



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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ZBA 95-23

Petition of Frank S. and Anne R. Bae  
36 Brook Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 30, 1995 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of FRANK S. AND ANNE R. BAE requesting renewal of a Special Permit pursuant to the provisions of Section II A 8 (a) and Section XXV of the Zoning Bylaw to allow their premises at 36 BROOK STREET, in a Single Residence District, to continue to be used as a residence for not more than two families, a use not allowed by right in a Single Residence District.

On March 13, 1995, the petitioners filed a request for a hearing before this Authority, and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Frank and Anne Bae. Mr. Bae asked for renewal of the Special Permit originally granted two years ago, and renewed last year. He said he has followed all the conditions listed in the 1994 decision.

Naomi Stonberg, 31 Brook Street, speaking on behalf of the neighbors, requested a continuance on the petition. The neighbors were very concerned that Conditions 4 and 5 in the 1993 decision had been changed in the 1994 decision without notice, a Public Hearing, a public vote, or the opportunity for neighbors to have input as to the changes.

The Board stated that the change in Conditions 4 and 5 relating to the freezing of the specific floor plans of the interiors of the units had been changed when it became apparent that such restrictions were illegal under MGL Chapter 40A, Section 6. It is the understanding of the Board that it can condition the use of the premises, which includes the number of kitchens allowed with said use, but cannot freeze the interior floor plan of the premises. The wording of Conditions 4 and 5 in the 1993 decision was illegal. The Board corrected a mistake that it made due to a misunderstanding of the law and the application of the law. In the opinion of the Board, the correction of the mistake did not require a Public Hearing.

Ms. Stonberg stated that the neighbors were concerned with the process and requested that any future changes in the conditions would require notice and a public vote.

The Board responded that it could not include a premise that deals with the future in any decision. The 1995 decision would include that the 1993 decision had illegalities which were

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eliminated in the 1994 decision and that a discussion regarding the illegalities had occurred at the present Public Hearing. The Board further stated that the conditions in the 1995 decision would be identical to the corrected language of the 1994 decision.

Anneliese Hoelker, 29 Brook Street, spoke in support of the petition.

Statement of Fact

The subject property is located at 36 Brook Street, in a Single Residence District, on a 24,082 square foot lot. The house contains 24 rooms, including 6 bathrooms, one kitchen and a kitchenette. The dwelling was constructed in 1890 and used as a two-family dwelling from that time until purchased by Pine Manor College in the 1940's. In 1947, the Board of Selectmen granted permission for its use for Educational purposes. From 1948 until 1960, the property was used as a dormitory by Dana Hall Schools, and Special Permits were granted annually or biennially by the Board of Appeals for that use. In 1965, the property was purchased by John J. Dillon, who changed its use from a dormitory to a single family dwelling.

In 1984, the property was purchased by the petitioners and used as a multi-family dwelling without benefit of a Special Permit for that use. In 1993, the petitioners came before the Board of Appeals to request a Special Permit to legalize the use of the premises as a two-family dwelling. The Board granted the Special Permit (ZBA 93-7) for one year, which included stringent conditions regarding the two-family use. In 1994, the petitioners requested renewal of the Special Permit, which the Board granted (ZBA 94-14).

In drafting the decision renewing the Special Permit in 1994, the Board realized that the language in Conditions 4 and 5 of the 1993 decision was illegal pursuant to MGL Chapter 40A, Section 6, in that an interior floor plan could not be frozen. The number of kitchens could be conditioned, but not their location or the location of any other rooms in the dwelling. The Board corrected the aforementioned conditions by eliminating the illegal language.

The petitioners are requesting renewal of their Special Permit to continue the use of the premises as a two-family dwelling with the identical conditions as enumerated in ZBA 94-14.

Letters from Arthur LaConte, Zoning Enforcement Officer, dated October 13, 1994 and March 6, 1995, attesting that he had inspected the premises and had found no violations, are on file in the office of the Board of Appeals.

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On March 28, 1995, the Planning Board reviewed the petition and voted to recommend approval of the request for a two year period under the same terms and conditions as are currently in effect.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The petitioners have adhered to all conditions in the Special Permit granted in 1994. It is the opinion of this Authority that the continued use of the premises as a two-family dwelling will not be injurious or offensive to the neighborhood, and that the dwelling can no longer be used or adapted at a reasonable expense and with a fair financial return without the rental income from the second dwelling unit.

Therefore, it is the unanimous decision of the Authority to grant a Special Permit pursuant to the provisions of Section II A 8 (a) for the continued use of the premises as a two-family dwelling, subject to the following conditions:

1. The premises shall contain **two** and **only two** dwelling units, namely the "Main House" and the "Garage Apartment"; and at no time shall additional cooking facilities of any type be installed in any room of the premises except the two kitchens currently in existence.
2. The property owners, Frank and Anne Bae, shall be the owner-occupants of the "Main House" for the duration of the Special Permit. The "Garage Apartment" shall be considered the second dwelling unit available for rental to a second family unit.
3. All applicable State and local laws, ordinances and regulations shall be complied with by both the petitioners and the tenant(s).
4. The premises shall be inspected by the Zoning Enforcement Officer within a two week period prior to 6 months from the date of this decision to ensure continued compliance with Section II A 8 (a) of the Zoning Bylaw, and again within a two-week period prior to the filing of a request for renewal of this Special Permit. A report of each inspection shall be submitted by the Zoning Enforcement Officer to the office of the Board of Appeals.
5. The responsibility for arranging said inspections is that of the petitioners.
6. All parking related to the use of the premises shall be on-site, and no parking related to the use of the premises as a two-family dwelling shall be allowed on Brook Street or adjacent streets.

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7. This Special Permit shall lapse, expire, and be of no further effect or force upon the earlier to occur of the following:

- a. Conveyance of the property by the current owners, Frank and Anne Bae; or
- b. The expiration of this Special Permit.

8. If any of the aforesaid conditions are breached, this Special Permit shall be revoked immediately, the second kitchen shall be removed, and court action shall be instituted.

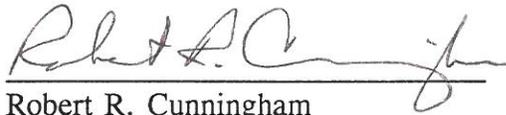
9. This Special Permit shall expire one year from the date of this decision.

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.

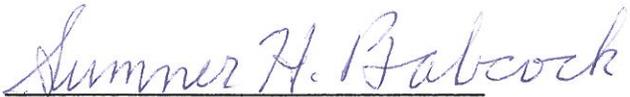
cc: Planning Board  
Inspector of Buildings  
edg



Kendall P. Bates  
Kendall P. Bates, Acting Chairman



Robert R. Cunningham  
Robert R. Cunningham



Sumner H. Babcock  
Sumner H. Babcock