



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 95-8
Petition of James Kaufman
101 Oak Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, January 19, 1995 at 8:10 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of JAMES KAUFMAN 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 101 OAK STREET, in a Single Residence District, for the purpose of a home occupation; namely, safety consulting, with hours from 9 a.m. to 5 p.m. on Monday through Friday throughout the year, and 4 part-time employees whose total hours would be less than 80 hours per week. This use is not allowed by right in a Single Residence District.

On January 3, 1995, the petitioner 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 was James Kaufman, who said that he was requesting a Special Permit to conduct his Safety Consulting business with 4 part-time employees, no more than two of whom would be working at the house at any one time. His work does not involve clients coming to the house, as he goes to his clients at their locations. He has sufficient off-street parking for his employees in his driveway. The total working hours for the 4 part-time employees would be less than the equivalent of two full-time employees.

Mr. Kaufman said that, although he shares his driveway with his abutters, the Guarinos, neither they nor any other neighbors oppose the petition.

The Board noted that Mr. Kaufman had business premises in Natick as well as in his home, and asked why he was requesting a Special Permit, if other space was available. Mr. Kaufman responded that the location at 192 Worcester Street in Natick is a small office with 370 square feet of space, and is used as the office for Laboratory Safety Workshop, a not-for-profit educational center that he founded 15 years ago at Curry College, where he is a chemistry professor. This work was previously done at home, but has been moved to the Worcester Street location. The office is staffed with two employees of his consulting business; one who works two days a week, and one who works three days a week.

The Board commented that it appeared that Mr. Kaufman was running a full scale business from his home, rather than a home occupation. Mr. Kaufman said that his home is his office

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for his work, and that the employees would be hired to provide clerical help for the proposals that he writes. He cannot afford to have sufficient office space for his employees, if he had to rent additional space outside his home.

The Board noted that Mr. Kaufman had been using his premises for a home occupation with one employee without a Special Permit, as outlined in a letter from the Assistant Building Inspector, and asked how long the violation had existed. Mr. Kaufman said that his first employee was hired to work in his home in 1986. He became aware of the need for a permit several years ago, picked up the necessary paper work in the Building Department, but never filed for a permit. He was before the Board at this time to correct the violation.

No other person present had any comment on the petition.

Statement of Facts

The subject dwelling is located at 101 Oak Street in a Single Residence District.

The petitioner is requesting a Special Permit for a home occupation with hours from 9 a.m. to 5 p.m. on Monday through Friday throughout the year, and 4 part-time employees whose total hours will be less than 80 hours per week.

Floor plans of the premises depicting a basement office and an office on the second floor; and photographs were submitted.

The petitioner leases office space at 192 Worcester Street, which is staffed by two part-time employees, and from which all shipping and receiving of materials occurs. This office is the location of the Laboratory Safety Workshop, originally founded by Mr. Kaufman, which is now a client of his consulting practice.

On December 7, 1994, the Assistant Building Inspector, while conducting a routine building inspection of the basement garage, observed that the petitioner had what appeared to be a home office which was staffed. A letter regarding the violation of the Zoning Bylaw was sent to the petitioner on December 12, 1994. Following receipt of the letter, the petitioner made application for a Special Permit for a home occupation.

On January 10, 1995, the Planning Board voted to recommend that the requested Special Permit be denied as the Board is of the opinion that the proposed home occupation is not in keeping with the customary character of a residential area.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing and finds that the petitioner's request for a Special Permit for the

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"home occupation" of Safety Consulting exceeds the parameters of a home occupation as it is not "subordinate to residential use", but equal to that use in that the premises contain two offices, one of which would be staffed by four part-time employees five days a week with split shifts from 9 a.m. to 5 p.m.

Mr. Kaufman also leases office space in Natick, which is staffed by the equivalent of one full-time employee, for the conduct of another facet of his consulting practice. This portion of the consulting practice, with one employee, was originally conducted in the petitioner's home. The growth of the consulting practice to include 4 part-time employees working in the petitioner's home is in the nature of a full-time business, and not a "home occupation".

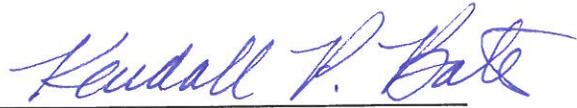
It is the opinion of this Authority that constant traffic created by the arrival and departure of 4 part-time employees throughout the week would create a situation that could not be monitored by the Board of Appeals regarding hours of employment, and would disturb and disrupt the customary character of the neighborhood.

It is the opinion of this Authority that the scope of this safety consulting business is such that it more properly belongs in an off-premise office, and not in a residential setting. This Authority is of the opinion that the grant of a Special Permit for this home occupation would substantially derogate from the intent and purpose of the Zoning Bylaw.

Therefore, the requested Special Permit is hereby denied and this petition is dismissed. Furthermore, the Board of Appeals directs the petitioner to immediately discontinue the practice of having any employees on the premises, thereby eliminating the current zoning violation, and to file for a by-right Home Occupation permit in the Building Department within 10 days of 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, Acting Chairman



Sumner H. Babcock



William E. Polletta

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