

**ZONING BOARD OF APPEALS**

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ZBA 2006-25

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

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 6, 2006 at 7:30 p.m. 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 continue to allow their premises at 36 BROOK STREET, in a Single Residence District, 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 22, 2006, 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 was Frank Bae who said that there has been no change in the conditions and that they have complied with the conditions set by the Board. He said that he and his wife are now retired and stay at home.

The Board said that when the house is sold, the Special Permit will cease to exist and a new buyer will not be entitled to use the house as a two-family.

The Board noted that the Building Inspector had made the inspections that were conditioned in the Special Permit.

Kit Bowry, 42 Brook Street, said that she is an abutter to the property. She said that the petitioners had requested that Condition 4 of ZBA 2004-15 be eliminated. She asked the Board to include that condition in the renewal of the Special Permit.

Ms. Bowry said that there are too many cars parked on the property. She said that is inconsistent with the Single Family Residence District. She asked if the Board could make some stipulation about the number of cars that can be parked at the property as related to the occupancy.

Ms. Bowry said that there is a condition that the Special Permit not convey to a buyer. She said that there is an attachment at the Registry of Deeds specifying that the permit will not convey. She said that when the Bae's bought the house in 1993 it was represented to them as a two-family house by the real estate agent. She asked that the Bae's be compelled to make this information readily available early in the process if they plan to sell the house.

The Board asked Mr. Bae how many adult children they have living with them and the number of vehicles the children have. Mr. Bae said that there are two children and they have two vehicles. He said that the tenants have two vehicles.

The Board discussed limiting the number of vehicles permanently parked on the property to six.

Mr. Bae said that he has four children. He said that the six car limitation would limit the ability of his children to live there. The Board said that Mr. Bae could come back to amend the Special Permit. Mr. Bae said that currently they have seven parking spaces.

Ms. Bowry said that she disagreed about the number of parking spaces. She said that cars are often parked on her grass and on his grass.

Naomi Stonberg, 31 Brook Street, said that she sees cars parked right to the end of the driveway. She said that the cars go right up to the side of Ms. Bowry's house. She said that she sees that repeatedly.

Mr. Bae said that he does not park on Ms. Bowry's lawn because there is a tree there. He said that he had a boat there last summer and Ms. Bowry complained about it. He said that he spoke to the Building Inspector about that and was told that it was okay.

The Board said that if they are going to be parking seven vehicles there, they should not be parking a boat. The Board said it would add a condition prohibiting parking of boats or trailers.

The Board said that it would renew the Special Permit for one year this time due to neighbors' concerns. The Board said that a further restriction to Condition 2 will be that the second family unit shall be limited to two motor vehicles.

The Board said that the number of parking spaces exclusive of the driveway shall be determined by the Building Inspector.

The Board said that the Planning Board had no objection to granting the request under the same conditions.

Statement of Facts

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, 1 kitchen and 1 kitchenette. The dwelling was constructed in 1890 and used as a two-family dwelling from that time until it was 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 to 1960, the property was used as a dormitory by the Dana Hall School, 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. Since 1993, the Board of Appeals has granted a Special Permit for the use of the premises as a two-family dwelling on an annual or biennial basis.

The petitioners are requesting renewal of their Special Permit under the same terms and conditions as are currently in effect, with one exception: that annual inspections be discontinued.

Pursuant to compliance with Condition #4 in the decision granted two years ago (ZBA 2004-15), Michael Grant, Building Inspector, inspected the premises on April 26, 2005 and February 24, 2006 and found no violations.

On March 30, 2006, the Planning Board reviewed the petition and had no objection to renewal on the same terms and conditions as are currently in effect assuming there has been no change in the circumstances since the time of the last review.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The petitioners have complied with all conditions in the Special Permit issued in 2004. 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, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing for the petitioners to continue to use the premises as a residence for not more than two families, 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 in 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 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 the filing of a request for renewal of this Special Permit, to ensure continued compliance with Section II A 8 (a) of the Zoning Bylaw. A report of the 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 petitioner.

6. The number of parking spaces exclusive of the driveway shall be determined by the Zoning Enforcement Officer. The number of cars parked on the property shall not exceed the available number of spaces, exclusive of the driveway, as determined by the Zoning Enforcement Officer.
7. 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.
8. Parking for the "Garage Apartment" shall be limited to two vehicles.
9. There shall be no parking of boats or trailers on the property.
10. This Special Permit shall lapse, expire and be of no further effect upon the earlier of the following to occur:
 - a. Conveyance of the property by its current owners, Frank and Anne Bae, or
 - b. The expiration of this Special Permit.
11. The current property owners, Frank and Anne Bae, shall disclose to potential buyers early in the real estate process that Condition #10 of this Special Permit is in effect.
12. 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.
13. This Special Permit shall expire one year from the date time-stamped on this decision.

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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

Cynthia S. Hibbard

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm