



MAY 3 1 48 PM '91

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181JOHN A. DONOVAN, JR., Chairman
ROBERT R. CUNNINGHAM
KENDALL P. BATESELLEN D. GORDON
Executive Secretary
Telephone
431-1019RECEIVED
TOWN CLERK'S OFFICE
FRANKLIN P. PARKER
SUMNER H. BABCOCK
MAY 3 1 48 PM '91

ZBA 91-18
Petition of Robert P. DiNapoli
889 Worcester Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 25, 1991, at 8:15 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley, on the petition of ROBERT P. DINAPOLI requesting a Special Permit pursuant to the provisions of Section II A 8 (h) and Section XXV of the Zoning Bylaw to allow him to use a portion of his premises at 889 WORCESTER STREET, in a Single Residence District, for the conduct of a home occupation; namely a travel consultant with office hours from 9 a.m. to 6 p.m., Monday through Friday throughout the year, with four part-time employees. This petition was continued from the Public Hearing held on March 28, 1991.

Prior to a hearing on this petition, the Board of Appeals was to hear evidence and vote on whether specific and material changes in the conditions upon which prior unfavorable action was based had occurred (ZBA 88-96).

On March 11, 1991, the petitioner requested a hearing before this Board, and thereafter due notice of the hearing was sent by mailing and publication. Due notice of the continued hearing on April 25, 1991 was also sent by mailing and publication.

No one appeared to present the case at the hearing on April 25, 1991.

Statement of Facts

The subject property is located at 889 Worcester Street, in a Single Residence District.

In 1988, the petitioner applied for a special permit to use a portion of his premises for a home occupation, namely that of a travel consultant agency, with office hours Monday through Friday from 9 a.m. to 5 p.m. throughout the year, with two full time employees. The Board of Appeals denied the petition in a decision filed with the Town Clerk on December 7, 1988.

The petitioner filed an appeal to this decision in the Norfolk Superior Court, which was received in the office of the Town Clerk on December 19, 1988. This appeal was denied in a Judgement dated August 4, 1989, signed by Judge Elizabeth Donovan.

The petitioner appealed the Judgement to the Appeals Court, which, on July 5, 1990, upheld the Judgement of the Superior Court.

ZBA 91-18
Petition of Robert P. DiNapoli
889 Worcester Street

The petitioner filed an application for Further Appellate Review with the Supreme Judicial Court. This application was denied on September 19, 1990. The docketing of the rescript of the petitioner's appeal occurred on September 28, 1990.

May 3 1 48 PM '91
RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02181

The petitioner filed a request for a Special Permit for a home occupation on March 11, 1991, to be heard at the Public Hearing on March 28, 1991. At that hearing, the petitioner was represented by William Mohan. The Board indicated to Mr. Mohan that it considered the petition to be repetitive and agreed to continue the hearing until April 25, 1991 to enable to petitioner to complete the procedures required for submission of a repetitive petition, namely, appearance before the Planning Board for a determination that there have been specific and material changes in the conditions upon which unfavorable action had been based.

Upon advice of Town Counsel, the petitioner was notified by both the Planning Board and the Board of Appeals that an appearance before the Planning Board would be subsequent to a finding and a unanimous vote of the Board of Appeals, acting as the Special Permit Granting Authority, that there have been specific and material changes in the conditions upon which unfavorable action had been based, and that this would occur at the Public Hearing on April 25, 1991, prior to any consideration of the petition on its merits.

The Planning Board, on March 18, 1991, voted to recommend denial of the request for a Special Permit and indicated its belief that the application constituted a repetitive petition pursuant to the Zoning Bylaws, it having been denied within a prior two year period.

Decision

This Authority has made a careful study of the evidence presented. It is the opinion of this Authority that the petitioner's request for a Special Permit for a home occupation pursuant to Section II A 8(h) of the Zoning Bylaw must be considered as a repetitive petition pursuant to the provisions of Section XXV of the Zoning Bylaw.

Section XXV of the Zoning Bylaw states:

"No application or petition which has been unfavorably and finally acted upon by the Special Permit Granting Authority shall be acted favorably upon within two (2) years after the date of final unfavorable action unless:

1. Said Special Permit Granting Authority finds, by a unanimous vote of a three-member Board, specific and material changes in the conditions upon which unfavorable action was based, and describes such changes in the record of its proceedings; and
2. All but one of the members of the Planning Board consents thereto; and
3. After notice is given to parties in interest of the time and place of the proceedings when such consent will be given..."

ZBA 91-18
Petition of Robert P. DiNapoli
889 Worcester Street

It is the opinion of this Authority that Mr. DiNapoli's request for a Special Permit for a Home Occupation constitutes a repetitive petition, as, in the opinion of this Authority, "the date of final unfavorable action" is held to be September 28, 1990, the date of docketing of the rescript in Norfolk Superior Court, and the required two years have not elapsed since that date.

It is the opinion of this Board that, based on the submitted petition, and in light of the previous decision and a lack of evidence to the contrary, there have been no specific and material changes in the conditions on which the prior unfavorable action had been based.

This Authority, by unanimous vote, denies reconsideration of the repetitive petition within the required two year time period.

As reconsideration of the repetitive petition has been denied, consideration of the request as a new petition is moot and this case 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


William E. Polletta

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02161

May 3 1 48 PM '91