



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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85-12

Petition of Jeanne Rutledge
41 Cottage Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, April 4, 1985 at 8 p.m. in Room 17 of the Town Offices at the Phillips Building, 12 Seaward Road, Wellesley Hills, on the petition of JEANNE RUTLEDGE requesting a variance from the terms of Section XVII (Non-conforming Uses and Structures) which will allow a three-car detached garage located at 41 COTTAGE ST. in a Historic District and a Single Residence District, to be altered and used as a studio-family room. Said garage is a non-conforming structure. Said request is pursuant to Section XXIV-D of the Zoning Bylaws.

Presenting the case at the hearing was Martin Healey, attorney with Rackemann, Sawyer and Brewster, and Jeanne Rutledge. Mr. Healey stated that he disagrees with the Building Inspector and believes that no relief is required from the Board of Appeals because the non-conforming nature of the garage is not being increased regarding physical conformity. He believes that an accessory use as a family room can be allowed by right. Ms. Rutledge stated that she has removed the garage doors, installed sliding glass doors in their place, put up wall board, light fixtures and electric heating and a brick hearth for a wood stove. She wants to use the room for reading, writing and typing. She stated that there is no plumbing and no kitchen in the room. A trench has been dug and a pipe installed to allow 220 amp. electricity to be put in. She stated that she did have a home occupation in her dwelling at 41 Cottage Street, Rutledge Investments, but now conducts business from an office in Medfield. She had four telephone lines in her home but now retains two.

Eleanor Blair, 25 Cottage Street, asked why there were three different telephone numbers listed in the telephone book for 41 Cottage Street. Harriet Willcutt, 39 Cottage Street, asked where cars would be parked. Alice Piehler, owner of 29 Cottage Street, asked if there would be a telephone in the new room. Ms. Rutledge said "no". Jeffrey Allen, 32 Cottage Street, expressed concern about the use of the room as a rental unit or a gathering spot for teenagers. Mr. Healey stated that the former garage would not be used as a residence.

Statement of Facts

The property in question is located at 41 Cottage Street, containing 13,178 square feet of land, located in a Single Residence District and a Historic District. The

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property contains a single family dwelling and a detached three-car garage approximately 26.6 feet by 18.3 feet which is located 9.3 feet from the rear lot line and 17.8 feet from the left side line.

The petitioner recently made extensive alterations to the existing garage. Arthur LaConte, Inspector of Buildings and Zoning Enforcement Officer, inspected the property on December 5, 1984 and reported the following changes: two new sliding glass doors, a mechanical chimney vent, an excavated utility trench extending from the main house to the garage, two-thirds of the walls and ceilings covered with drywall, and other changes. The petitioner did not obtain required permits for any of the alterations, including a building permit, permit from the Fire Chief, certificate of appropriateness from the Historic District Commission.

A Cease and Desist Order was issued by the Inspector of Buildings to Ms. Rutledge on December 6, 1984. On February 1, 1985 the Inspector of Buildings inspected the premises and further construction had been completed in violation of the Cease and Desist Order. On February 21, 1985 a complaint by the Town of Wellesley was filed by Albert R. Robinson, Town Counsel in Norfolk Superior Court on behalf of the Inspector of Buildings requested issuance of a restraining order on 41 Cottage St.

On March 13, 1985 the petitioner filed an application with this Board for a variance from the terms of Section XVII (Non-Conforming Uses and Structures) to change the use of the three-car garage to a family-type room to be used as a studio for writing.

The Fire Chief inspected the site and commented on the petition in a letter of 4/2/85 on file at the Board of Appeals office.

The Planning Board, at its meeting of March 19, 1985, voted unanimously to recommend denial of the application.

The Historic District Commission received an application from Ms. Rutledge on February 20, 1985, followed by a hearing on March 21, 1985 for which the applicant did not appear and a hearing on April 11, 1985. The application before the Historic District Commission was disapproved on 4/12/85.

Letters objecting to the request were received from Rosemary and Alfred Sommer, 16 Wildwood Circle, Robert Ware, 40 Appleby Road.

Decision

This Authority has made a careful study of the evidence presented. The petitioner owns property in a Single Residence District and in an Historic District at 41 Cottage Street, containing a non-conforming single family dwelling and a non-conforming detached three-car garage.

The petitioner made extensive alterations to the existing garage and excavated a utility trench from the house to the garage. She did not obtain the required permits from the Building Inspector, the Fire Department or the Historic District Commission.

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A Cease and Desist Order was issued on December 6, 1984 by the Inspector of Buildings. Further construction continued, and on February 21, 1985 a complaint was filed by Albert S. Robinson, Town Counsel, to the Norfolk Superior Court requesting issuance of a restraining order.

This Authority is of the opinion that the petitioner has shown a flagrant disregard for the Zoning Bylaws of the Town of Wellesley.

The issue before this Authority is the proposed change of use of the garage, which is a non-conforming structure. This Authority is requested by the petitioner to make a finding that the alterations and changes shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

The State Building Code defines a private garage as: "a garage for four or less passenger motor vehicles without provision for repairing or servicing such vehicles for profit." It is the opinion of this Board that the petitioner is converting a building designed and constructed as a garage to a second livable unit on the property. The bylaw allowed the garage to be constructed in that position on the lot so long as it was for auxiliary use. Converting the garage into living space is expanding the auxiliary use to a use not allowed by the present Zoning Bylaws. Two detached structures on a lot in a Single Residence District are not allowed for living space.

This Board finds that the use of the garage as proposed at 41 Cottage Street, or for business use, would be substantially more detrimental to the neighborhood than the original use because the garage is so close to the rear property line and the side line. It is the opinion of this Authority that the petitioner is attempting to overuse the property which is located in a fragile area of Wellesley that has problems with residential density and traffic congestion as well as being located in an Historic District.

The petitioner has violated the Zoning Bylaw regarding Historic Districts, Section XIVD, which states in Part E. Certification:

- "1. Except as this Section may otherwise provide under Part G Exceptions no building or structure within an Historic District shall be constructed or altered in any way that affects exterior architectural features unless the Commission shall first have issued a certificate of appropriateness, a certificate of non-applicability, or a certificate of hardship, with respect to such construction or alteration."

The petitioner altered the garage in a way which affects the exterior architectural features without the required certificate from the Historic District Commission. The exterior of the garage must be restored to its original condition until such time as the Historic District Commission issues a certificate of appropriateness for any proposed changes relating to a garage. The restoration of the garage exterior to its original condition must be completed within 30 days of the date of this decision. Failure by the petitioner to do so will result in court action.

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The requested variance under the terms of Section XVII is hereby denied for three reasons:

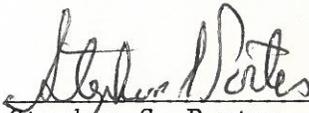
1. The Zoning Bylaw does not allow a garage to be used for living space.
2. The proposed use would be substantially more detrimental to the neighborhood than the existing non-conforming use as a garage.
3. The petitioner is violating the Zoning Bylaw regarding Historic Districts (Section XIVD).

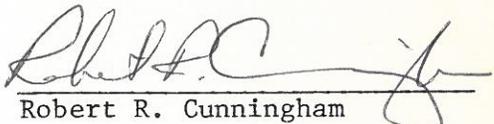
The Building Inspector is hereby requested to enforce the terms of this decision regarding the use of the garage and regarding the restoration of the exterior of the garage to its original condition. The Building Inspector is requested to institute appropriate fines of \$100. per day if the restoration work is not completed within 30 days of this decision.

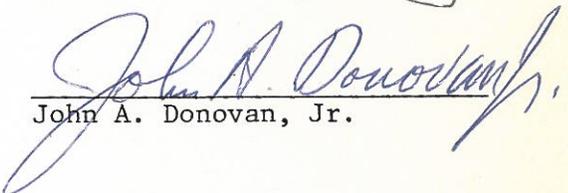
APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
 mam

cc: Al Robinson, Town Counsel
 S. Carter, HDC


 Stephen S. Porter, Chairman


 Robert R. Cunningham


 John A. Donovan, Jr.

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