



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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ZBA 94-5  
Petition of Erika C.M. Hampe  
18 Maugus Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 24, 1994 at 8:10 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of ERIKA C.M. HAMPE requesting a Special Permit pursuant to the provisions of Section II A 8 (a) and Section XXV of the Zoning Bylaw to allow the premises at 18 MAUGUS AVENUE, in a Single Residence District, to be used as a lodging house for 8 lodgers; and upon the remand contained in the Mass. Appeals Court decision No. 92-P-877 as follows:

"to the board of appeal of Wellesley for consideration of an application by Hampe for a special Permit to accommodate 8 lodgers, such permit to be issued on a reasonable long-term basis as permitted by the zoning bylaw."

The petitioner seeks alternative relief pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw for a Finding that the expansion of the pre-existing nonconforming use of her premises from a lodging house for 2 lodgers to a lodging house for no more than 8 lodgers shall not be substantially more detrimental to the neighborhood than the existing nonconforming use.

On February 7, 1994, the petitioner requested a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Edward C. Donlon, attorney for Mrs. Hampe. Mr. Donlon said that Mrs. Hampe is applying for a Finding under MGL Chapter 40A, Section 6, and not for a Special Permit under Section II A 8 (a) under the Zoning Bylaw because she believes that Section 6 is the correct basis for the application, as the issue is the expansion of the nonconforming use.

The Board stated that it viewed the remand as the Appeals Court ordering the Board to decide whether a Special Permit should be issued for 8 lodgers, and that it would make no ruling regarding a Finding pursuant to Section 6.

Mr. Donlon disagreed with the Board's position.

No other person present had any comment on the petition.

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Statement of Facts

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The subject property is located at 18 Maugus Avenue on a 20,610 square foot lot, in a Single Residence District. The house 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, the premises were occupied by a family who had, as far as Town records can ascertain, two lodgers, and served meals to Babson students. This use was 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, the Hampes requested permission from the Board of Appeals to use the house as a combination lodging and apartment house.

In its 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 this decision to the Norfolk District Court, which 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.

The ZBA decision of September 20, 1977 (ZBA 77-34) reinstated its decision of October 15, 1975. The Hampes again filed an appeal, which they subsequently withdrew.

Mrs. Hampe became the sole owner of the property, and in 1982, and annually thereafter, the Board of Appeals granted Special Permits to allow no more than eight lodgers subject to certain conditions. The last Special Permit (ZBA 87-102) expired on December 31, 1989. Mrs. Hampe declined to renew the Special Permit on the grounds that the use of the premises as a lodging house had grandfathered status as a pre-existing nonconforming use.

On January 3, 1990, Arthur LaConte, the Zoning Enforcement Officer, issued a Cease and Desist Order on the use of the property as being in violation of the Zoning Bylaw.

On January 28, 1992, the case was heard by Judge John M. Xifaras at the Norfolk Superior Court. Judge Xifaras' Order, dated February 19, 1992, stated:

- "1. It is hereby declared that Erika C.M. Hampe's lodging house was a non-conforming pre-existing structure and use prior to the enactment of zoning by the Town of Wellesley.
2. The defendent Erika C.M. Hampe in order to have a lodging house for more than two lodgers must obtain a permit annually from the Town of Wellesley."

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Mrs. Hampe then appealed the decision of the Superior Court to the Appeals Court. In a decision entered on September 22, 1993, the Appeals Court ordered:

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"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 required 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 bylaw."

On November 29, 1993, the Supreme Judicial Court denied Mrs. Hampe's Application for Further Appellate Review.

On February 7, 1993, Mrs. Hampe's request for a Special Permit pursuant to the remand ordered by the Appeals Court and MGL Chapter 40A, Section 6, which was accompanied by a letter of explanation from her attorney, Edward C. Donlon, Esq., was filed in the office of the Town Clerk.

On February 15, 1994, the Planning Board reviewed this petition and voted to recommend issuance of the special permit pursuant to the directive from the court.

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. Both the Superior Court and the Appeals Court have made the determination that the use of the premises as a lodging house for up to 2 lodgers is a matter of right, and that the use of the premises for more than that number is subject to the granting of a Special Permit. The Appeals Court thus remanded the matter to the Board of Appeals for consideration of whether to grant a new Special Permit for up to eight lodgers, and to determine the length of time that the Special Permit shall be in force. The Court has suggested that the special permit be issued

"on a reasonably long-term basis as permitted by the zoning bylaw."

It is the opinion of the Authority that the language of the remand is very precise in stating that the relief sought is to be a renewable special permit, and not an eternal permission to use the premises as a lodging house for eight lodgers.

Therefore, this Authority will base its decision solely on Section II A 8 (a) of the Zoning Bylaw, which describes additional uses, of which a lodging house is one, allowed in a Single Residence District, provided a Special Permit is granted for said use, and on the language of

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the Appeals Court remand.

It is the opinion of this Authority that the use of the twenty room dwelling as a lodging house, under Mrs. Hampe's supervision, for no more than eight lodgers, will not reduce the value of the property in the area, that the use does not disturb or disrupt the neighborhood, and that the use will allow the petitioner to secure a reasonable income from the property. the opinion of this Authority, 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 number of rooms and the size of the dwelling.

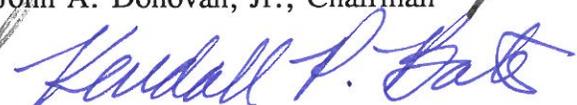
It is the unanimous decision of this Authority that a Special Permit be granted to Erika C.M. Hampe to use her premises at 18 Maugus Avenue, in a Single Residence District as a lodging house for no more than eight lodgers under the following conditions:

1. No more than 8 lodgers may occupy the dwelling at any one time.
2. Off-street parking shall be provided for the all the vehicles of the lodgers in residence.
3. All applicable laws and ordinances and State and local building and fire codes and regulations shall be complied with.
4. This Special Permit shall expire three 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

  
John A. Donovan, Jr., Chairman

  
Kendall P. Bates

  
William E. Polletta