

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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ZBA 2017-14
Petition of Anne Bae
36 Brook Street

Pursuant to due notice, the Special Permit Granting authority held a Public Hearing on Thursday, March 2, 2017 on the petition of Anne 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 the premises at 36 Brook Street to be used as a residence for not more than two families, which is a use not allowed by right in a Single Residence District.

On January 24, 2017, 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 Anne Bae, who said that she is the owner of 36 Brook Street. She said that the request is for renewal of a special permit. She said that a history of the house is described in a binder that she submitted. She said that the house has 10 bedrooms and five and a half baths in the main house and a house in the back. She said that is the way that it was when they bought the property. She said that they rent out the back apartment.

The Chairman said that his understanding of the conditions of the special permit include one that requires that Ms. Bae be a resident of the property. He asked if she currently lives there. Ms. Bae said that she lives there part time. She said that her daughter lives there full time. She said that her belongings are still there. She said that she is in the middle of a transition. She said that she is trying to figure out whether she should sell the house. She said that her daughter is there with her husband and they just had a baby.

Ms. Bae said that the main house has seven bedrooms and four bathrooms. She said that it was a lot of house to be in when her husband passed away. She said that she asked her daughter to move in to help fill up some of the rooms.

A Board member said that the application package was well put together. He said that there is a condition that requires that Ms. Bae live in the house. He said that the Board typically inserts that condition. He said that it is the Board's view that the property should comply with Zoning to the extent that it can. He said that the Planning Board indicated that Ms. Bae ceased living in the house, as evidenced by neighbors and the Assessor's data base. He said that is a violation of the condition. He said that it is a big house and is probably not inappropriate for its use. He confirmed that Ms. Bae is still the owner of the house. Ms. Bae said that the house is still in her name and her daughter is listed as a trustee on the trust. The Board member confirmed that the property was conveyed from Ms. Bae to a trust. He said that a trust is different in that it cannot cease to exist as a person can.

The Chairman asked if Ms. Bae's daughter intends to continue living in the house. Ms. Bae said that they have been priced out of buying a house. She said that she may be there for quite a while. Ms. Bae said that she did a lot of work to the house. She said that it is in very good condition. She said that her daughter's family is young and they do not have money for a down payment on a house.

A Board member asked who occupies the other unit. Ms. Bae said that it is a man who is a CEO of a company. The Board member asked if there is a lease or if he is a tenant at will. Ms. Bae said that he has a lease. She said that he has a home in Connecticut. She said that he stays in the apartment during the week when he is working. The Board member asked about the term of the lease. Ms. Bae said that it is a self-extending lease. She said that the first year the term was for one year and it has been self-extending since then. Ms. Bae said that the tenant has been there for approximately two years. She said that they had a family living there before and it was much busier. She said that the rental unit has three bedrooms. The Board confirmed that the tenant lives there by himself.

Peter White, 10 Marvin Road, said that he was present at the public hearing six years ago and had concerns about the request for the homeowner to move into the back unit and rent out the front unit. He said that if this was a simple renewal and nothing had changed, he probably would not be present at this hearing. He said that one of the conditions is that there be no conveyance. He said that there have been two conveyances. He said that Ms. Bae has admitted that she no longer lives there, which is another breach of conditions. He said that there was a comment on the application for the renewal that said that if the house was sold it would be listed as a single family with an in-law apartment. He said that is precisely what the neighbors do not want. He said that they do not want this to somehow grandfather into a buyer saying that the property was purchased with an in-law apartment that can be used as a rental property. He said that the fundamental problem is that the special permit has been breached. He said that the property listing in the town has Anne Bae living in Natick, Massachusetts. He said that the special permit requires her to be an owner/occupant.

A Board member asked Mr. White what his objection is. He asked if there have been any problems with noise, excessive traffic or something specific. He asked if the use is offensive. He asked if there was a reason that Mr. White thought that it would be more advantageous to turn this back to a single family house. Mr. White said that uniformity of Zoning in the neighborhood should be retained. He said that he was concerned about the intent of extending this to another family. He said that now it is basically a two family rental unit. He said that Ms. Bae is letting her daughter and family live there and rent it from her and she is renting to the CEO. He said that she is collecting rent for both units. He said that he wished that he could put an apartment over his garage and rent that out because he could get a really good income. He said that part of this was originally allowed for some financial reason. He said that if they have been collecting \$3,000 to \$4,000 a month in rent, they have earned a fair return on any renovations that they might have done. He said that said that it is in way better condition in today's market and would sell for a much higher value than the assessed value. He said that if Ms. Bae is going to live there and nothing is changing, he would not have any concerns.

Ms. Bae said that an appraiser told her that 36 Brook Street should be described as a single family with an in-law apartment. She said that architecturally it is not a two-family. She said that it looks like a single family with an in-law apartment. She said that her daughter does not pay rent.

Ms. Bae said that she takes very good care of her property and wants her children to enjoy it. She said that all of their lives they were bothered and stressed by the cost of the house and the watchfulness of the neighbors. She said that she is thinking of moving into the back unit but the situation is not right for her to do that. She said that she is not sure if her daughter's family will want to stay. Ms. Bae said that she is in transition and is not sure of her plans yet.

A Board member said that, according to the Planning Board, the house was used as a two-family from 1890 to 1965. He said that from 1965 to 1985 it was used a single family, so it lost its grandfathering.

A Board member said that he was disappointed that Ms. Bae did not come before the Board when the facts changed. He said that the property was conveyed. He said that it appears that Ms. Bae is not living there and saying that she lives there part time seems a little disingenuous. He said that, all in all, it is unfair to have the tenant move out. He said that the use does not seem to be offensive to the neighborhood.

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Kit Bowry, 42 Brook Street, said that the property is beautifully maintained. She said that the present tenant is quiet. She said that the prior tenant, which was a family, was intrusive. She said that she had to put up a fence to protect herself. She said that she has no problem as Peter White said, with the conditions in the previously granted special permit being continued as an owner occupied residence. She said that Ms. Bae has more than one home and does spend time at different places. She said that it is not terribly important to her that Ms. Bae spend 100 percent of her time there. She said that to protect the neighbors in a single family residential neighborhood and the property values that they have, the special permit should not be modified or changed so that this becomes two permanent income rental units in the future. She said that the title of the property has been conveyed to a trust where the daughter is a beneficiary. She said that other people probably are beneficiaries of the trust, so that if Ms. Bae was not to live there, other people could stay in the house. She said that the title could be conveyed again and this could go on for a long time. She questioned whether there is a financial hardship here. She said that it has not been assessed or proven that there is one. She said that it would be good if Ms. Bae moved back into the house at some point. She said that her big concern is that this not be changed so that the conditions of the house will change in the future. She said that the Board owes it to the other members of the neighborhood with single family residences to protect their interests as well.

A Board member asked Ms. Bowry what harm she would have by having it continue with Ms. Bae's daughter living there and a single tenant. He asked how that is detrimental to Ms. Bowry's property value or lifestyle, as opposed to a single family house with a more conventional family with four children and a dog. Ms. Bowry said that there is no one to guarantee that is going to happen unless the Board wants to insert a condition that one of Ms. Bae's children can live there. She said that all of Ms. Bae's children have lived there at some point. She said that Ms. Bae has four children. She said that when the special permit was first issued in 1993, it was granted to allow them to keep the family and the children in the house. She said that was 24 years ago. She said that Ms. Bae's children are successful and work. She said that the daughter who lives there now is a vice president of a bank. She said that they are quiet. She said that she just does not want this to become an income property for the trust. She said that an in-law apartment is not allowed in a single family residential district. The Board member said that it depends on the definition of an in-law apartment. Ms. Bowry said that she spoke with the Planning Board and they confirmed that the Zoning laws do not allow that. She said that she was going on what she was told.

A Board member said that his feeling is that it is somewhat draconian to require the tenant to leave. He said that it does not appear to have an adverse impact on the neighborhood. He said that he could support an extension and a modification of the special permit which requires Ms. Bae's daughter to live there rent-free so that it does not become a rental property. He said that if Ms. Bae's daughter no longer resides on the property, it would result in expiration of the permit. The Chairman said that it could be the daughter or any of the other children if the property is conveyed.

A Board member said that the previously granted special permit was subject to 14 conditions. He said that Condition #2 would change to the property owners, Anne Bae or one of her children occupying one of the two units for the duration of the special permit at no remuneration. He said that there is also a condition that the premises be inspected by the Zoning Enforcement Officer within a two-week period prior to the filing of a renewal. He asked if that happened. Ms. Bae said that Mr. Grant, Building Inspector, came by yesterday. The Board member said that the report of the inspection should be submitted. Victor Panak, Planning Department, said that Mr. Grant inspected the property yesterday as opposed to two weeks before renewal. He said that Mr. Grant sent an email to him that summarized the results of the inspection. He said that email was forwarded to the Board. The Board member said that Condition #8 would have to be modified to state that a son or daughter and partners shall be permitted to live there as well. He said that Condition #10, the conveyance of the property by the current owners, Frank and Anne Bae, can be amended to be the Trust that owns the property. The Chairman said that preventing the potential of this becoming a full rental property is at issue here.

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 was 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 Petitioner 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 or an annual or biennial basis.

On March 1, 2017, the Planning Board reviewed the petition and recommended that renewal of the special permit be denied.

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 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 Petitioner 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, nor shall any bathrooms be added.
2. The property owners, Anne Bae or a son or daughter and partners shall be an occupant of one of the two units at no remuneration for the duration of the special permit.
3. All applicable State and local laws, ordinances and regulations shall be complied with by both the Petitioner 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. There shall be parking for no more than five resident vehicles on the property.
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. If the property owners, Anne Bae or a son and daughter and partners are the occupants of either unit, a live-in caregiver and a Son/Daughter and partner or significant other shall be permitted to reside there as well. If the Main House is the rental unit, an au pair, nanny or caregiver shall be permitted to reside with a single family unit. Except as stated above, the occupants of both units must be a single family unit with all persons related.
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:

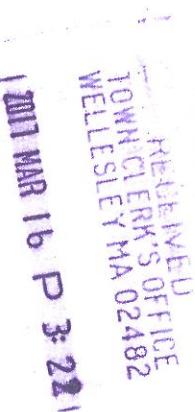
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- a. Conveyance of the property by its current owners, the Trust that owns the property, or
- b. The expiration of this special permit.

11. The current property owners, Anne Bae or the Trust that owns the property, 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 two years from the date time-stamped on this decision.



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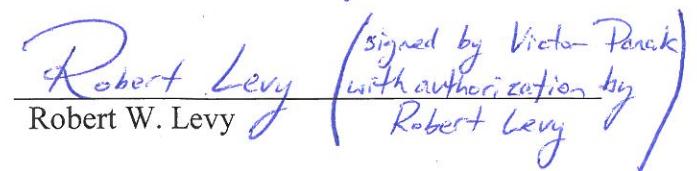
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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



David G. Sheffield



Robert W. Levy (signed by Victor Panek
with authorization by Robert Levy)



Derek B. Redgate

cc: Planning Board
Inspector of Buildings
lrm