

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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ZBA 2018-04

Petition of Sue Fun Lee and Ronald Ko  
1 Crescent Street

Pursuant to due notice, the Special Permit Granting authority held a Public Hearing on Thursday, February 1, 2018, on the petition of Sue Fun Lee & Ronald Ko requesting renewal of a Special Permit pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw for use as a three-family dwelling at 1 Crescent Street, in a 10,000 square foot Single Residence District.

On January 2, 2018, 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 David Himmelberger, Esq., who said that a special permit was previously granted in 1956 and renewed annually until 1961 when it was put on a five year track. He said that the Board added a condition in 1977 that the special permit would continue in perpetuity so long as the Petitioner, Mr. Nuzzi, or one of his family members owned the property. He said that the permit continued until 2010, at which time the owner wished to sell the property. He said that the Board granted modification of the condition that required a member of the Nuzzi family to own or occupy the property to allowing the special permit to continue as long as the owner of the property or a member of the Nuzzi family lived there, subject to a one year review. He said the property was then sold to his clients and they have resided there ever since.

Mr. Himmelberger said that in 2012, the Board granted continuance of the special permit, subject to a two-year window. He said that the State's Special Permit Extension Act extended the permit, so this is the first time that the petition has been back to the Board since 2012.

Mr. Himmelberger said that when the decisions issued over the past four or five times, including 2010 and 2012, they stated that Conditions 1 to 3 of the 1977 permit are continued and Condition 4 is modified. He said that his clients purchased the property in 2011 and began a series of renovations to the house. He said that when his clients bought the house, they were told by the broker that the third floor, which was in derelict state, could not be occupied for sleeping. He said that the house has 24 rooms with six rooms on the third floor. He said that in 1956 when the permit first issued, the petitioner asked for four apartments with a fourth unit on the third floor where there was a kitchen and a bath. He said that the Board denied that request because there was only one single means of egress and it was not practical to add an egress. He said that a permit was granted for a third unit. He said that one of the conditions states that the first and second floors shall only be used for human occupancy. He said that Condition 2 requires that the third floor be closed off. He said that the third condition requires the Building Inspector to inspect annually and the fourth condition stated that the permit was contingent upon compliance with the conditions.

Mr. Himmelberger said that photographs were submitted in 2010 to show that the third floor was not in use. He said that his clients have since renovated the third floor but there are no bedrooms up there. He said that they use the space for an additional sitting area. He said that Mr. Ko has an intestinal issue and there was only a single bath on the second floor, so they updated the bathroom on the third floor. He said that they wanted to bring to the Board's attention the fact that the third floor has not been closed off. He said that his clients are upset that they may have done something that was not allowed. He said that nothing in the decision indicates anything specifically about the third floor. He said that the decisions talk about conditions, as per the 1977 permit. He proposed a modification to the special permit to allow these rooms to be used. He said that he has inspected the third floor and it is a remarkable space with high ceilings. He said that his clients would be seeking modification of items 1 and 2.

The Chairman asked if there was a building permit issued for the work on the third floor. Mr. Himmelberger said that he is in the process of trying to determine that. He said that he looked at the Assessor's records and they show that there were significant bathroom renovations. He submitted photographs of what the third floor space looked like in 2010 and what it looks like today.

A Board member asked how many people reside in the building. Mr. Himmelberger said that Ms Lee and Mr. Ko live in Unit 3, which is on the second floor and has access to the third floor. He said that they have two young adult sons in college who are home occasionally. He said that there is a single woman in one unit on the first floor and two older people in the other unit on the first floor.

The Chairman said that the third floor is being used as part of the second floor living space. He said that it does not need two exits. Mr. Himmelberger said that his clients' unit has a staircase down to the first floor as well as an entrance that they primarily use to the second floor deck where they walk down. The Board said that a single way down from the third floor would be legal.

The Board discussed renewing the special permit with new conditions. A Board member said that the condition to not use the third floor space is terrible because it makes it dangerous. He said that it is better to have people up there. The Board said that the third floor cannot be used for bedrooms but will be considered to be part of the living quarters of the second floor. The Board said that the permit will be effective for three years or shorter if there is a change of owners.

There was no one present at the public hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 1 Crescent Street, in a 10,000 square foot Single Residence District.

The Petitioner is requesting renewal of a Special Permit pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw for use as a three-family dwelling at 1 Crescent Street, in a 10,000 square foot Single Residence District.

On January 25, 2018, the Planning Board reviewed the petition and submitted comments.

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, pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw, granting renewal of a Special Permit that was originally granted on May 20, 1977 pursuant to the provisions of M.G.L. Chapter 40A, Section 15, for use as a three-family dwelling, shall not be substantially more detrimental to the neighborhood than the existing nonconforming use.

Therefore, renewal of the Special Permit is granted, subject to the following conditions:

1. This permit shall be contingent on compliance with these conditions and all applicable Rules & Regulations.
2. This permit shall remain in effect as long as one of the dwelling units is owner occupied.
3. Use of the third floor as auxiliary space for the owner occupied unit is allowed with no bedrooms.
4. The permit shall be subject to review in three years.
5. The Building Inspector shall inspect the premises and make a report of his findings upon transfer of ownership.

1 2018 FEB 15 AM: 11:11

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2018 FEB 15 A



Richard L. Seegel, Chairman

  
J. Randolph Becker

Walter B. Adams

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  
lrm