

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN  
CYNTHIA S. HIBBARD, VICE CHAIRMAN  
DAVID G. SHEFFIELDLENORE R. MAHONEY  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 431-1019 EXT. 208ROBERT A. BASTILLE  
J. RANDOLPH BECKER  
ROBERT W. LEVY

ZBA 2004-89

Petition of Timothy Ernst and Margaret Shipp  
3 Middlesex Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, December 9, 2004 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of TIMOTHY ERNST AND MARGARET SHIPP, requesting a Variance pursuant to the provisions of Section XXIV-D and Section XVIII-C of the Zoning Bylaw that construction of 114 square feet of new living area and enclosure of an existing 94.25 square foot porch, which will increase the existing non-conforming lot coverage from 28.8% to 30.3%, on a 6,500 square foot lot, in a district in which the minimum lot size is 10,000 square feet and on which the maximum allowable lot coverage is 25%, at 3 MIDDLESEX STREET, shall not be substantially more detrimental to the neighborhood than the existing nonconforming dwelling.

On November 23, 2004, 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 Stanley Brooks, who said that the house was constructed in 1908. The garage on the property was constructed in 1910.

Mr. Brooks said that there is an existing unenclosed porch. The petitioners propose to respect the rear line of the porch when adding a single story addition. The right and left side yard setbacks are currently nonconforming. The addition will be three feet inside the left side yard setback.

Mr. Brooks asked that the petition for a Variance be considered as a Special Permit. He said that the increase in lot coverage is an increase from an existing nonconformity. He said that under Section XVII, which tracks Section 6 of Chapter 40A M.G.L. (The Zoning Act), the Board identifies a proposed increase in nonconformity. In this case, the proposed lot coverage will increase from 28.8% to 30.3%. The Board must also determine if the increase in intensity of the nonconformity shall be substantially more detrimental to the neighborhood. Mr. Brooks said that he believes that the Bylaw, Chapter 40A, and a recent Land Court Decision, reinforce his opinion that the petition should be considered as a Finding rather than as a Variance. Mr. Brooks said that he believes that the question is not the amount of the intensification but whether there is an intensification. He said that the amount of the intensification would be part of the determination of detriment to the neighborhood. Mr. Brooks said that he believes that the question of increasing the intensity of nonconforming lot coverage is similar to the increasing the intensity of the nonconforming side yard setback.

The Board noted that it has traditionally made a distinction. If a new addition will not be any closer to the property line than the existing nonconforming structure, the petition is considered for a Special Permit. If

there are increases in the percent of lot coverage over the allowable amount, the petition is considered as a Variance.

Mr. Brooks said that if the percent of lot coverage is 24% and the proposal is to increase that to 26%, the petition should be considered as a Variance, because it is creating a new nonconformity. The fact that there is an existing nonconformity at 3 Middlesex Street, throws it back to Section 6.

The Board noted that the Planning Board opposes granting the request, stating that the garage could be eliminated or reduced in size. Mr. Brooks said that the garage was built in 1910 and is an existing nonconforming structure. He said that razing the garage to bring their proposal into compliance would be a hardship for the applicants.

The Board asked if the portion of the garage that encroaches on the north abutter is included in the lot coverage. Mr. Brooks said that it is not.

The Board said that it could allow for intensification of the existing nonconformity as a Special Permit, as long as it makes the finding that the intensification would not be substantially more detrimental to the neighborhood.

The Board noted that there were two petitions before them for the same proposal at 3 Middlesex Street. Under ZBA 2004-88, the petitioners were requesting a Variance to increase lot coverage. Under ZBA 2004-89, the petitioners were requesting a Special Permit build an addition out to the existing nonconforming side yard setback. The Board said that it could consider the requests for increased lot coverage and nonconforming side yard setback under one petition for a Special Permit.

The Board asked if there was anyone present who wished to speak to the petition.

The Board said that the application for Special Permit, ZBA 2004-89, would be amended to include the request for an increase in percent of lot coverage.

#### ZBA 2004-89, TIMOTHY ERNST AND MARGARET SHIPP, 3 MIDDLESEX STREET

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, December 9, 2004 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of TIMOTHY ERNST AND MARGARET SHIPP, requesting a Special Permit/Finding that removal of an existing 6.7 foot by 7 foot nonconforming bulkhead with less than required left side yard setback, enclosure of an existing 6.5 foot by 14.5 foot porch with less than required right side yard setback, construction of a 6.5 foot by 17.7 foot one story addition with less than required left side yard setback, which will increase the existing nonconforming lot coverage from 28.8% to 30.3%, on a 6,500 square foot lot, in a district in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The Board said that the lot coverage is already over the 25% that is allowable. The lot is small, so intensification should be looked at strictly. The neighborhood is crowded. Although the petitioners do not propose to get any closer to the neighbors, there is an intensification.

Mr. Brooks said that the petitioners had spent about a year working on the design. They had considered alternatives, including reconfiguration of the house. Mr. Brooks said that the interior of the house has many architectural details. To rework the interior of the house would create smaller rooms. The proposed plan is to respect the existing roofline and existing rear line of the porch. There is a six foot fence that surrounds the property. There are mature plantings on the property and the abutting properties. What the petitioners are proposing to do will not significantly alter what the abutters currently look at.

The house at 3 Middlesex Street is one of the smallest on the street and will remain one of the smallest, even after the addition.

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.

---

Cynthia S. Hibbard, Acting Chairman

---

Robert A. Bastille

---

Robert W. Levy

cc: Planning Board  
Inspector of Buildings  
lrm