

# TOWN OF GEORGETOWN ZONING BOARD OF APPEALS

## MINUTES OF A PUBLIC HEARING 150 ELM STREET – ZBA FILE #09-01 - VARIANCE

**Peter J. Coccoluto & Kristen V. Lund**

Hearing Opened - March 3, 2009

*Continued to April 7, 2009*

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**Board Members Present:** Paul Taraszuk, Chairman, - Voting  
→ Matt Lewis, regular member - Voting  
Paul Shilhan, associate - Voting  
Jeff Moore, associate member - Voting  
Scott MacDonald, associate member - Voting

Helen F. Sides – Architect for Applicant

Absent – Joe Young, regular member and Mike Muller, regular member, Jon Pingree, regular member

Zoning Clerk: Patty Pitari

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P. Taraszuk: The Board of Appeals will conduct this hearing according to rules laid out in Chapter 40A of the General Laws of the Commonwealth of Massachusetts, Roberts Rules of Order and its own particular set of rules, entitled Rules of Procedure, a copy of which is on file with the town clerk, another copy is available from the clerk at this meeting. These proceedings are being tape recorded, for the purpose of preparing minutes, once the minutes have been approved, the tape recording may be taped over.

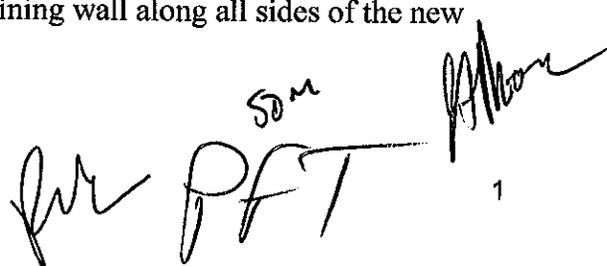
Taraszuk stated a petition has been made by Peter Coccoluto & Kristen V. Lund for a Variance/Special Permit under M.G. L. Chapter 40A, Section 6, 9 & 10, and the Georgetown Zoning Bylaw, Chapter 165 Sections 8-11, 78, 79 & 84 for side setback, in the RB Zone. The premises affected is 150 Elm Street, and identified on the Assessor's Map 9A, Lot 26.

A Motion was made at the March 3, 2009 hearing to continue to April 7, 2009 at 7:30, and for the applicant to come back with two items.

1. Topographical evidence
2. A drawing showing the new structure would be instead.

The applicants presented new information requested at the last meeting, a letter and topographic drawings along with pictures.

Peter Coccoluto the owner/applicant explained the new information he was asked to provide. He stated they did a Plan B which would turn the garage out of the non-conforming zone, putting a new garage behind the house and it would require them to dig up and remove much of the yard, which would be an enormous amount of earth and build a massive retaining wall along all sides of the new driveway.

for PFT <sup>50m</sup> 

He stated they would have to lay 2,200 sq. ft. of new asphalt instead of only 120 sq. ft and add 200 linear ft. of new retaining wall, ranging from 4-6 ft. high, instead of only 10 linear ft. of new retaining wall.

Helen Sides their architect states they would have to dig and remove as much as 11,000 more cubic ft. of dirt. Ms. Sides describes the slab height in the new presented plan b, and shows how the turning and grade requires a much more substantial wall and the end of the drive would be like a pit, and it would cause a drainage issue.

Peter (applicant) stated if we were not able to rebuild our garage as planned in the original plan our only option is to build behind the house and the location of our septic system prevents us from building on the south side of the house. The yard slopes up steadily up from the back of the house to the barn and because of that the back wall of the existing garage is several ft. lower than ground level.

Kristen Lund (applicant) stated their neighbor's are much happier with the original plan to rebuild, and we have pictures showing the garage already below ground level, the wall in the garage is 3 ft. 10" and bottom of window is 5' 4", and pictures looking up to the barn from back of garage to show the slope. We believe the original Plan A is keeping with the character of the neighborhood and is not more detrimental.

P. Taraszuk stated the plan they presented shows elevations in and around the barn at 107 and the existing is around 103, it varies 3-5 ft. Plan B puts a case together for a hardship for a variance.

### Board Questions

M. Lewis asked on the construction on the garage side where the tree is, so said at the last meeting you wanted to try and keep that concrete slab, you still have to dig down for a footing, so what are the trees run that 5 ft. back.

Peter stated there is some scrub bamboo, lilacs midway to the barn, and an old fence, our neighbors would like plan A because we would not block their sunshine onto their yard where their laundry line is and that matters to them.

P. Taraszuk asked what type of trees you will have to take down for Plan A.

Peter stated just the bamboo and blackberry bushes and maybe some lilac, the trees start near the existing red shed shown on the photo. There is a sugar maple near the barn that would have to come down if we had to do plan b, moving the garage to the non-conforming space on the sloping land at the back of the house.

P. Taraszuk stated you would not go any closer than the 5'5" and 5'9" that is there now.

Peter stated no, we would not come any closer.

J. Moore stated is the lot line not parallel to the structure? Peter stated correct.

P. Taraszuk asked if you are overlapping on the old footprint by 10 ft., and asked if they are removing the old slab?

Kristen stated we don't know, we haven't had a builder look at it, but we will keep what we can of the retaining wall and extend it back.

The applicants stated they are willing to discuss special permit since it was discussed at last meeting.

P. Taraszuk asked how the board feels.

J. Moore stated he believes in this case we have the authority to grant a special permit because I think this project meets the requirements of a special permit and he would like to go with that unless the board feels the need for a variance he is willing to discuss it, he stated his personal opinion is in doing as much research as I have done on this and along with our bylaws and some case law, because it's a pre-existing non-conforming dwelling I am willing to go with that.

S. MacDonald agreed with Jeff that he believes it should be a special permit for a pre-existing non-conforming structure.

P. Taraszuk stated he would like to go with the special permit first.

Discussion followed on the sections of the bylaw for pre-existing nonconforming special permit.

J. Moore stated he thinks if the project increases the conforming nature then they have to show it is not more detrimental.

The board as a whole decided to go the Special Permit route.

P. Taraszuk stated you are making it more non-conforming by being too close to side and going back 5'.

J. Moore stated it's up for interpretation.

P. Shilhan stated the intention of the special permit issue is to what degree and I think they left it up to interpretation, so we can make that determination and in that case I think it's perfectly acceptable and it gives us the ability to make that decision every time this comes up and it makes me more comfortable about making this decision, if we feel the impact is more substantial in a later case, we will be able to say your impact is more detrimental as compared to a previous case so I believe we are on save ground.

S. MacDonald stated he keeps going back to 165-94 and I believe it is more non-conforming, but it's not it's not more detrimental.

P. Taraszuk asked each member if they believe the original plan/project would be more detrimental and each member felt it would not be.

Discussion on leaving some of the existing slab intact because it's probably tied in with the retaining wall.

M. Lewis stated we may want to put a condition in regard to damaging the retaining wall that's there now.

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H. Sides the architect asked why. Discussion of safety issues followed.

M. Lewis stated you were going to work off the existing foundation, if for some reason you can't now the integrity of the existing wall has to be taken out, it could affect the existing trees. At the first hearing you stated those trees in the front are the property of your abutting neighbor's the Millers, if you find down the road that the building inspector and contractor think the foundation or retaining wall is not adequate those trees can be damaged or destroyed, and if we don't have something in here, it is the neighbor's property that should be protected, that's why I think we need a condition on it.

P. Taraszuk stated that does have an impact on the neighbor's trees, we are trying to work with you and it does fall into our jurisdiction.

Discussion on conditions for using the plans submitted and potential damage to the neighbor's trees.

P. Shilhan stated he doesn't think you will be able to retain much or any of that, we need to maintain protection to the neighbor; you don't know how the trees will react, maybe plant some trees back.

**MOTION:** J. Moore made a motion to grant a Special Permit to Peter Coccoluto & Kristen Lund of 150 Elm St. based on the contents of the of the application and evidence presented by the applicant and parties in interest in support of application for a Special Permit to demolish the existing garage and construct a new two story two car garage, two story addition and a one story screened in porch to the existing dwelling closer to the side lot line than allowed in the RB district, extending or altering a pre-existing non-conforming single family structure, and finds that such extension or change is not substantially more detrimental than the pre-existing non-conforming structure as the plan submitted per 165- 94 with the following conditions:

1. The new construction shall be built per plan submitted in the application.
2. If any trees that are the property of the abutting neighbors on the side of the lot were the retaining wall exists are affected negatively or destroyed during construction they shall be replaced at the applicant's expense and the applicants will work in conjunction with that abutting neighbor.

Seconded by S. MacDonald, all in favor – Yes, motion carries. Granted unanimously

P. Taraszuk stated there is a 20 day appeal period following the 14 days the clerk has to file the written decision with the Town Clerk.

**MOTION:** M. Lewis to close the hearing on 150 Elm St, seconded by S. MacDonald, all in favor. Hearing is closed at 8:45pm.

Patty Pitari  
  
Zoning Administrative Assistant

Date Approved 7-14-09

  
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