

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2005-54
Petition of Shani Kumarasena
30 Yarmouth Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 7, 2005 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of SHANI KUMARASENA requesting renewal of a Special Permit pursuant to the provisions of Section II A 8 (h) and Section XXV of the Zoning Bylaw to allow her to use a portion of her premises at 30 YARMOUTH ROAD, in a Single Residence District, for the purpose of a home occupation, namely, Pediatrician's Office, for 1 patient a day from 5:00 p.m. to 7:00 p.m., Mondays through Fridays, with no more than two patients per month. There are no nonresident employees and all parking is on the premises.

On June 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 Shani Kumarasena, who said that she had been before the Board six months earlier for a Special Permit. She said that she has a pediatrician's office in Wellesley and she lives at 30 Yarmouth Road.

The Board said that this is a 6-month renewal of the Special Permit. The Board said that Dr. Kumarasena did have to come back after 6 months because it was an original approval and there was some controversy.

The Board said that the number of patients was limited to no more than one per day or two per month. The Board asked how many patients Dr. Kumarasena had seen. Dr. Kumarasena said that she had seen one patient.

Dr. Kumarasena said that she is a practitioner who works out of her office on Washington Street. She said that she cares for her patients 24 hours a day, seven days a week. She said that when she is home, because she has small children, she prefers to not go out. She said that on occasion she has seen a patient during hours that she does not normally work. She said that she would like to have the flexibility to see a patient at her home. She wanted to be above board about the situation. She said that there seemed to be a lot of apprehension as to what could be with the neighbors.

The Board said that part of the reason that Dr. Kumarasena was asked to come back after six months was to see how things were going.

The Board said that two of the conditions of the Permit were that a site plan would be submitted and that Dr. Kumarasena would maintain a log. The Board asked if those conditions were met. Dr. Kumarasena

said that it was her understanding that because they were renovating their house, the Town already had the site plan.

The Board said that the reason for the condition was to satisfy the record that there is adequate parking off of the street. Dr. Kumarasena said that they have two driveways.

The Board said that it looked like work had been done on the house. The Zoning Board would need to have a copy of those plans for the file.

Dr. Kumarasena said that the plans will be submitted. She said that they have a three-car garage for two cars. She said that their cars will not be in the driveway. The Board said that it did not appear that parking would be a problem.

The Board said that before the existing Special Permit was approved the biggest uncertainty was that the proponent was not sure about the number of hours and the number of patients. The proponent seemed unclear as to what to include for times of day. The neighbors that appeared in opposition were also uncertain about whether it would be many patients and what the impact on the neighborhood would be.

The Board asked if there is a need for the proposed service. The Board said that Dr. Kumarasena had seen only one patient in six months. The Board asked why Dr. Kumarasena wanted to continue the Special Permit.

Dr. Kumarasena said that she would like to have flexibility in case there is a need. She said that she has already gone through all of this trouble to get the Special Permit.

John Carey, 14 Yarmouth Road, said that he was unclear as to whether the petitioners are actually living in the house. He said that it looks like there is no access to the house, particularly from the circular drive. He said that Dr. Kumarasena said that she had seen only one patient. He said that he was concerned that they were not living there and what the situation would be when they are living there.

The Board clarified that Mr. Carey thought that the six months period that elapsed may not have been representative.

Mr. Carey asked about the Special Permit. He said that the original Special Permit allowed for one patient a day and no more than two patients a month. He wanted to be sure that the number of patients was limited to two patients a month.

Dr. Kumarasena said that they have been living in the house since February.

Louise Grossman said that she is a neighbor but she was not notified of the Public Hearing. She said that she lives at 9 Yarmouth Road. The Board said that it is the Zoning Bylaw that people who live within 300 feet are notified. Ms. Grossman asked what the renewal application was for. The Board said that the application is for the same conditions.

1. There will be no signs or advertising.
2. All patient parking will be on site.
3. The number of patient visits will be limited to two per month.

4. The hours of operation will be limited to 5:00 p.m. to 7:00 p.m., Monday through Friday, with no more than one patient per day.
5. Allowed uses are examination and writing prescriptions. There are no procedures allowed.
6. Medical waste is to be removed from the premises within 24 hours.
7. The petitioner will keep a log of dates and times of actual use.
8. The Special Permit will be reviewed by the Zoning Board of Appeals after six months from the date time-stamped on this decision.
9. A site plan will be submitted for the file.

The Board said that Special Permits are usually granted for two years.

Thusitha Kumarasena said that he is Dr. Kumarasena's husband and that they have lived at 30 Yarmouth Road since the beginning of February.

The Board said that the reason that the Kumarasenas' residence is relevant is because the six month period that has gone by may not be representative of what the activity will be like over a normal six month period. Mr. Kumarasena said that he felt that it had been a representative six month period. He said that just because the two neighbors have not seen them living at the house, there is no justification to have Dr. Kumarasena come back every six months to renew her Special Permit.

Mr. Carey said that the circular drive, where the patients are supposed to park, looks completely inaccessible. The Board said that the Kumarasenas also have a side driveway that patients can use.

Dr. Kumarasena said that the period that has elapsed is a representative sample. She said that there are neighbors who did not come to the hearing who are supportive.

The Board said that the bylaw 2 A 8 (h) allows for home occupations. The Board said that there is a Special Permit for two patients per month and that only one patient was seen in the six month period. The Board said that it would be willing to renew the Special Permit for a six month period to see if this was a truly representative period or not.

The Board said that it is within its purview to determine if the use is invisible.

The Board said that it would like to have a copy of the log at the end of six months. The Board said that it would not ordinarily ask for such a short period but in this case six months makes sense.

Dr. Kumarasena said that this is something that she has done before in other states and it has worked. The Board said that the request to conduct a medical practice in a residential area was unusual to the Board.

Ms. Grossman said that she was concerned that this would start a trend that would escalate in the neighborhood. The Board said that would be of concern to them also.

Statement of Facts

The subject property is located at 30 Yarmouth Road, in a Single Residence District.

The petitioner is requesting renewal of a Special Permit to allow her to use a portion of her premises in a Single Residence District for the purpose of a home occupation, namely, Pediatrician's Office, for 1 patient a day from 5:00 p.m. to 7:00 p.m., Mondays through Fridays, with no more than two patients per month. There are no nonresident employees and all parking is on the premises.

On June 28, 2005, the Planning Board reviewed the petition and had no objection to granting the request with the same conditions.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

It is the opinion of this Authority that the requested use of a portion of the premises at 30 Yarmouth Road for the purpose of conducting a pediatric practice is in compliance with the requirements of Section II A 8 (h) of the Zoning Bylaw and shall neither disturb nor disrupt the customary character of the neighborhood.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, subject to the following conditions:

1. There will be no signs or advertising.
2. All patient parking will be on site.
3. The number of patient visits will be limited to two per month.
4. The hours of operation will be limited to 5:00 p.m. to 7:00 p.m., Monday through Friday, with no more than one patient per day.
5. Allowed uses are examination and writing prescriptions. There are no procedures allowed.
6. Medical waste is to be removed from the premises within 24 hours.
7. The petitioner will keep a log of dates and times of actual use.
8. The Special Permit will be reviewed by the Zoning Board of Appeals after six months from the date time-stamped on this decision.
9. A site plan will be submitted for the file.

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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.

Cynthia S. Hibbard, Acting Chairman

Robert A. Bastille

J. Randolph Becker

cc: Planning Board
Inspector of Buildings
lrm