

**ZONING BOARD OF APPEALS**

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ZBA 2016-97

Petition of Hien D. Nguyen  
153 Great Plain Avenue

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Pursuant to due notice, the Special Permit Granting authority held a Public Hearing on Thursday, December 1, 2016 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of Hien D. Nguyen requesting a Special Permit pursuant to the provisions of Section II A 8 h and Section XXV of the Zoning Bylaw to allow a portion of the premises at 153 Great Plain Avenue, in a 20,000 square foot Single Residence District, to be used for the conduct of a home occupation, with two commercial vehicles and one trailer to be parked on the premises. Three to five employees arrive at the property at 7 am and leave at 7:15 am and return to the property at 4 pm and leave by 4:15 pm. Employees park two (2) to four (4) personal vehicles behind the house.

On November 14, 2016, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

**WITHDRAWN WITHOUT PREJUDICE**

Presenting the case at the hearing were David Himmelberger, Esq. and Hien D. Nguyen, the Petitioner.

Mr. Himmelberger said that he was representing Mr. Nguyen, who moved to Wellesley in the Spring. He said that Mr. Nguyen maintains a business called Boston Premier Flooring. He said that neighbors at 149 Great Plain Ave raised questions about the fact that there are two commercial vans are parked on site and four employees are coming onto the site at 7 am for the vans, leaving for the job sites, and returning at 4 pm to pick up their vehicles. He said that a Request for Enforcement was filed with the Building Inspector. He said that a second Request for Enforcement was filed by a neighbor at 141 Great Plain Ave, which is a few houses removed.

Mr. Himmelberger said that Mr. Nguyen spoke with Mr. Grant, who told him that the pathway was to apply for a home occupation special permit. He said that Mr. Nguyen filed that application and then sought counsel.

Mr. Himmelberger said that he looked at the specific definition of a home occupation in the Zoning Bylaw. He said that it is a non-residential use of a dwelling unit, by the residents, for gainful employment, that is subordinate but compatible to residential use. He said that it is not non-residential use of premises. He said that he looked at all of the applications that the Board has

entertained for home occupation and they do all involve activity within a house. He said that he struggled with whether this should be the basis for a home occupation request but the request had been filed.

Mr. Himmelberger said that Mr. Nguyen has provided a commitment to do an extensive planting plan. He said that the degree to which the property is used now is compliant with the criteria set forth for the issuance of a home occupation special permit, noting that there are no business deliveries, all business mail goes to an office in Quincy, the only use is three to four cars coming in the morning and returning in the afternoon. He said that all of the vehicles are parked behind the house. He said that Mr. Nguyen provided photos that show that the vehicles are not visible from 149 Great Plain Ave. He said that they could be viewable from 165 Great Plain Ave, where the resident is supportive of this request.

Mr. Himmelberger said that they believe that there is no disruption to the customary character of the neighborhood. He said that the area is across from the sports club and abuts the entrance to the Recycling and Disposal Facility (RDF). Mr. Seegel said that this is a Single Residence District. Mr. Himmelberger said that hundreds, if not thousands of cars drive down Route 135 every day. He said that this request is for four vehicles to arrive at 7 am, leave at 7:15, return at 4 pm and leave at 4:15 pm. He said that there is no signage, nothing in the business materials that identifies a place of business at 153 Great Plain Ave, no signage on the vehicles that identified 153 Great Plain Ave, no outdoor storage of any materials, no pick up or delivery of materials, and all of the parking is off-street.

Mr. Sheffield asked about ownership of the vans. Mr. Nguyen said that ownership is personal as well as corporation as an LLC. Mr. Sheffield confirmed that Nguyen owns the vans.

Mr. Redgate asked if the vans are driven by a resident of the home or a non-resident. Mr. Nguyen said that non-residents pick up the vans on the property.

Mr. Sheffield asked if, in conducting the business, Mr. Nguyen does his accounting in the house. Mr. Nguyen said that he does his paperwork on the premises.

Mr. Sheffield asked about the proposed landscaping plan for screening. Mr. Himmelberger said that a planting plan lists the plants. Mr. Seegel said that there are no sizes listed.

Mr. Seegel said that he was troubled by the fact that Mr. Himmelberger said that this is not really a home occupation. He said that the business address is in Quincy. Mr. Himmelberger said that all of the work is done in someone's home where the floors are being refinished. Mr. Seegel said that the first clause under Home Occupations in the ZBL states that there shall be no activity or equipment as a result of a home occupation which disrupts or disturbs the customary character of a neighborhood. He said that he was concerned that parking vans and having employees coming in to get them at 7 am does disturb the character of a residential neighborhood.

Mr. Himmelberger said that, if that is the Board's conclusion, he would go back to the definition in the bylaw of a home occupation. Mr. Seegel asked what right would Mr. Nguyen have to keep commercial vehicles there. Mr. Himmelberger said that Mr. Nguyen owns the vehicles. Mr. Seegel said that the vans are owned by Mr. Nguyen's corporation, or LLC, so they are commercial vehicles. Mr. Himmelberger said that Wellesley does not have a rule against having commercial vehicles in residential areas. Mr. Seegel said that there is a house on Route 9 in a single family district that always has construction

equipment parked on it. He said that it is a violation. He said that no one occupies the house. He said that parking commercial vehicles like that is a violation of a Town Bylaw.

Mr. Seegel asked if there was anyone present at the public hearing who wished to speak to the petition.

Grace Bartini, 149 Great Plain Ave, said that she filed a complaint in September about the activity. She said that it is inappropriate to have this kind of activity in a residential neighborhood. She said that the noise of the cars going back and forth and having a trailer on the property bothers her. She said that there is a sense that it is not part of the residential area.

Tom Ahern, 145 Great Plain Ave, said that he lives to the right of the property. He said that Dan and Sharon have been good neighbors since they moved in. He said that Dan has made efforts to speak with people in the neighborhood. He said that they have spoken on several occasions and he appreciated the honest and open discussions. He said that he does disagree with Mr. Nguyen on this matter. He questioned whether this would be a change of use because of the commercial use of the property. He said that it is not just about a couple of cars going back and forth at 7:15 am. He said that this is a residential area with six houses closed in on each other with the aqueduct behind it. He said that Dan and Sharon's property is landlocked. He said that having a commercial business operating out of the house changes the structure of the community between the vans that are parked there and the big white trailer that is now a focal point when they look out their windows on the first and second floors. He said that his problem with the screening idea is that they would need a 12 to 15 foot fence because of the grade. He said that the property grades down and they would need a significantly high fence to wall off the vans, trailer, and plow that are back there. He said that they are visible from the walking trail at the back. He said that there would have to be significant screening.

Mr. Ahern said that the larger issue for him is that there are seven stipulations that the Board has to look at in for granting a special permit. He said that this proposal will only conform to two. He said that picking up of vans qualifies as pickup of delivery of products and/or articles at the premises. He said that the trailer outside on what was the tennis court is now a parking lot. He said that is where the trucks are. He said that, looking out his front windows, they now see vans and the big white trailer, which is, to him, outdoor storage of products and materials. He said that there is a change in the outside appearance of the property. He said that commercial uses in a residential zone seems to go against zoning purposes. He said that the bylaw requires that the residential character be retained. He said that is one area that needs some work, in terms of the plan that was put forward. He said that it sets a precedent for business use of houses. He said that he has friends in town who run landscaping business and they get places in other towns for storage of their vehicles.

Mr. Himmelberger said that, in addition to the planting plan, there was also a commitment to fencing. He said that he disagreed with Mr. Ahern's assertion that it is above grade. He said that it is below grade and the fencing, along with the robust planting plan of 28 arbor vitae, a number of spruce, and four giant arbor vitae, would provide significant screening. He said that they are blocked by the house. He said that the resident at 165 Great Plain Ave expressed support.

Mr. Himmelberger said that the planting plan that was submitted shows a fence at the front of the property. He said that Mr. Nguyen is amenable to providing more fencing if the Board wishes to make that a condition. Ms. Bartini said that her house is above Mr. Nguyen's house. She said that a fence

would not help with noise or the view. She said that there were trees on the property that have been removed.

Mr. Seegel read the Planning Board recommendation.

Mr. Seegel said that he could not approve this permit. He said that it flies in the face of the whole purpose and intent of the bylaw. He said that if you own a business, you should rent space and park your vehicles there. He said that you should not disturb your neighbors with commercial vehicles. He said that he would find it substantially more detrimental to the neighborhood if he was living next door.

Mr. Redgate said that he agreed with Mr. Seegel. He said that the business owner living in the home and driving the vehicles is a different situation from running a commercial business out of a home where employees have to come to the property to get the vehicles and return the vehicles at night.

Catherine Johnson, Planning Board, said that the decision of the Board was split. She said that the Planning Director felt very strongly that this was not necessarily a special use of the building. She said that this is more of a slippery slope in that this is a way station. She said that the business may be in Braintree or Quincy, the home is here and the work is done at different sites. She said it became a way station rather than an occupation, so she was not personally in favor of granting this petition. Mr. Seegel said that the Planning Board recommendation did not state that it was a split decision but stated that the Planning Board recommended approval. He said that it flies in the face of the intent of the Zoning Bylaw.

The Board discussed allowing the petition to be withdrawn without prejudice versus taking a vote.

Mr. Sheffield said that noncompliance with standard # 5 troubled him. He said that the change in the outside appearance of the premises and grounds is not in keeping with the residential character of the neighborhood. He said that this cannot meet the standard.

Mr. Himmelberger requested that the petition be allowed to be withdrawn without prejudice. Mr. Seegel said that the Board would approve that subject to the immediate cessation of parking the commercial vehicles and use of the property for any commercial use.

Mr. Himmelberger asked if the condition for immediate cessation could be enlarged to Monday. Mr. Seegel said that he will allow 30 days to find another place.

Mr. Seegel moved and Mr. Redgate seconded the motion to allow the petition to be withdrawn without prejudice, subject to the condition that all commercial use of the property and that parking of commercial vehicles cease within the next 30 days. The Board voted unanimously to allow the petition to be withdrawn without prejudice.