



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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ZBA 95-47

Petition of Timothy J. and Mary Anne Maines  
12 Waban Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, September 28, 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 TIMOTHY AND MARY ANNE MAINES requesting 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 12 WABAN STREET, in a Single Residence District, to be used as a two-family dwelling, as the petitioners claim that the dwelling, constructed prior to 1925, can no longer be used or adapted at a reasonable expense and with a fair financial return as a Single Family dwelling.

On June 5, 1995, the petitioners filed a request for a hearing on June 22, 1995 before this Authority and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing on June 22, 1995 was Mary Anne Maines, who asked for a Special Permit to install a separate apartment on the third floor of their residence. She stated that her home had been used as a boarding house prior to 1925, and had up to 4 non-family residents until they purchased the house in 1993. She felt that the change of use to a two-family dwelling would not be more detrimental to the neighborhood than its current use.

Mrs. Maines said that she is expecting their third child in December and would like to remain at home. If she does not work, at least 38% of their combined income would be lost.

The Board stated that it needed figures on household expenses and combined incomes in order to reach a decision. The Board agreed to continue the petition, if the Maines would submit the requested financial information. The petition was continued to the Public Hearing to be held on August 24, 1995.

The requested financial information was filed on August 7, 1995. As there was no Public Hearing held in August due to an insufficient number of Board members, the petition was continued to September 28, 1995. Due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing on September 28, 1995 was Keith Hughes, attorney representing the Maines. Mrs. Maines was also present. Mr. Hughes explained that the

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house, which had been used for many years in the past as a rooming house, is a large victorian. The Maines would like to convert the third floor to a new apartment. No facade changes would be necessary, and the impact on the neighborhood would be very slight.

Mr. Hughes explained that the Maines presently have one child, are paying support for a step-child, and are expecting a new baby. The additional expenses of the baby and the loss of income as Mrs. Maines would not be working, would make it difficult to maintain the property. The Maines would like to rent to "nice people" and the premises would be owner occupied.

Mr. Hughes noted that the new Comprehensive Plan encourages multi-family residences in neighborhoods that presently have mixed use. The Maines' home is in such a neighborhood.

Mr. Hughes submitted a petition in support of the Maines, which had been signed by 21 neighborhood residents, of whom 14 were property owners. He also submitted a copy of the Maines' property tax bill, which designates the property as a two-family dwelling.

William Moynihan, 9 Waban Street, expressed opposition to the petition. He was concerned with the potential erosion of the single family neighborhood, traffic and fire safety.

Ed Hand, 26 Weston Road, expressed opposition to the petition. He stated that there was no question of a "fair financial return" as the Maines had purchased their home for \$265,000 and could resell it for much more. The prior owner, a single parent with two children, had rented rooms to two Babson students to defray the maintenance costs. He felt there was no justification to grant the special permit which, once granted, would be difficult to revoke.

Richard Clayton, 8 Cross Street, expressed opposition to the petition. He explained that the neighborhood, which is bordered by retail use, is unusual mix with most multiple family dwellings on the perimeter of the triangle and single family dwellings in the interior. In recent years, three homes have reverted permanently from multi-family to single family use.

Steve Velky, 7 Waban Street, expressed support for the petition.

Sandra Carter, 14 Waban Street, expressed opposition to the petition. She stated that the property has been used as a single family home for the past twenty years, and that the prior owner had occasionally had two tenants during that time. The property, as a single family home, could be resold at a profit, so the "financial return" standard was insupportable.

The Board stated that the intent of Section II A 8 (a) of the Zoning Bylaw was to allow long time owners of large, old homes, who might have had a change in financial circumstances in

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later years, the opportunity to defray expenses by adding a second dwelling unit to their home. The Maines purchased the house two years ago, and should have been aware of the maintenance costs of their home. The addition of a baby, while welcome, is not sufficient reason to allow the property to be converted to a two-family dwelling.

Statement of Facts

The subject dwelling is located at 12 Waban Street, in a Single Residence District. The dwelling, which contains 12 rooms and 3 1/2 baths, was built between 1886-88, and was used as a rooming house for Wellesley College students from 1920 to 1944. From 1944 to 1969 the property was used as a rooming house. In 1969 the property was purchased by Joseph Sangiolo, who continued to use it as such. In 1971, Mr. Sangiolo petitioned the Board of Appeals to grant him permission to use the premises as a lodging house, as he had been notified in 1970 by the Inspector of Buildings that the use of the premises as a lodging house was illegal (ZBA 71-41). The Board of Appeals denied the petition finding "the present multiple occupancy use is not a valid continuing nonconforming use". From 1975 to 1993, the property was owned by the Woods and then the Truslows, who often had up to two unrelated tenants living in the premises. The Maines purchased the property in 1993, and are now seeking a Special Permit pursuant to Section II A 8 (a) of the Zoning Bylaw to use the premises as a two-family dwelling.

The following information was submitted in support of the petition: A document dated May 31, 1995 containing a Letter to the Zoning Board of Appeals, Age of Building, Pictures of Residence, Registrar's List of Residents, Wellesley College Library Listing of Residents, Existing and Proposed Floor Plans dated May 30, 1995, drawn by Sarah N. Hines, A.I.A.

Financial Information dated August 2, 1995, which included Earnings, Budget/Present Conditions, Budget/New Baby/Mother Working, Budget/New Baby/Mother Home, Mortgage and Tax Statements, Income Tax Returns, Child Support Payments, Child Care/Daycare Payments, Utilities, and Other Monthly Payments was also submitted.

Letters in opposition to the petition were received from Linda Clayton, 8 Cross Street; Edward S. Hand and Susan Hand, 26 Weston Road; William and Mildred Moynihan, 9 Waban Street, and Sandra Carter, 14 Waban Street.

On June 20, 1995, the Planning Board reviewed the petition and voted to recommend that the special permit for two-family use not be granted as it appears that the prerequisite conditions are not present.

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Decision

This Authority has made a careful study of the materials submitted and the information presented at the two Public Hearings. This Authority finds that the subject property was in existence when the Zoning Bylaw took effect in 1925.

It is the finding of this Authority that the original building is being used and has been used for the past twenty years as a single family dwelling, a use permitted in the district, and that the argument of a "fair financial return" is not applicable, as the property has appreciated in value since being purchased by the petitioners two years ago.

It is the further finding of this Authority that any additional expense created by the arrival of another child in the family, even coupled with the temporary or permanent loss of income from a working parent, is not sufficient justification for the granting of a special permit to change the use of the premises from a single to a two-family dwelling, particularly inasmuch as other income producing options are available to the petitioners that do not require the grant of a special permit that, once granted, would be difficult to revoke.

Therefore, it is the unanimous finding of this Authority that the request for a special permit be denied, and the petition 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  
Board of Assessors  
edg

  
John A. Donovan, Jr., Chairman

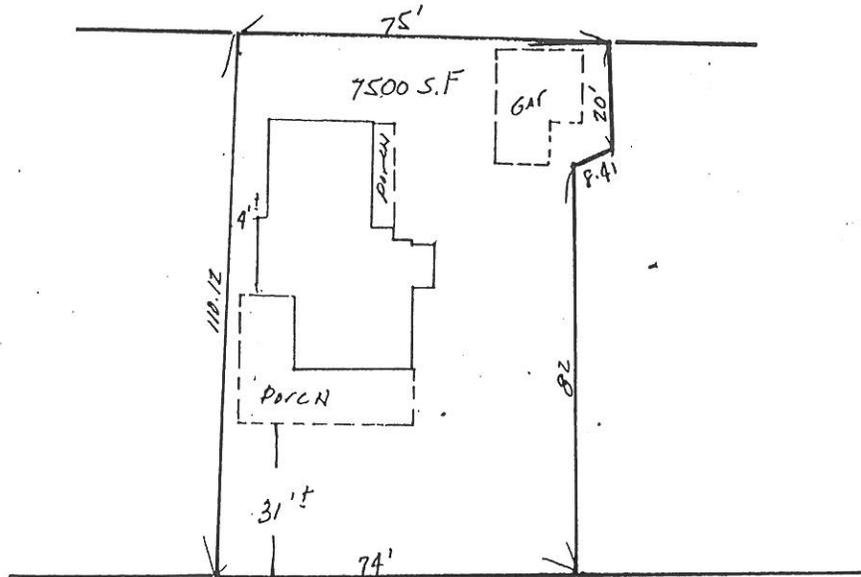


Kendall P. Bates



William E. Polletta

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WABAN STREET

CERTIFIED to Bristol Mortgage Corp & Timothy & Mary Anne Maines

Location: #12 WABAN ST  
 Weymouth, MASS  
**MORTGAGE INSPECTION PLAN**  
 Scale: 1" = 30  
 Date: 5/6/1993

Deed recorded in NORFOLK Registry of Deeds, BK 5272 PG 249  
 and being shown as Lot on a plan by  
 dated and recorded in BOOK PAGE

I certify that the above property does not lie within the Flood Hazard  
 zone as delineated on F.E.M.A. community map no. 250255

This plan is for bank purposes only and is not to be used to locate street  
 or property lines. I hereby certify that the structure(s) shown on this plan  
 are located approximate hereon and that it/they conformed to the  
 local zoning by-law with respect to horizontal offset requirements when constructed



DESIMONE SURVEY SERVICE, INC. 38 coffee street  
 Medway, Ma. 02053

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 Timothy J. Maines Mary Anne Maines

DATE: June 9, 1993