

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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ZBA 2006-59

Petition of Aliana Von Richthofen  
7 Hampden Street

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Petition of ALIANA VON RICHTHOFEN requesting a Special Permit/Finding pursuant to the provisions of Section XVII and XXV of the Zoning Bylaw that construction of an 11.5 foot by 13.1 foot garage, construction of a 22.1 foot by 30.4 foot one-story addition, and construction of a 8 foot by 30.4 foot deck, with less than required right side yard setback, at the existing nonconforming dwelling at 7 HAMPDEN STREET, in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 19, 2006, the petitioners 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 Aliana Von Richthofen, who said that they bought the small house that is in deteriorated condition. She said that they have lived in the neighborhood for over 20 years at 5 Middlesex Street. She said that most of the neighbors have approved the plans.

Ms. Von Richthofen said that the objective was to provide a first floor bedroom and bath and garage with good access to the house for her husband who has limited mobility. She said that it is currently a two bedroom house. She said that there are restrictions for building on this lot due to the proximity of the wetlands.

Ms. Von Richthofen said that they wanted to maintain privacy for themselves and the abutters. She said that the design steps down to follow the lay of the land. She said that they could not make it any more compact. She said that the proposed lot coverage of 14.9 percent is well below the 20 percent that is allowed.

The Board asked about the 14.1 foot dimension on the right side. Ms. Von Richthofen said that it is from an existing porch. She said that they had to recess the garage. The garage will be at 14.2 feet.

The Board asked about the left side yard setback to the new addition. There is an 8.8 foot setback to the existing house. The existing floor plan shows the kitchen to be 13.7 feet across. That would make the setback slightly more than 22 feet. The Board said that the petitioners are proposing to build an addition that does not conform. The Board would need to see the dimension on the left.

The Board said that the frontage is roughly 56 feet. It would be impossible to build something that is conforming.

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The Board asked about the lot size. It is shown two ways on the plot plan, recorded and calculated.

The Board said that this request for a special permit is significantly different from other requests because the current controlling dimension is to an existing porch that is to be demolished. Ms. Von Richthofen said that will remain as part of the recessed garage.

The Board said that usually the proposed addition is in line with the existing construction. The petitioners are looking to have the 14.1 foot setback as relevant anywhere along the right side of the lot. There will be a substantial increase in lot coverage.

The Board said that there is precedent for this. The Board has allowed stepping to follow the lot line. The proposed construction does follow the topography so that it fits naturally into the setting. Ms. Von Richthofen said that they had to work hard to make it work. She said that this was a carriage house. They tried to maintain the character of the house. There are three story houses on either side.

Doug McLaughlin, said that he is representing the immediate abutters to the right side of the property, Naomi and Jeffrey Stonberg, 31 Brook Street.

Mr. McLaughlin said that at the time of submittal there was possibly more approving neighbors than at the present time. He said that it was his understanding that five letters were submitted to the Board. Ms. Stonberg that the letters had not been submitted. The Board said that it had received three letters of opposition. Mr. McLaughlin said that there is only one abutter who is currently not objecting to the proposal.

Naomi Stonberg, 31 Brook Street, said that the neighbors had been shown a very small plan that had been submitted to the Natural Resources Commission in April. She said that several people who had originally signed the petition have withdrawn their consent.

Mr. McLaughlin said that dimensions were not shown on that plan. He said that the proposal has changed to become more encroaching than what was originally presented. He displayed a copy of the original plan.

Mr. McLaughlin said that the addition comes closer to the right side on the revised plans. The Board confirmed that the dimension at the back had changed from 28 feet to 30.4 feet.

Mr. McLaughlin said that the breezeway that is shown on the plan is a roof with two pillars out front. He said that they are proposing to put a significantly more intense structure there. He said that although the proposal is to stay at least 14.1 feet from the side, there will be new or expanded nonconformance. He said that the magnitude of the proposal is a six times larger increase of the encroachment in the setback.

The Board said that the lot is very narrow. There is only a small amount of space in the middle that is not within the setbacks. It is not really possible to build something that conforms to the setback requirements.

Mr. McLaughlin said that there is an opportunity to build something on the left hand side that would be more conforming.

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Mr. McLaughlin discussed the history of the property. He said that it was an existing structure on a larger lot that was subdivided in the early 1960's. Ms. Stonberg said that it was the carriage house to their home.

Mr. McLaughlin questioned if that would make it a pre-existing nonconforming structure. He asked if the petition had been filed under the correct bylaw. The Board said that the subdivision is fact and the house is there.

Mr. McLaughlin said that if the side setbacks were there before the subdivision was implemented, there may be no pre-existing nonconformity.

The Board said that without evidence to the contrary it would look at this as a legally created lot. There was no evidence presented regarding setbacks at the time the lot was created.

The Board said that Mr. McLaughlin may have raised a valid point regarding the breezeway. If it is an overhang as opposed to a structure, it could not be used as a basis for determining the setback. If it is less than 25 square feet it would not be considered a structure for the purposes of the bylaw. Mr. McLaughlin said that he believes that the structure is 8 feet by 16 feet. The Board said that 14.1 feet would be the controlling dimension. The fact that the posts are there suggests that it is more than an overhang. It also has a slab. Ms. Von Richthofen said that she had photographs of the breezeway with her.

Dave Secor, 4 Hampden Street, said that he has lived there for 13 years. He said that they did an extensive renovation to their home a year ago. In keeping with the harmony of the neighborhood, they decided that they would not seek a variance or a special permit. They made their garage into a side entryway. He said that he has seen the Von Richthofens' plans and he is concerned about the encroachment.

Anneliese Hoelker, 29 Brook Street, said that she is a direct abutter. She said that she originally had no objection to the small scale plan. She said that when she saw the plans in the Zoning Office she noticed the garage that will be located right next to her yard. She said that she does not approve of the new plan.

Jeff Stonberg, 31 Brook Street, said that he and his wife have lived there for 25 years. He said that they have beautified their house but never enlarged it. He said that their property was originally part of a lot that included 7 Hampden and Ms. Hoelker's property. Their house had previously been owned by Pine Manor College. Dana Hall bought the property in 1963 and the property was subdivided.

Mr. Stonberg said that most of the houses in the neighborhood have remained the same size. He said that they are close to town and the pressure on them for expansion is great. He said that it would be a negative precedent to allow expansion within the 20 foot setback. He said that the proposed area of expansion is located next to where the Stonbergs have their master bedroom, master bathroom, kitchen, and deck. He said that the automobile access has been limited so that it is parallel to their playroom. He said that moving the car further along the driveway will place a car with doors opening and closing where none exists now.

Mr. Stonberg said that their lot is so small, it caused a previous owner to take the driveway to the back side of the house. He said that there is a lot of pavement at the back side. He said that the quiet space has been important to them. They enjoy having the view. The Board said that they are not entitled to rights to views. The Board said that what is being proposed will not come any closer to the side lot line.

Mr. Stonberg said that he is a builder. He said that he has looked at the plans and the stated objectives. He said that they propose to take out the front door of the house and move it to the side. They will construct a vestibule between the garage and the house. He said that they could build and not go into the 20 foot setback.

Ms. Von Richthofen said that the porch is an integral part of the architecture. She said that it is tied in with the roofline. She said that the house sits sideways to the street. The side where the porch is located is the entrance and the hall. She said that there is no other logical place to put the addition due to wetlands restrictions.

Ms. Von Richthofen said that her attorney and the bank's attorney had researched and found that it is a legal lot. She said that she also checked with the Planning and Zoning Departments to see what the setback requirements would be.

Ms. Von Richthofen said that the Stonberg's home has 3,904 square feet of living space at 16.83 percent lot coverage. She said that she is only proposing 14.9 percent of lot coverage.

The Board asked about the change to the size of the living space on the revised plan. Ms. Von Richthofen said that the change was made to meet the setback of 14.1 feet. She said that pushing the garage back took up valuable space. They wanted to have a bedroom of reasonable size. They added two feet to the side. They reduced the size of the deck.

The Board showed the plan that Mr. McLaughlin had submitted to Ms. Von Richthofen. Ms. Von Richthofen said that was not her plan. She said that she did show the neighbors the first plan that went to the Natural Resources Commission. She said that the garage was too close to the side lot line.

The Board said that because the plans had changed, it would not give the letters of support as much value.

Ms. Von Richthofen displayed photographs of the existing house.

The Board said that the plan was revised three times. It is not clear what the depth of the addition is. Ms. Von Richthofen said that the Board has the final plan. Ms. Von Richthofen said that the plans were presented to the Wetlands Protection Committee on March 31, 2006 and revised plans were presented in June.

The Board said that there is a room on the plan that is not identified. Ms. Von Richthofen said that is a transition room. She said that they thought of putting a breakfast table there. The Board said that this is space that they could work with. They may be able to pull the garage in to that space for three or four feet.

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Ms. Von Richthofen said that it is a very small house. She said that there is no informal breakfast area or work space. The Board said that the stated objectives were for a master bedroom on the ground floor. It is reasonable to have a bath with that and to have a one car garage. The small space was not listed as an objective.

Ms. Von Richthofen said that they have grandchildren who come to visit. She said that she and her husband work from home. There are two small bedrooms upstairs. One of them could be used but her husband has trouble with stairs.

Alexander Von Richthofen said that space would just be for a breakfast table.

The Board said that it is a small house amongst larger houses. Pulling the design in will not affect the primary objectives. The Board suggested that the Von Richthofens look for a compromise. There is a hardship with the lot so the Board did not expect that they could go back the full 20 feet. It may not be feasible to move the wall in from a construction standpoint.

Mr. Von Richthofen said that he wanted to discuss what Mr. Stonberg had talked about regarding his views. Ms. Von Richthofen displayed photographs of the existing screening.

The Board discussed the breezeway and concluded that it was original to the house. The 14.1 foot setback would be considered relevant. The breezeway structure is larger than 25 square feet and has a slab and posts.

The Board said that since it is a one story addition and slopes back down, it will be low.

#### Statement of Facts

The subject property is located at 7 Hampden Street, with a minimum left side yard setback of 8.8 feet and a minimum right side yard setback of 14.1 feet, on a 12,354 square foot lot in a 10,000 square foot Single Residence District.

The petitioner is requesting a Special Permit/Finding that construction of an 11.5 foot by 13.1 foot garage, construction of a 22.1 foot by 30.4 foot one-story addition, and construction of a 8 foot by 30.4 foot deck, with less than required right side yard setback shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 3/17/06, revised 3/31/06, 6/13/06, stamped by Frank Iebba, Professional Land Surveyor, and Existing and Proposed Floor Plans and Elevation Drawings, dated 6/10/06, drawn by Taproot Design were submitted.

On June 20, 2006, the Planning Board reviewed the petition and had no objection to the granting of the request.

On May 11, 2006, the Wetlands Protection Committee issued an Order of Conditions for the additions to the house at 7 Hampden Street.

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On June 22, 2006, the Wetlands Protection Committee voted to certify that the revisions to the approved plan, shown on the revised drawing dated June 13, 2006, stamped by Frank Iebba, PLS are insignificant.

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that although construction of an 11.5 foot by 13.1 foot garage, construction of a 22.1 foot by 30.4 foot one-story addition, and construction of a 8 foot by 30.4 foot deck, with less than required right side yard setback is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for construction of an 11.5 foot by 13.1 foot garage, construction of a 22.1 foot by 30.4 foot one-story addition, and construction of a 8 foot by 30.4 foot deck, subject to the condition that a certified plot plan be submitted showing the setback from the proposed addition to the left side lot line.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

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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.

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J. Randolph Becker, Acting Chairman

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Cynthia S. Hibbard

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Robert W. Levy

cc: Planning Board  
Inspector of Buildings  
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