



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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ZBA 93-7  
Petition of Frank S. and Anne R. Bae  
36 Brook Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, January 28, 1993 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 FRANK S. AND ANNE R. BAE requesting a Special Permit pursuant to the provisions of Section II A 8 (a) and Section XXV of the Zoning Bylaw to allow the premises at 36 BROOK STREET, in a Single Residence District, to be used as a two-family dwelling, a use not allowed by right in a Single Residence District. The petitioners maintain that the original building can no longer be used or adapted at a reasonable expense and with a fair financial return as a single family dwelling.

On January 11, 1993, the petitioners requested a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Frank and Anne Bae. Mr. Bae said that the house had been built in 1890 and was used as a two-family dwelling in 1925 when the Zoning Bylaw was adopted. It is a 24 room house with 6 exits, and has a self-contained apartment in the rear. When the Baes purchased the house in 1984, it contained two kitchens. At the time of purchase, the house was in a run down condition. The Baes took out a home equity loan of \$120,000 which was used to repair the house. Due to the prior use of the house as a two-family dwelling, and the presence of the two kitchens, the Baes were under the impression that the house retained pre-existing nonconforming status as a two-family dwelling.

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The Board noted that Mr. Bae had signed an affidavit in January, 1985, attesting to the use of the house as a single family dwelling, and that shortly thereafter, began renting the premises in violation of the Zoning Bylaw. As the premises had not been used as a two-family dwelling since 1965, it had lost its status as such.

The Board asked when the Baes found that they could no longer afford to maintain the house. Mr. Bae said that after they had spent the money to fix the house in 1985-6. He submitted figures showing that the expenses to maintain the house are \$3,935.00, which is 52% of the combined monthly income of the Baes.

The Board stated that in response to complaints that the house was being used in violation of the Zoning Bylaw, the Zoning Enforcement Officer had requested an inspection, which the Baes refused to allow to the present date. Mr. Bae agreed that the reason they have refused inspection was because they feared that the inspection would result in discovery of the nonconforming use of the premises.

The Baes agreed to an inspection of the premises by the Fire Chief and the Building Inspector on Tuesday, February 2, 1993.

Naomi Stonberg, 31 Brook Street, said that she represented a group of neighbors present who opposed the petition. The Baes have flagrantly disregarded zoning in that they knew the house was a single family, but have been renting since 1987 to one or two additional families. Neighbors are concerned that the grant of a Special Permit would not only appear to condone the illegal use of the premises, but would set a precedent for future conversion requests in an area in which there are many very large homes, and that the conversion of the Bae home would have a negative impact on property values.

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The following neighbors opposed the grant of the petition:

Andrew Knowland	4 Hampden Street
Kathryn Bowry	42 Brook Street
Francis J. MacDonald	6 Amherst Road
Judith & Maxwell Morton	45 Brook Street
Edward Shotynski	7 Hampden Street
Joy Maerder Mitchell	12 Marvin Road
Susan Baggett	34 Brook Street
Richard Sergel	34 Brook Street

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The Board unanimously decided to continue the Public Hearing until February 25, 1993, by which time the premises would have been inspected by the Fire Chief and the Building Inspector, and reports regarding their findings would have been filed with the Board.

This inspection of the premises by the Inspector of Buildings and the Fire Chief took place on February 2, 1993. Reports of their findings and recommendations are on file in the office of the Board of Appeals.

The hearing on the petition continued at the Public Hearing on February 25, 1993, having been duly noticed by mailing and publication. The Board was in possession of reports from the Building Inspector, which noted the nonconforming use of the garage apartment, and from the Fire Chief, with comments on the fire wall and smoke detectors.

Mr. Bae gave a short history of the premises, after which Anneliese Hoelker, 29 Brook Street, expressed support for the petition, as did Damon Borgo, 5 Solon Street; and Dan Durickas, 8 Middlesex Street.

Jeffrey Stoneberg, 31 Brook Street, expressed opposition to the petition.

A Business Meeting was noticed in the Town Clerk's office and all Interested Parties were informed by mailing on March 2, 1993. The

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Business Meeting was called to order at 1:15 p.m. by the Acting Chairman. Members of the Board enumerated conditions that must be included if the Special Permit was to be granted. The Acting Chairman called for a voice vote on the petition, and each of the members present voted to grant the Special Permit subject to conditions regarding duration of the permit, compliance with fire safety regulations, inspections, parking, occupancy, and revocation.

#### 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 dwelling was constructed in 1890 and was used as a two family dwelling from the time of construction until 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 until 1960, the property was used as a dormitory by Dana Hall Schools, 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 applied for a building permit in December, 1965 to "change use of building from dormitory to single-family dwelling." In 1984, the property was purchased by Frank and Anne Bae. The dwelling contains 24 rooms, including 6 bathrooms, a kitchen and a kitchenette.

On January 28, 1985, the Inspector of Buildings received a request for zoning enforcement as to alleged unauthorized use of the premises. The following day, Mr. Bae applied for a building permit to repair damage and renovate the third floor, and to install a second stairway from the third floor. At that time, Mr. Bae signed an affidavit acknowledging and attesting to the use of the premises as a single family dwelling. On February 20, 1985, the Inspector of Buildings wrote to Mr. Bae regarding the legal occupancy of the property

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according to Section IA and Section II A 8 (a) of the Zoning Bylaw.

On November 7, 1990 and on July 15, 1991, requests were filed with the Inspector of Buildings regarding multi-family use of the single family residence. Requests for inspection of the premises by the Inspector of Buildings were not granted. On September 22, 1992, the Inspector of Buildings requested advice of Town Counsel. On December 17, 1992, Town Counsel wrote to Mr. Bae proposing an inspection date, and stating that if the inspection were not allowed, the Town would have no alternative but to instigate court proceedings.

On January 11, 1993, Frank and Anne Bae filed a petition requesting a Special Permit pursuant to Section II A 8 (a) to allow the premises to be used as a two-family house.

Submission materials accompanying the petition included the following:

1. Copies of the List of Resident Tax Payers for the years 1906, 1908, 1915, and 1925 showing two separate families in residence at 36 Brook Street. Copies of pages of the Townsman from 1907-1908 which mention the Richardson family, original owners of 36 Brook Street.
2. Copies of Special Permits granted to Dana Hall Schools in 1949 and 1960 to use 36 Brook Street for educational purposes
3. Copy of the realtor listing of the property at 36 Brook Street.
4. Copy of 1980 Zoning Map of Wellesley.
5. Copy of Town of Wellesley Utility Service bills dated 10/30/92.
6. First, second and third floor plans for 36 Brook Street.
7. Copy of Boston Federal Savings Statement dated 11/20/92.
8. Copy of paycheck issued by New England School of Law to Frank S. Bae, dated 12/31/92.

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9. Copy of Mortgage Inspection Plan dated 12/13/84 drawn by Jean Nysten, Registered Land Surveyor.

The following were submitted by the Neighborhood group:

1. A letter dated January 19, 1993 requesting inspection of the premises and full financial disclosure by the petitioners.
2. A chronology of the property from 1965 to December, 1992 with the following attachments:
  - a. Letter from Arthur LaConte to Albert Robinson dated 1/13/92
  - b. Request for Zoning Enforcement by Susan Baggett, 34 Brook Street, dated 7/15/91.
  - c. Request for Zoning Enforcement by Susan Baggett, 34 Brook Street and Naomi Stoneberg, 31 Brook Street, dated 11/7/90.
  - d. Advertisements in Townsman on 10/8/87 and Boston Sunday Globe on 10/11/87 listing rental apartment.
  - e. List of Residents at 36 Brook Street.
  - f. Three pages of NYNEX telephone directory showing Frank and Anne Bae, Susan Anthony, and T.F. Nelson at 36 Brook Street.
  - g. Sketch of first and second floors of garage apartment.
  - h. Letter from Arthur LaConte to Susan Baggett dated 7/24/91.
  - i. Letter from Arthur LaConte to Albert Robinson dated 9/22/92.
  - j. Letter from Albert Robinson to Frank Bae dated 12/17/92.

On January 26, 1993, the Planning Board reviewed the petition and voted to recommend that if a special permit is granted for two-family use, that it be conditioned on owner occupation of the structure.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the two public hearings. The subject dwelling at 36 Brook Street is a single family dwelling located in a Single Residence District. The petitioners are requesting a Special Permit pursuant to the provisions of Section II A 8 (a) of the Zoning

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Bylaw to allow said premises to be used as a two-family dwelling, as the original building can no longer be used or adapted at a reasonable expense and with a fair financial return as a single family dwelling.

Documentation has been provided that the premises were not only in existence, but were used as a two-family dwelling when the Zoning Bylaw took effect in 1925. However, this pre-existing nonconforming use was intentionally abandoned in 1965, when the prior owners converted the premises to a single family dwelling.

It is the opinion of this Authority that, regardless of past zoning violations by the property owners, which are in no way condoned by this Authority, the petition must be decided on its merits.

It is the opinion of this Authority and supported by the information submitted by the petitioners, that due to the cost of maintaining the subject premises relative to the income of the petitioners, the property can no longer be used or adapted at a reasonable expense and with a fair financial return without the rental income from a second dwelling unit.

Therefore, this Authority unanimously grants a Special Permit for use of the premises at 36 Brook Street as a two-family dwelling subject to the following conditions:

1. The petitioners must comply with the fire safety recommendations of the Inspector of Buildings and the Fire Chief in regard to the fire wall and smoke detectors, as noted in their letters on file in the office of the Board of Appeals, within 21 days of the date of this decision.

2. An inspection of the premises, to be arranged by the petitioner, by the Inspector of Buildings and the Fire Chief to determine compliance with all fire safety and zoning requirements

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shall be made within 30 days of the date of this decision, and letters documenting said compliance shall be received from both officials in the office of the Board of Appeals following said inspection.

3. The second dwelling unit cannot be occupied until compliance with all fire safety regulations has been documented.

4. The premises shall contain **two** and **only two** dwelling units; one to be designated as the "Main House" and the second as the "Garage Apartment". The interiors of these two dwelling units shall be and shall remain identical to the floor plans (Exhibit 6) submitted and noted in the foregoing Statement of Facts.

5. At no time shall additional cooking facilities of any type be installed in any room of the premises except the two kitchens currently in existence as shown on the floors plans (Exhibit 6) submitted and noted in the foregoing Statement of Facts.

6. 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 to a second family unit.

7. The premises shall be inspected by the Zoning Enforcement Officer within a two week period, six months from the date of this decision to ensure continued compliance with Section II A 8 (a) of the Zoning Bylaw, and again within a two-week period prior to the filing of a request for renewal of this Special Permit. A report of the inspection shall be submitted by the Zoning Enforcement Officer to the Board of Appeals.

8. The responsibility for arranging said inspections is that of the petitioners.

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9. All parking related to the use of the premises shall be on-site, and no parking related to the premises shall be allowed on Brook Street or adjacent streets.

10. This Special Permit shall lapse, expire, and be of no further effect or force upon the **earlier** to occur of the following:

- a. Conveyance of the property by the current owners, Frank and Anne Bae; or
- b. The expiration of this Special Permit.

11. If any of the aforesaid conditions are not met as stated, this Special Permit shall be revoked immediately, the second kitchen shall be removed, and court action shall be instituted.

12. This Special Permit shall expire one year from 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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