



Georgetown Zoning Board of Appeals

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

MINUTES OF A PUBLIC HEARING

Thomas & Lisa Simmons of 36 Prospect Street, Georgetown MA

36 Prospect Street - ZBA File - #16-04

Special Permit – Multi-Family

February 2, 2015 *continued from January 5, 2016*

Board Members Present: Gina Thibeault, Chairman
Jeff Moore, regular member
Dave Kapnis, regular member
Paul Shilhan, regular member
Sharon Freeman, regular member
Shawn Deane, associate member – Absent, not voting

Zoning Clerk: Patty Pitari
Owners/Applicants: Thomas & Lisa Simmons

Attorney for the Applicants:
James T. Connolly, 51 Green St., Newburyport MA 01950
Also present; Attorney Jonathan Eichman, Town Counsel, Kopelman & Paige

Chairman Thibeault opened the hearing at 7:30pm that was continued from 1/5/16 and introduced the board members and who will be voting.

Applicants Presentation:

Attorney Connolly – Since the last hearing the concerns raised we discussed a special permit with conditions, there was a suggestion on it being owner occupied which is fine with Mr. Simmons, I sent an email to that affect; If the board would entertain that and the unit have no more than three cars, that would be fine with us, just a suggestion. Email he sent below;

GT – Asked for new correspondence. Patty just that email from Attorney Connolly.

Patty marked as Exhibit A.

Exhibit A – Email from Attorney Connolly, email to Patty stating, In an effort to address the concerns of the Board expressed at the last hearing, Tom Simmons would suggest that the special permit be conditioned upon one of the two units being owner occupied, and that the number of automobiles for the non-owner occupied unit be limited to three.

Audience

Betsy Amsel, 37 Prospect – Submitted a set of 5 Pictures of house with parking shown, marked as Exhibit B.

Denise Langley, 41 Prospect – There are a lot of people who park on our street during the day, some of us have construction projects going on and we are forced to park in the street, we have visitors and we park on the street. We have the elementary school around the corner, and the parents park on our street, there is a parking issue.

Tim Parthree, 23 Prospect – This is not a bad situation, he has agreed to owner occupied I don't believe it will be detrimental

Nora Cannon, 16 Pond St. – I spoke last time and as a citizen the inspector didn't do the right thing, it's more about what you heard she speaks of the previous hearing, and has concerns about, what the board can do about all of the violations. We are depending on you.

R. McGuire, Pond St. – It comes down to as Mr. Shilhan said, I don't think there should be a reward for doing the wrong thing. The structure is already built. It should stay a single family.

Betsy Amsel, 37 Prospect – It's my opinion that it's the towns responsibly for this situation; I would never have purchased my house if the Simmons house looks like now. I hope you will mitigate your decision as far as parking, fencing, trees to shield other properties from this huge structure.

Scott Mantel, 32 Prospect St. – I would rather see it occupied, I would like to see it owner occupied.

John McDonald, 26 Prospect – I agree, it's there I would like it to be owner occupied.

Denise Langlely – There is always going to be change, change will happen.

Tim Parthree – Across the street, they have a parking lot, we have Townsend fuel that terrible.

New Correspondence - Exhibits

Exhibit A – From Attorney Connolly

Exhibit B - Pictures of 36 Prospect property from Betsy Amsel who lives directly across the street.

Exhibit C – Plot plan dated 11/12/15 by Engineering Land Services of West Newbury MA, stamped by Robert M. Grasso PLS

Board Discussion

DK – There was a deed restriction was contingent upon an updated septic system being installed, then they had to come back to us.

SF – This is quoted from our last findings, in July of 2010, Board of Health voted to amend the building permit application that was originally approved for a garage only, the board voted to amend the permit for a 3 bedroom dwelling above the garage and agreed that an occupancy permit could be issued, utilizing the existing septic system, and provided among other things that the owner remove the kitchen from the main dwelling, and a recorded deed restriction stating that no more than 3 bedroom shall be on the premises. It that was it is today.

JM – That was the Board of Health trying to use the existing septic that what that was, the previous septic was only for 3 bedrooms, then they put on the deed restriction that has since been lifted.

SF – What I am trying to understand if we don't condition it, it would be a 7 bedroom house, I don't see that anything has changed, I don't see that is not a detriment, I don't feel that I should be compelled to grant it just because it exists. Discussion on occupancy permit follows.

Attorney Connolly stated in your packet is the release of the deed restriction.

Jeff answers an abutters question on permitting process, and the history with this, is the legality of the addition and how it happened.

SF – I feel this is precedent setting if we approve a multifamily, it was a single family no matter how many bedrooms, I understand we can condition it, but I don't see that it is not a detriment to the neighborhood, if this came before me today in the current configuration, I would say no, and I don't feel I should be compelled to feel otherwise, just because it exists.

PS – This was over built.

JM – The building code and the zoning code limits the size of the structure and the height and how far from lot lines and those items, which other than a slight existing nonconformity on the front setback, everything else complied with the building code at the time, he has the land to put in the septic for up to 7 bedrooms, but you don't have the right to make it a two family. The history that's ambiguous is the legality and how it was built and how it transformed from a barn/garage to a residence, there is a lot there.

SF - I feel bullied, not by the board, but the situation is bullying me to grant this, not by anyone just what has happened.

GT – I don't think you should feel bullied, you have every right to your opinion, we are volunteers doing best we can. Don't feel badly about it.

SF – I mean the situation that's been presented before us.

JM – We had asked about the other 2 families on the street.

Patty passed out the field cards on the other 2 families that have a total of 4 bedrooms for both units total.

JM – To the size of the structure and the number of bedroom my concern is the number of residents that can be attracted to the size of the home. The number of people that could reside in this structure, I am only comfortable if we could limit the occupancy of the home. Paul made valid points, it was overbuilt. As Dave said a single family you could have more people living there, so I want to control that by somehow restricting this, and limiting the cars parked off the street, I don't care how many bedrooms, because people can put many bedroom in a house this big. We can restrict by unit or by total. We are kind of cornered.

JM – The zoning enforcement officer at the time made some mistakes at the time as well as Mr. Simmons.

DK – It was a serious of event, but we should think about the potential. We have to try to have a happy medium.

JM – How many kids in the house?

Tom Simmons - 3

Motion to go beyond the 10PM rule moved by JM/DK to 10:30pm all in favor, yes.

JM – You can fit 5 cars off street. Simmons – yes.

JM – My concern is you have the kids, and the grow up and get cars, now more parking, I would suggest limiting the occupancy of the front to 3, limit the front to 2 people and no more than 5 cars total on the property just a suggestion..

PS – I think as possible as it may be to place limitations, to stay in control is to stay a single family no matter what we do, once it's a two family that's it, I just feel you can fit up to 15 people in a single, people are going to what they are going to do, they can eventually have 7 cars. This board hears people who come to ask us to do a two family you can't do it after the fact. It just can't. I just feel that this is not the right way in which this needs

to occur, it's not an after the fact board, applicants are asked to come and apply and the board decides, but this was done after the fact it should never have happened this way.

GT – I agree, but my fear is it will be worse if we don't control it, it could be a vacant house over time, it dies, it could go vacant.

PS – It's not going to go vacant. GT – Are you living in the front now?

Discussion follows on the selling of the property and putting conditions.

Simmons – No. I had to wait for the lawsuit about the insulation.

Denise Langley abutter voices her concerns.

DK – Screening is important we should do something with that.

PS – You needed to come to us before you build it. I understand this was different.
The building inspector was wrong at the time.

JM – I would say 3 in front and 5 in back with no more than 5 cars. I was also thinking Accessory Apt, and we have to think in perpetuity here.

GT – I was thinking 4 bedrooms not 3.

JM – The equivalent of an in-law.

Discussion followed on number of people that can potentially live in the home.

DK - It needs screening also. Should it be on the side and the rear, the house to the right is concerned or the one across the street.

GT asks DK based on the picture from Betsy, how would you screen, she asks Betsy Amsel and Betsy stated so you can't see the cars right now you can see the all the cars for the property.

DK – I would put screening between the houses to the right.

Simmons – How about a 4 ft. fence out front? DK – What is out back? Simmons – a wire fence.

PS – To be frank you may want to reconsider, I just can't vote for this.

DK stated to Mr. Simmons you need 4 out of 5 votes.

JM- If this were a single residence you could do an in-law, if we were to grant a special permit, I am just throwing it out there, to move on other structures in town, we allow accessory apartments, as far as conditions maybe 2 people in the front, restrict the front home.

PS – If it went through the proper channels, we would not be here. DK – It's not going to change.

JM – My only thought is that most single family homes in town could fairly easily.

SF – We would have never approved something this big.

JM – Owner occupancy of the rear unit, and restricted to 5 vehicles (be limited to 5), I would not be comfortable limiting the front to 4 in the front.

DK – So you would go with 3 people.

MOTION – JM, I make a motion to grant to Thomas & Lisa Simmons of 36 Prospect Street, in the RA district and identified on the Assess Map 11A, Lot 6, Georgetown MA, a special permit under MGL chapter 40A, Section 9 and the Georgetown Zoning Bylaws, Chapter 165 Sections, 9, 74-79 to convert a single family dwelling to a multifamily, a 2 unit dwelling.

I further move that the requested use as required by the Georgetown Zoning Bylaw, Chapter 165 Section 79 the use is essential or desirable to the public convenience or welfare. The requested use will not overload any public water or other municipal system so as to unduly subject any areas to hazard affecting health, safety or the general welfare and will not impair the integrity or character of the district or adjoining districts, and the use will not cause an excess of that particular use which could be detrimental to the character of the neighborhood. With the following Conditions:

1. Occupancy to the front residence shall be limited to 3 people in the front residence, and 5 persons in the rear unit.
2. The rear unit must be continuously occupied by the owner
3. Total number of vehicles for property be limited to 5 cars.
4. Owner is to maintain screening to rear, side and front of property per plan marked Exhibit C.

Marked on Plan, Exhibit C -6Ft fence rear of property as marked by DK

Seconded by DK.

Discussion - DK – The screening in the rear be a 6 ft. fence. And maybe a 4 Ft. right side front to rear, and 6ft on rear of lot.

Discussion on screening. DK – Inserts for screening to be decorative.

Eichman – He will have to bring the property into compliance, and some kind of rental agreement SEE TAPE

JM - Motion to extend time of hearing to 11pm, 2nd DK, all in favor motion carries.

GT asks Simmons about screening Tom show rear fencing with a 6 ft. fence solid not chain link.

Simmons – I have a fence on right side facing home, I can make it look like a bush

DK – Can you do something in front? Simmons that's for parking.

DK shows Simmons around the tree in front. Discussion follows about screening.

DK explains we are talking about limiting to 5 cars.

DK – The first 10 ft. is owned by the town.

DK – To appease Ms. Amsel a set back fence maybe plastic vinyl or picket.

Recess at 10:59 for Cable to change tape.

Back from recess at 11:05pm.

JM makes a friendly amendment to condition #4 that the Owner is to maintain screening to rear; side and front of property per certified plot plan dated 11/12/15 by Engineering Land Services of West Newbury MA, stamped by Robert M. Grasso PLS and marked for screening by board member Dave Kapnis marked as Exhibit C.

The conditions will now read;

1. Occupancy of the front residence shall be limited to 3 persons and 5 persons in the rear unit.
2. The rear unit must be continuously occupied by the owner.
3. Total number of vehicles for property be limited to 5 cars.
4. Owner is to maintain screening to rear; side and front of property per certified plot plan dated 11/12/15 by Engineering Land Services of West Newbury MA, stamped by Robert M. Grasso PLS and marked for screening by board member Dave Kapnis marked as Exhibit C.

Motion on main Motion with amendment:

JM/DK - GT – All in Favor, Yes 4-0. PS - No.

The Board Granted the Special Permit by a vote of 4-1.

Motion to Close the Hearing DK second SF, all in favor, motion carried.

Motion to adjourn - JM seconded by SF, all in favor – yes.

G. Thibeault - 20 Day Appeal Period - The Zoning clerk has 14 days to file a decision any appeal of this decision shall be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, within 20 days after the date the notice of decision was filed with the Town Clerk. An applicant may file this decision before the 20 days but does so at their own risk.

Lapse of Special Permit - Per M.G.L. 40A §9, Special Permits granted shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in Section 17, if a substantial use thereof or construction has not commenced, unless upon timely application this Board finds good cause to extend such period.

Recording: Any applicant who receives a special permit or variance is required by Massachusetts General Law 40A to have the decision recorded/ registered at the Essex South District Registry of Deeds after the 20 day appeal period. A copy of the recorded document shall be forwarded to the Georgetown Zoning Board of Appeals Office.

Patty Pitari
Zoning Administrative Assistant

Approved at 3/8/16 Business Meeting