



## Georgetown Zoning Board of Appeals

Memorial Town Hall ♦ One Library Street ♦ Georgetown, MA 01833

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### MINUTES OF A PUBLIC HEARING

ZBA File #14-09

Zoning Board of Appeals

60 E. Main Street & 64-74 E. Main Street, Georgetown MA –RA Zone

Special Permit for Alteration or Extension of Pre-Existing Lawful

Nonconforming Use and Structure, Variance for 60 E. Main St.

& Variance Modifications for ZBA File #97-17 & 04-03 Decisions

& Water Resource District Special Permit

March 4, 2013 – CONTINUED TO APRIL 1, 2014

Board Members Present:

Paul Shilhan, Chairman

Gina Thibeault, regular member

Dave Kapnis, regular member

Jeff Moore, regular member

Sharon Freeman, regular member – Recused on 3/4/14

Zoning Clerk: Patty Pitari

Also present:

Representative for the applicant Mr. Constantine G. Scrivanos;

John T. Smolak, Esq., Smolak & Vaughan, LLP, East Mill, 21 High St, Suite 30, North Andover, Ma 01845

Constantine G. Scrivanos, Owner

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Chairman Paul Shilhan opened the Hearing at 8:45pm, being the second hearing of the night stating the Board of Appeals will conduct this meeting 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. This meeting is being taped recorded for the purpose of taking minutes, once the minutes are complete the recording may be taped over.

**Motion** to waive the reading of the legal ad, Motion by D. Kapnis, seconded by G. Thibeault, all in favor, yes. Motion carried.

Chairman Shilhan – Introduced the Board Members, and let the applicant know they would need a unanimous vote, as Sharon Freeman has recused herself as she is on the abutter's list.

#### **New Correspondence**

Letter from Police Chief Donald Cudmore, dated March 25, 2014

Read into the record by G. Thibeault;

“This letter is in regard to the Notice of Hearing for the above referenced property. The plans submitted involve site improvements as well as additional parking spaces. Please note that on October 23, 2013, I contacted Building Inspector Jon Metivier relative to the overall condition of the existing parking lot as it pertains to the access to the rear of the building.

The area in question is at times not passable by way of a vehicle and as a result I elected to cease police patrol activity of the building due to the condition of the rear access road. Additionally, with the excessive snow fall this winter as well as

the continual freezing and thawing temperatures it made the roadway for both pedestrian and vehicle traffic dangerous. Building Inspector Metivier did contact a representative of the complex (Attorney Smolak) and was advised the property owners were informed of my concerns at the time. Also note Fire Chief Beardsley had echoed the same concerns via email and will not allow equipment in the area. As the hearing continues with this property before the Zoning Board, I would like to inform the Board that the area in question has still not been repaired and remains in disrepair today. Currently, the Georgetown Police Department will still not enter this area to provide security checks until the roadway is repaired. In my opinion this is clearly a public safety concern as this property has legal access by way of licensees and invitees pursuant to M.G.L. signed by Donald C. Cudmore, Chief of Police & Albert Beardsley, Fire Chief.

### **Applicants Presentation:**

John T. Smolak, Esq. representative for Mr. Scrivanos – We discussed at our last meeting doing a subcommittee of one or two members of the board, I guess that is not an option at this time although that is being potentially revisited. We did meet with the Town Planner and Building Inspector on various site and in terms of the process, also we have made some revisions to the site plans based on the issues identified at the last hearing.

Attorney Smolak shows the board a plan on the easel (conceptual plan) he explains the history as the first hearing before 60 E. Main St. was involved, and now with the existing house, this plan is revised which it restores the driveway to the historic house and moves the septic forward but moves parking in the front to the rear, that was discussed at the last meeting, we restored landscaping in the area which last showed parking, and moved the septic slightly forward the we think this minimizes the impact that was last discussed, this is a discussion piece, I know you are just seeing this tonight.

G. Thibeault – As you know, the trees are important to me, they are not shown in front the Christmas tree, and the others, they are not depicted there.

Scrivanos – Those will stay.

Kapnis – When was this plan done?

Smolak – A couple of weeks ago.

Kapnis – Why didn't you give them to us a couple of weeks ago per our rules, so we have time to review them, and you have had them for a couple of weeks, personally, I have an issue with that, I am seeing them now for the first time, and I can't even see it from here. It's not a demand but it's a request.

Smolak – We wanted to meet with the Building inspector and Town Planner.

Kapnis – But you had them, why didn't you give it to the Building Inspector then? I met with the Building Inspector after you did and he said had no idea what was going to be presented either.

Smolak – We were just discussing it.

Shilhan – What's the latest feedback from the Building Inspector?

Smolak – He didn't give us feedback. There are two ways we can go about this, go the planning with an ANR proposal to combine the lots, the other is to close on the property and acquire it, that's a significant financial risk. If we combine it and and come back to you and the board doesn't agree with it, we have two problems, we have the adjacent residential property that we can't redevelop, and we have existing, pre-existing nonconformities on the both lots that may be impact as a result of trying to un do those lots, so if you combine both lots, your establishing hardship with respect to the lot.

Shilhan – What's the pre-existing nonconformity with the house lot?

Smolak – The setback issue and on the other is the pre-existing nonconforming uses and structure and the like. There was also a comment from the Planner that you go to them.

Smolak – That was a discussion that we may do that, we have a way's to go, we want to see what the board feels.

Patty gave P. Shilhan, the bylaw section that states you must finish with Zoning before going to site plan approval.

Smolak – Conservation also wants the parking up front. The applicant has spent a lot of money.

Smolak – We had a discussion from the town administrator, he is still evaluating this, on having a joint or a representative for each of the boards, and he has not gotten back to us yet. We can't lease it out without the parking.

Mr. Scrivanos, Owner – We have been empty for a while, 50%, we are not getting calls for retail, the bike shop left, we had industrial in the back and they left, we got call for Chinese restaurant, nail salon, and hair salon that's it, we not getting even one call. I charge \$14 -16 per sq. ft. I am going to spent close to 2 million dollars to fix the front and everything, more windows and make it more retail.

Kapnis – Going back with history on your property, the letter from the Chief of Police and previous building Inspector, going back, to 2009 with noncompliance with the sign, and last year the Police Dept. contacted you. There has been no response from you on either of these issues. There has been no effort and I would like to know why.

Scrivanos – The thing is, I don't have that information, but what we have back there is conservation land, we can't put anything there we it fix once or twice a year to fix the back and then it comes back again, I can check with my people. I have conservation issues.

Kapnis – There has been no response, this letter we just got from the Police Chief stating they contacted Attorney Smolak, your representative and the other issue is the sign in 2009 that you ignored.

Scrivanos – We want to fix it back there, with conservation they are happy with some things like the pervious area. I can get you when we have fixed back there, one or two rains it comes back again. I asked my people last week, what we can do.

Smolak – We are in the middle of conservation, and we have a solution for it.

J. Moore – Not for the expansion but for the upgrade of the existing site.

D. Kapnis – This is in addition to Chief of Police and Chief of Fire Dept.

Smolak – The notice of intent was filed before this letter from the Police and Fire Chief.

Kapnis - Did you not respond?

Smolak - I responded to the Building Inspector on it.

Kapnis – This is not from the Building Insp.

Smolak – I thought building was satisfied. I just recently got that letter.

Kapnis – The letter references an email from October of last year.

Smolak - I responded to the Building Inspector on it.

G. Thibeault – There was an email and you should have responded to it.

Scrivanos – In the past when they asked us we have done work back there. I can get you all the times we have done work back there.

Shilhan – I have walked back there and it's almost always a mess. You bought the property about 20 years ago, it's the same, nothing has changed and you re-did the septic 10 years ago, there is no need to make it bigger, you made it as big as you could with what you have, nothing has changed since you purchased it, that's not reason to move it to another property. The market is terrible right now, but that is no reason to move your problem to another property.

Scrivanos – The reason the septic is an issue, is the water table is 2 to 2 ½ ft. I don't know if that's a hardship.

Shilhan – But the septic was acceptable to you 10 years ago when you put it in. It I believe was about 10 years ago, the economy has gotten it seems that's what's driving this; it's like this all over New England.

J. Moore – You have migrated from retail plaza with a restaurant to a more professional building, you have Pentucket Medical and the Physical therapy in there and it's a different kind of client, and it seems you want more of that, and we spoke of the history and it's clouded, you were allowed a restaurant really and at some point, it became a retail strip in there, we went over the numbers at the last hearing, what kind of parking and septic do you need, retail doesn't need nearly what the other types need. The problem is, and you have my comments, I feel there isn't a business in town that can make the same argument, that they don't have enough parking or septic, that they can't expand like they may want to. An example is where little block of shops and Theo's is, that don't have the septic and parking etc... But that's the reality of down town, we are not here to rezone downtown. What you are asking for is to have special permission to break the zoning code to maximize the value of your property, which you have the right to do and the right to try to do, in the process, redeveloping an otherwise a single family property, to me is iconic, and a value to the character to the downtown neighborhood and it's a mixed use neighborhood.

Scrivanos – Across the street was a dump for the last 40 years, and I spent a lot of money on the lot. Except for Mr. Kapnis comment I put the wrong color on the sign, and the exit we changed and we keep it clean. Every time I want to rent I have to come to the board, people don't want to hear that, I am not a developer, I prefer to have retail.

Smolak – We are just exploring all options possible. We understand the town wants to maintain the area, it was loud and clear last meeting.

Scrivanos – Tell me what else you want me to do, I do anything. If I can put a septic on my own property and have massive retaining walls.

J. Moore – So we should look at that and say alright, so it's worth significantly redeveloping an abutting property that's iconic to town and significantly to the neighborhood and what you're going to do is significantly deteriorate from that and that should be allowed? We didn't create zoning, your zoned residential to begin with, this area is the downtown area, spot zoned with a mix of residential and commercial and that's what it is, and that 60 E. Main St. is one of the nicest homes in town, it's going to have an impact on the neighborhood, and you're asking us to break the code because you have problem on your property.

Scrivanos- I can hire someone to do it anyway you want it, we show the wild flowers on top of the septic on 60 E. Main St. I am paying 50% more than what's its worth. My side looks a lot better that what's across the street.

G. Thibeault – You came here with Triad Driving they have moved in. Scrivanos - Yes they have.

J. Moore – The rents didn't go up at all? Scrivanos – Maybe a little.

G. Thibeault – I can see you're trying with the new plan and I do appreciate it.

Shilhan – The big issue I have is a variance a use variance on 60 E. Main, which is a very high threshold.

Shilhan – But your saying you need more parking.

Scrivanos – It will be done with landscaping.

Shilhan – Your original proposal is better. Although I didn't like the elevated septic, but I don't know why it couldn't be tiered.

J. Moore – This is going to be very difficult to get. The other boards I think may have different issues.

Smolak – We had the limited options on this property.

Discussion follows on the previous plan from fall of 2013.

G. Thibeault – Is the reason for the subcommittee to avoid this. I feel like you're putting in the effort, I just don't think the variance thing is going to work.

Scrivanos – If the board thinks it's not a major detriment, you can hire someone to do it and I will pay for it. I could just go to conservation and I just need title V to keep it the same.

Smolak – If we just stayed on our own property, it morphed to the property across the street, now the conservation agent wants the parking up front.

Shilhan – The other boards are going to have different opinions. All I could think of I would say the hardship could possibly be the water table.

J. Moore – I am not convinced, I am not buying it, I still think that is a pre-existing nonconforming use. If this were zoned commercial, and the uses your planning on, and we cleaned up some of the documents, if you could do any by right if it was commercial and it was zoned properly and you can't use that lot for which it is zoned, I might feel differently about it, the only reason you have the right to use it as a doctor's office is because we helped you out 3 months ago with that decision, and that's been in there all this time, I won't say illegally, but I don't know how all those uses got in there before anyway, but we granted it because we recognized there was some history and it was clouded, and we decided that we would allow you to clean that up your right to use this property in a flexible manner as far as the tenants, with the condition that your recognize the site has limitations in terms of parking and septic, we said you have to manage that, we talked about it, even to the extent that units will have to go empty, it says it right in the decision we just gave you.

Scrivanos – So I can't put any more doctors, all I can put is retail.

J. Moore – You can get them in at the right price, I don't know what your rates/ rents are, I think for the right price you can get someone in there. What I am getting at is you want to convert this to one particular use. You're creating your own problem here, because you want to maximize your investment.

Scrivanos – Can't a water table be a hardship.

J. Moore - I disagree, I think redeveloping a perfectly conforming iconic home that contributes significantly to the neighborhood is detrimental, I would like to see that property the way it is now, and your saying your problem supersedes the Town's desire to maintain these types of properties in that area, and I don't agree with that. I appreciate the place has been upgraded, if you can come up with a way to keep this on your property, or  
*60 East Main Street & 64-74 East Main St, April 1, 2014 Hearing Minutes ZBA File # 14-09*

the parking on your property, and maybe carve off a little piece to put the septic over there, and a deed restriction to leave the house as a residential home or something, I don't know you have to think through it, it maybe if you needed a dimensional variance I could think about that, but you're asking to completely re develop that property is something I think Georgetown needs to maintain more of. Your proposal although it solves your problem, it not necessarily beneficial to the town.

Scrivanos – I don't think I am unreasonable. Where the septic will go will see flowers they won't see the septic.

D. Kapnis – We have been reasonable and we would like more time to look at these plans, but to look at this how that lot is going to change I can't tell by this plan, and 60 E. Main Street is a beautiful property, we want to see it maintained, from that plan I can't tell it's up 2 feet, I can't tell what is taken away for vegetation, we need a lot more detail. We have a job to do and protect the town.

Shilhan mentions rezoning the property.

J. Moore – The use they are trying to use is not even by right it was by special permission it was zoned residential to begin with he knew when he purchased it. It's a risk you took.

G. Thibeault – What was your intent for tonight. Were you looking for a vote tonight?

Scrivanos - I want to see what you need and tell you what I want.

Brief discussion on meeting with other boards.

Smolak – If there is absolutely no way we can't get a vote for the adjacent parcel, then we need to know that, but if we can get further feedback from planning and the like, we can see if we can come up with something, we don't want to prolong this.

J. Moore – I will be honest with you, I am not comfortable with this concept, I would vote no tonight. I think there are not a lot of people who are not in favor of this; I don't think I am the only one who has issues with this plan. Whether you have subcommittee meeting if you can, or whatever I am willing to listen. I don't think a use variance on 60 is a good idea, at least with the plans I have seen. I don't think I am the only one.

G. Thibeault – Can you condition a use variance.

J. Moore – Yes you can, you can't condition it on time or ownership.

Scrivanos asks about a use variance.

J. Moore – Explains what a use variance is and what you need to prove and that the house is zoned residential our role is to preserve that zoning, except in very unique and special circumstances. You're asking us to exempt you from the law. Effectively you want to impose your financial problem on to another lot and you're asking for exemption from the law to use that lot for a different purpose than what's it's zoned for.

Scrivanos – Then I should withdraw if I don't think you may not like it, so we need 4 votes.

J. Moore – This is why I presented comments for your meeting with the Building Inspector and Planner.

Shilhan – As it is right now, I would vote no as well the way it is now. Can I be persuaded it's very difficult to give a use variance?

Scrivanos – You leave me no choice then to put an 8 ft. wall.

G. Thibeault – I just don't want to abandon the fact that this person is trying to work with us, I think you have done everything we have asked and you're keeping the house. I don't know if you had other people in the neighborhood. I don't want that 8 ft. wall, I will be very disappointed.

D. Kapnis – I agree.

Patty stated that has to go through conservation.

Shilhan – It could be something else other business options. I know there are ways I building this wall without it looking like just a big 8 ft. wall. What if he sells it, I could be something else that is one business that doesn't need what he's asking for.

G. Thibeault – What if he sells it to someone who doesn't want to work with us, and will take care of that property on 60 E. Main St. I feel very strongly about a wall. I don't know what the next step is.

D. Kapnis – I think the next step should be to get approval to do that system with the wall on the septic, what if he goes to Board of health or conservation for approval with that wall. I would go explore that with them.

### **Audience**

S. Freeman, 58 E. Main St. – I am speaking as an abutter and not as a board member, I don't see how you can take 2 properties and put them together and say that a use variance will apply. I see Jeff's point but I don't see a hardship or it meeting any criteria for a use variance at all. The septic they are asking for 6,000 gallons that's huge. Just think of about what they are proposing we already have water issues, and then if you raise the septic that high I can't see it, but the people next door may be able to.

D. Kapnis – We are not qualified on the impact on the water system. I want to see something a lot more concrete I want to see your other option, but I also want to see that you complied with every condition, now and previous, because at one point we said show me a leap of good faith, and the best way to predict future behavior is past behavior, going back to the sign, the 50 ft. driveway, and the drive around in the back with the police department.

Scrivanos – I can get you some records on what we did in the next couple of days or two, all that information, and talk to the inspectors that we have complied in the past on what we did.

Kapnis - You should touch base with the Police chief and Fire chief, who just sent this letter.

G. Thibeault – It needs to look the same. You know what our concerns are.

P. Shilhan - I think you may want to withdraw without prejudice, and then figure out a different way around this.

Smolak – I suggest we continue and go to other boards, continue for a month.

G. Thibeault – Can we do the subcommittee. But if he withdraws and we do that.

Discussion inaudible multiple conversations at once.

Shilhan – In the towns that I have worked in before I haven't had a problem with it. I don't know how to get over that.

Scrivanos – If I go to Planning and they say I can't have the parking, I need those kind of business like hair and nail salons and they say no what I do.

Smolak – Maybe we continue to have dialog with conservation and maybe planning. If we decide within two week we are not any closer we may decide to withdraw or a further continuance or, we can refile.

Patty – We need an extension of the variance for 100 days.

**Motion** to go beyond the 10pm rule by G. Thibeault/D. Kapnis, all in favor. Motion carried.

**Motion** to Continue May 6, 2014 at 7:30pm, by G. Thibeault/ D. Kapnis all in favor, Motion carried.

**Motion** to allow an Extension of time to June 30, 2014 for final action on the Variances, D. Kapnis/G. Thibeault, Motion carried.

**Exhibit Mark at hearing - Plans Submitted:**

Exhibit 1 - Site Plan Existing Conditions (sheet 1 of 5), drawn by Williams & Sparages, dated revised 1/24/14.

Exhibit 2 -Site Plan Proposed Layout Plan (sheet 2 of 5), drawn by Williams & Sparages, dated revised 1/24/14.

Exhibit 3 - Site Plan Proposed Grading & Utility Plan (sheet 3 of 4), drawn by Williams & Sparages, dated revised 1/24/14.

Exhibit 4 - Site Plan Proposed Landscape/Lighting Plan, (sheet 4 of 5) drawn by Williams & Sparages, dated revised 1/24/14.  
Sheet 5 is construction plan not needed for building.

Exhibit 5 Watershed & Soils Map, by Williams & Sparages, Middleton Ma, dated revised 1/24/14.

Exhibit 6 **Color Proposed** Master Plan by Huntress Associates, dated January 2014.

Exhibit 7 - Marked L1 - Landscape Plan by Huntress Associates, Inc. 17 Tewksbury St. Andover MA dated 1/9/14.

Parking plan Table 1 – Exhibit 8

*Patty Pitari*  
*Zoning Administrative Assistant*

*Approved 5-6-14*