

DECISION OF THE BOARD OF APPEALS UNDER ZONING BY-LAW
TOWN OF ANDOVER, MASSACHUSETTS

UPON THE PETITION OF

MARK AND AUDREY SPENCER

#2476 YES

A meeting of the Board was held in The Hall, second floor, Memorial Hall Library, commencing at 7:00 P.M. on Thursday, January 5, 1995. There were present: Carol C. McDonough, Acting Chairman; Pamela H. Mitchell, Acting Clerk; Paul D. Bevacqua and Peter F. Reilly, Members and David W. Brown, Associate Member.

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on December 22 & 29, 1994 and pursuant to notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws, a public hearing was held on the petition of Mark and Audrey Spencer filed on November 29, 1994 as a party aggrieved for review of a decision made by the Inspector of Buildings in denying the Applicant to operate a photography business in a single family home.

Premises affected are located at 22 Spring Grove Road, Andover, Ma. in a Single Residence B District and is shown on Assessor's Map 76 as Lot 30.

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Mark Spencer, the Petitioner, introduced his father, Mr. Aaron Spencer, who spoke to the Board on his son's behalf. Mr. Spencer traced his son's background and outlined the evolution of his photography business. The applicants are relocating to this area from California and have purchased a lot at 22 Spring Grove Road, where they are currently constructing a new house. Mark Spencer proposes to operate from this house a "high end" professional photography business. The business will be comprised of four principal types of photography, of which three, wedding, commercial and some portraiture, would be carried out at locations off the subject premises. The fourth component, studio portraiture, is anticipated to comprise about 25% of the total business and would be conducted in a studio located within the home. All developing and printing would be done off the premises.

Mr. Spencer displayed floor plans and renderings of the proposed dwelling. The space to be used as a studio is on the main floor of the house, over the garage. It can be accessed internally, or by an outside door entering to the side from the front porch. The design and layout of the house is such that this room can readily be used as a family room as well as a photography studio. Mr. Spencer estimated that the proposed use would generate at most three or four client visits per day, and on many days, when work was being done off-premises, none.

Mr. Spencer submitted to the Board two letters to substantiate the claim that having an in-home studio is a customary practice

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among professional photographers. One, from the Professional Photographers of America, Inc., stated that the practice, while not universal, is "common and customary." The other, from the Professional Photographers Association of New England, estimated that about half of their 900 members operate home studios. Mr. Spencer offered as further evidence the observation that, of the professional photographers listed in the local yellow pages, four are listed with addresses located in Andover residential zones.

Three abutters of the Spencer's new residence spoke in opposition to the petition. Mr. Alex Costello, 18 Spring Grove Road, cited the prohibition in Section IV.B.38 against the practice of a customary home occupation in a residential zone that involves the "sale of articles not produced on the premises," particularly with reference to the fact that developing and printing of the photographs would not take place on the premises. Ms. Dana Powers, 18 Spring Grove Road, stated that the proposed business would be detrimental to the neighborhood and offered further evidence about the practices of Andover photographers. She had contacted all of the Andover photographers listed in the yellow pages and found that none of them operates an in-home studio. Lastly, Mr. Eric Hansen, 12 Spring Grove Road, stated concerns about traffic on Spring Grove Road, a narrow, winding street, and his concern that the proposed business would grow to the point that it could become a real problem.

Mr. Spencer responded by offering assurances that, should the

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business grow to that extent, it would be relocated to offices outside the home.

The Board viewed the premises on Saturday, January 7, 1995, and observed that the house, currently in the early stages of construction, sits high on the lot and is well-separated from its neighbors. The Board deliberated after taking the public viewing.

This case was initiated by a letter to the Inspector of Buildings from Michael J. Powers, dated October 12, 1994, which requests a written opinion as to whether, "the operation of photography studio constitutes a permitted 'accessory use' in a Single Residence B District." In her response, dated October 19, 1994, the Building Inspector states in part that, "A photography studio with associated activities constitutes a 'consumer service', 'professional service' or a 'business', none of which are allowed to be conducted as a matter of 'right' in the residential zones in the Town of Andover." She cites the definition of "accessory use" found in Section II.1 of the by-law, and further states that, "Operating a studio to take photographs 'for hire'...in our opinion constitutes an activity not customarily incidental to the principal residential use..."

In deliberating this case the Board considered the evidence offered by both sides relative to the issue of whether the maintenance of an in-home studio is a customary practice among professional photographers. In addition the Board considered evidence gathered by a Board member who consulted with a local

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professional photographer. That person, who has knowledge of a range of professional photographers' practices, offered the opinion that, while some photographers may maintain in-home studios, usually for economic reasons, such is not the customary practice. Based on its evaluation of this body of evidence, it is the Board's opinion that the Building Inspector's interpretation of Article VIII, Section IV.B.36 is essentially correct in that the operation of a professional photography studio in the home is not per se a use customarily incidental to a principal residential use, even if one restricts the range of users to include only professional photographers.

However, both Mr. Powers' request for an opinion and the Building Inspector's response refer to the application of the language found in Article VIII, Section IV.B.36 as it relates to "accessory uses" under a somewhat hypothetical situation. Neither the request nor the opinion make specific reference to the Spencers' case or any facts relating that case. In considering the petition brought before the Board by the Spencers, the Board is obligated to consider the specifics of the Spencer's case and the application of the Zoning By-Law thereto.

Section IV.B.38 of the Zoning By-Law allows as a matter of right the "use of a room or rooms in a dwelling or accessory building by permanent residents for the practice of a customary home occupation", subject to certain conditions. Section II.28 defines a "customary home occupation" as "a use which may be

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conducted within a residential dwelling without adversely changing the appearance, character or condition of the residence or neighborhood." Based on the specific representations to the Board by the Petitioner, namely: that no more than 25% of Mr. Spencer's practice would be conducted on the premises; that the proposed studio space will be constructed so that it can readily be used for residential purposes; that not more than one person will be employed to assist with the business; that there will be no exterior signage; and that client visits will not exceed four per day; the Board finds by a vote of 4 in favor and 1 opposed that the proposed use falls within the definition of a "customary home occupation" under Section II.28 and may be allowed, subject to the restrictions enumerated under Section IV.B.38. In the context of the proposed business activity, the Board finds that the composition and exposure of studio photographic portraits on the premises constitutes "production" of the portrait under Section IV.B.38.(a), regardless of whether the developing and printing is done on-site.

The Inspector of Buildings shall have the right to take appropriate enforcement action should evidence be presented that the conditions imposed by Article VIII, Section II.28, Section IV.B.38, or any other provisions of the Zoning By-Law, have been violated or exceeded.

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AGAINST:

Carol C. McDonough
Carol C. McDonough, Acting Chairman

FOR:

Pamela H. Mitchell
Pamela H. Mitchell, Acting Clerk

Paul D. Bevacqua
Paul D. Bevacqua, Member

Peter F. Reilly
Peter F. Reilly, Member

David W. Brown
David W. Brown, Associate Member

DWB:ps

Dated: February 3, 1995

CERTIFICATION

I, Randall L. Hanson, Town Clerk of the Town of Andover, Massachusetts do hereby certify that twenty days have elapsed since the above referenced decision of the Board of Appeals which was filed in the office of the Town Clerk on _____ and no appeals have been filed with the Town Clerk.

Randall L. Hanson
Town Clerk
Andover, Massachusetts