

**ZONING BOARD OF APPEALS**

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ZBA 2005-47
Appeal of Dean Behrend
136 Worcester Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 9, 2005 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the appeal of DEAN BEHREND pursuant to the provisions of Section XXIV-C of the Zoning Bylaw of the decision of the Inspector of Buildings ordering the use of 136 WORCESTER STREET for operation of a landscaping business to cease and desist.

On May 23, 2005, 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 Dean Behrend.

The Board asked Mr. Behrend if he resides at 136 Worcester Street. Mr. Behrend said that he does reside at 136 Worcester Street.

Mr. Behrend said that he has owned that property since 1987. He said that he was granted a Variance to construct a two-door garage, 25 feet by 40 feet, for the propagation of plants and flowers. He said that he has occasionally had piles there to do planting and potting. Mr. Behrend said that he has occasionally had some equipment there to do repairs inside the garage. He said that he has another location outside of town where he houses the majority, if not all, of his equipment.

The Building Inspector said that prior to March, 2005 he received an anonymous complaint over the telephone that there was a business operating at 136 Worcester Street. The Building Inspector said that when he conducted an investigation at the property, there was a small pile of mulch out near the roadway. There were approximately three or four large trucks on the property. There was equipment on the right side of the property.

The Building Inspector said that a Variance was granted by the Zoning Board of Appeals in 1990 for construction of an oversized garage. The Variance was granted with four conditions.

1. That there shall be no outside storage of trucks or heavy equipment on the property.

The Building Inspector said that when he visited the property there were four large pieces of equipment with the words, "Behrend Landscaping" on them, which is in violation of Condition 1.

2. That no equipment or vehicles used in the petitioner's landscaping business shall be kept at the subject location at any time.

The Building Inspector said that the trucks had the words, "Behrend Landscaping" on them.

3. That there shall be no outside storage of loam, fertilizer, seed or any other materials related to any horticultural activity on the property.

The Building Inspector said that when he visited the property there was a small pile of bark mulch out near the roadway.

The Building Inspector said that the left side of the property is cleared and there is no equipment stored there. He surmised that there is probably bulk storage there based on the leftover pile.

The Building Inspector said that he sent a letter to Mr. Behrend via certified and regular mail. The certified letter was never picked up. Mr. Behrend did come into the Building Inspector's office and talked with him. Mr. Behrend stated to the Building Inspector that he resides at 136 Worcester Street. The Building Inspector said that he disagrees with that assertion. The Building Inspector said that he believes that Mr. Behrend resides at 70 Old Town Road or at 96 Hampshire Road. Mr. Behrend owns several properties in town.

The Building Inspector said that Mr. Behrend disagreed with the opinion that he is in violation of zoning.

The Building Inspector said that when he drove by the property on June 9, 2005 there was one truck parked behind the garage and the material was still on the left side of the property, although the small pile of bark mulch was removed.

The Building Inspector said that he believes that Mr. Behrend is running a business in a residential neighborhood, which is a zoning violation, and that should cease and desist.

The Board asked what the zoning is at that location. The Building Inspector said that it is a 10,000 square foot Single Residence District.

One member of the Zoning Board said that when he drove by the property, he counted seven trucks.

Another member of the Zoning Board said that he drives by the property every day on his way to his office. He said that every day, no matter what season, there are trucks parked there, materials are stored there, and there are huge concrete barriers sitting out there, all of which are in violation of the bylaw. The Board said that the property needs to be cleaned up so that it looks like a single family residence.

A third member of the Board said that he went to the property on June 9, 2005 and day or two prior to that. He said that on the left hand side there was a pile of tree logs. At the front of the property, there were piles of tree stumps. There was a pile of six or eight jersey barriers. There were at least four trucks there. There was one truck that was backed in under the trees that has vines growing all over it. There were two pieces of heavy equipment and a flatbed trailer. There were four cars there, which he assumed belonged to workers.

The Board questioned whether anyone lives in the house. Every shade in the house was fully drawn. Other than a green garden hose, there were no signs of occupancy there.

The Board said that it will urge the Building Inspector to impose a daily fine to the maximum permitted if Mr. Behrend does not clean the property up.

Dean Cartwright, 140 Worcester Street, asked to speak to the Board. He said that Mr. Behrend does live at 136 Worcester Street and is a good neighbor.

John Lin, 3 Dearborn Street, said that his property is next to 136 Worcester Street. He said that he bought his house about 2 ½ years ago. At the time he asked the builder at Sun Life what the house at 136 Worcester Street was used for. He was told that it was used by someone running a landscaping business. Mr. Lin said that he was surprised to learn that it is in a residential district. He said that he spoke with Mr. Behrend a few months ago when someone hit his fence. He said that Mr. Behrend indicated to him that he is running a business there, not necessarily landscaping next door, but that he does run a landscaping business. Mr. Behrend put in a few trees for Mr. Lin.

The Board said that regardless of whether Mr. Behrend does reside at 136 Worcester Street, he is still in violation of the conditions of the Variance.

Statement of Facts

The subject property is located at 136 Worcester Street, in a 15,000 square foot Single Residence District.

On April 6, 1990 the Permit Granting Authority granted a Variance to allow construction of an oversized 1 ½ story garage, approximately 40 feet by 25 feet for the dual uses of horticulture and automobile storage. The size of said garage is larger than a garage which is accessory to a single family use. The Variance was granted subject to four conditions:

1. That there shall be no outside storage of trucks or heavy equipment on the property
2. That no equipment or vehicles used in the petitioner's landscaping business shall be kept at the subject location at any time.
3. That there shall be no outside storage of loam, fertilizer, seed or any other materials related to any horticultural activity on the property.
4. That all conditions imposed by the Wetlands Protections Committee shall be met.

On June 9, 2005, the Board of Appeals heard the Appeal of Dean Behrend, filed on May 23, 2005, of the March 21, 2005 decision of the Building Inspector ordering operation of a landscaping business, storing of equipment and storing of bulk-landscaping materials to cease and desist at 136 Worcester Street.

The following information was submitted by the Inspector of Buildings pursuant to Section XXIV-C.3 of the Zoning Bylaw:

1. Letter to Dean Behrend from Michael Grant, Building Inspector, dated March 21, 2005, regarding Zoning Violation – 136 Worcester Street.

On June 7, 2005, the Planning Board reviewed the petition and stated:

The Board is aware that this property has apparently been in violation of the Zoning Bylaw and the 1990 decision of the Zoning Board of Appeals for an extended period of time. This decision specifically prohibits the storing of equipment and the storing of bulk-landscaping materials on the premises.

In addition to the violations referenced in the March 21, 2005 letter of the Inspector of Buildings, it is noted that during the winter months snow, presumably containing road salt, has been disposed of at the site such that the piles are above the roof level of the buildings. This is right at the edge of the Town Conservation District wetlands.

The Planning Board strong supports the action of the Inspector of Buildings and recommends that the appeal be dismissed.

On June 9, 2005, the Board considered whether the March 21, 2005 decision of the Inspector of Buildings ordering operation of a landscaping business, storing of equipment and storing of bulk-landscaping materials to cease and desist at 136 Worcester Street was in violation of the Town of Wellesley Zoning Bylaws and conditions 1, 2 and 3 of the Zoning Board of Appeals' decision, 90-17.

The Board found that storage of landscaping equipment and bulk landscaping materials is in violation of the Town of Wellesley Zoning Bylaws and conditions 1, 2 and 3 of the Zoning Board of Appeals' decision, 90-17.

The Board voted unanimously to uphold the decision of the Inspector of Buildings and to recommend that the appeal be denied.

Decision

This Authority has made a careful study of all the materials submitted and the information provided by all parties at the public hearing.

The appeal is denied.

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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.

Richard L. Seegel, Chairman

Robert A. Bastille

Robert W. Levy

cc: Planning Board
Inspector of Buildings
lrm