are intended to be used by guests and family. The stairway to the outside and the garage are used in common with the rest of the house.

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Decision

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This Authority has made a careful study of the evidence presented. The petitioner is appealing the decision that the premises at 1 Washburn Avenue constitute a two-family dwelling in violation of Section II of the Zoning Bylaw, and that the kitchen facilities in the second dwelling unit must be removed immediately to bring the property into conformance with the Zoning Bylaw.

Section IA of the Zoning Bylaw defines a dwelling unit as follows:

"A room, group of rooms, or dwelling forming a habitable unit for one family with facilities for living, sleeping, cooking and eating, and which is directly accessible from the outside or through a common hall without passing through any other dwelling unit."

It is the opinion of this Authority that the area above the garage at 1 Washburn Avenue meets all the specifications of a separate dwelling unit as delineated in Section IA of the Zoning Bylaw; and furthermore, is being used as a separate dwelling unit in direct contravention of the Affidavit signed by D. Ann Cooke Leggat and the Certificate of Use and Occupancy issued by the Inspector of Buildings and is in violation of Section II of the Zoning Bylaw which states:

"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, reconstructed or used, and no land shall be used, for any purpose except one or more of the following specified uses:

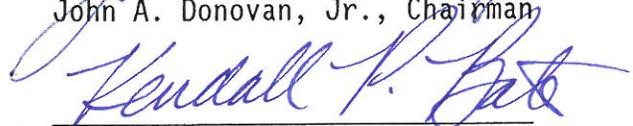
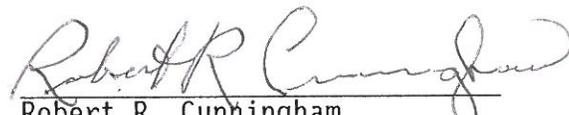
1. One-family dwelling".....

It is the unanimous opinion of this Authority that the Inspector of Buildings was correct in his conclusions.

Therefore, the appeal is denied; the order of the Inspector of Buildings is upheld; and the request before this Board 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

Kendall P. Bates

Robert R. Cunningham