



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

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 – not voting

Zoning Clerk: Patty Pitari

Owners/Applicants: Thomas & Lisa Simmons

Applicants and their Attorney Present:

James T. Connolly, 51 Green St., Newburyport MA 01950

Sid Silveira, Senior Project Manager of DMS Architectural Design, Beverly, MA

Mr. Tom & Lisa Simmons

Town Counsel - Attorney Jonathan Eichman, Kopelman & Paige

Minutes Note – Board Members noted by Initials.

J. Moore read legal ad; An Application has been made by Thomas & Lisa Simmons of 36 Prospect Street, Georgetown Ma, for a Special Permit under M.G. L. Chapter 40A, Section 9 and the Georgetown Zoning bylaws, Chapter 165 Sections 9, 74 -79, the owner/applicants are requesting to convert a single family dwelling to a multifamily (2 family) dwelling. The premises affected is 36 Prospect Street, Georgetown, MA, in the RA district and identified on the Assessor's Map 11A, Lot 6. The Application will be heard by the Georgetown Zoning Board of Appeals; at the Georgetown Town Hall 3rd Floor Meeting Room on January 5, 2016 at 7:30pm. *ZBA file #16-04*

Chairman Thibeault opened the hearing at 7:40pm and introduced the board members and who will be voting.

Previous Hearings on this Property, ZBA file #09-06 – Withdrawn ---ZBA File #13-11 Denied.

Applicants Presentation:

Attorney Connolly – I am representing the Simmons, and I have two additional items to pass out one is a letter from a realtor the other is from the Mass Historical Commission, they have a file on the front 1880 Building, I am not going to address it the architect will, many of you may recall basically the Simmons were here in 2013 and they requested what they are requesting again today, a multifamily to convert the single family, and for those of you who were not here then, they purchase it in 1999, and during renovations the insulation that was put in was toxic and they had to vacate the property, they went out of town, so they spoke to John Caldwell, previous inspector about it, and Tom Simmons had applied to take down his existing garage and put up another

one, and Tom asked if he could use it as a residence until the front house was clear to live in the and Mr. Caldwell said that's fine, and then you can go back to the board for it to be used as a two family, they did the renovations and moved into the property he allowed them to live in the addition. Tom applied for the multifamily and was denied by this board in 2013, in reviewing the video of that hearing, I think the issues are resolved. The first thing was the conflict with the plans; they didn't match as to what was built etc., so we have had new plans done by an architect of DMS Design. There was also a cease and desist from BOH, they could not have more than 3 bedrooms, and there is a deed restriction with the registry and they have now upgraded the septic system to support 7 bedrooms, the 3rd issue was the litigation about the foam insulation, that has now been settled, it's now habitable, so those items have changed from the last hearing. Simmons has resolved the issue/ litigation with the primary dwelling and it's now habitable.

We believe it's now desirable, we submitted a letter from a realtor. We don't think the dwelling will overload the municipal systems and not an excess of the particular use. The architect will address those issues. In your package is a signed letter from some abutters in favor, they may be some opposition tonight.

DK – How many bedrooms, is the septic now supporting?

Mr. Sid Silveira, Sr. Project Manager DMS Design (**Sid**) – 7 bedrooms.

DK– I went through the application and I still got a bit confused reading the plans, so 3 in the front and 4 bedroom in the back. Sid – Yes.

Sid – Explains the plans with elevations, all setbacks are met shows the proposed parking spaces, he reviewed the plans and the neighborhood analysis of the area, on prospect there are two other two families. He showed a separate analysis of the neighbors who signed in favor, but he did not provide a copy for the board.

JM – This neighborhood data based on the tax assessor's info. Sid – Yes.

JM – Did you identify how many bedrooms are on the other two families on the street?

Sid – No we did not.

DK – In comparison Mr. Simmons is about 21,000 sq. ft., across the street if larger?

Sid – The two family down the street is a small lot.

DK – But that is preexisting nonconforming.

GT – In your packet there are two deeds, can you explain.

Attorney J. Connolly – I think they took some back land, on the second deed, and expanded the size of the lot.

Simmons – When the Cannon's moved in there and there was a cut across the backyard and we agreed to work that out that's why there is two.

Audience

Betsy Amsel, 37 Prospect, in Opposition– My house is the only one that faces 36 Prospect St, I spoke back in 2013, my objections and concerns are the same, I don't think a large two family home is appropriate for our neighborhood, we already have traffic and parking issues, 36 Prospect is already out of character with the neighborhood, Mr. Simmons stated he would only rent to a family member and restrict the parking to two cars, maybe you can tell me is it legal to require the tenants only be family? In addition, he gave me a diagram indicating two parking spaces for the post tenants and said the spaces would be located further back on the property, in the past Mr. Simmons has been disingenuous, so I am not sure if this change in parking would have validity, can the town monitor and control, the notion that one resident of Georgetown can have the power to

decide to change the character of an existing fully built up neighborhood, in my eyes if you approve this request, this will be the result which would set a very unfortunate precedent for our town.

Nora Cannon, abutter, 16 Pond St. - In Opposition - I want to correct Mr. Simmons, it was not just the parcel regarding the deed, I was the one who sold it to him, because at one point he had taken over all of my property, before I purchase the house, I spent \$7,000 to have a survey and consequently if I didn't sell him that piece of land he would not have a back yard. Although we are here to discuss a two family on a one family lot, it already has a family one unit 4 bedroom on it. Ms. Cannon read from town website the duties of Building Inspector / zoning enforcement officer, I am extremely upset with the building dept. part in this. I depend on the town to do their due diligence. Explains an issue when she lived in Brookline ma. If this passes do I hire my own lawyer? And if it does not pass how will I assure the town will inspect it.

Timothy Parthree, 23 Prospect – I have no problems with this at all, I think it could help.

Scott Mantel, 32 Prospect – I don't have any issues with the project, the structure is already there. I live just to the left of Mr. Simmons.

John MacDonald of 25 Prospect St. – I don't object to the 2 family.

Denise Langle of 41 Prospect St. – I don't have a problem with it at all.

Mr. Reynold McGuire , 20 Pond St.- I did know what happened previous, I have an issue with the previous building inspector, in reviewing the minutes of previous hearing, the changing of plans etc....I am surprised it got too far with building, I think it's gone too far, I am not in favor, in the past couple of years there have been 2 dogs killed on the street and an accident, the street is very narrow and have issue with speed of cars, adding more tenants will just add to this. The new structure is significantly larger and is offensive. There should be some fines for what was done. I believe they always wanted to put in a multifamily from the start.

New Correspondence & Plans – Read into the Record by G. Thibeault

Exhibit #1 - Certified plot plan dated 11/12/15 by Engineering Land Services of West Newbury MA, stamped by Robert M. Grasso PLS.

Exhibit #2 – Sheet A.0.1 - Architectural site plan, – drawn by Architect Daniel Skolski of DMS Design, LLC of Beverly MA dated 11/18/15

Exhibit #3 – Sheet A-1.0 – Primary & Addition Basement and First Floor Plans by Architect Daniel Skolski of DMS Design dated 11/18/15

Exhibit #4 – Sheet A-1.1 – Primary & Addition Second Floor plan by Architect Daniel Skolski of DMS Design dated 11/18/15

Exhibit #5 – Sheet A- 1.2 – Primary & Addition Attic/3rd floor addition by DMS Design dated 11/18/15

Exhibit # 6 – Sheet A-2.0 – Neighborhood Analysis DMS Design dated 11/18/15

Exhibit #7 – Sheet A-3.0 – Primary & Addition Front and Right Elevations by DMS Design dated 11/18/15

Exhibit #8 – Sheet A-3.1 – Primary & Addition, Rear and Left Elevations by DMS Design dated 11/18/15

Exhibit #9 – Supplemental packet filed with Town Clerk 12/15/15 includes Letter from Law Office of Wessler & Wasserman stating the Litigation on primary dwelling in regard to foam insulation has been resolved, including a report from Hydro Environmental of Acton, MA dated 12/6/15.

Exhibit #10- Supplement to application filed with Town Clerk 12/15/15 Signatures from neighbors in favor of two family.

Exhibit #11 – Letter dated 1/2/15 from Realtor Susan Stead

Exhibit #12 – Document from Mass Historical commission of history of property survey

Exhibit # 13 – Letter hand written with no date from previous building inspector John Caldwell, read into the record by GT.

Board Discussion

JM – A matter of correction on the history, the attorney noted that the building inspector granted an occupancy permit indicating that, he felt a two family use would be appropriate, and the reason that occupancy permit was issued was because the applicant applied for a special permit and the hearing was continued at least 3 times and as an option at that time, it was to have them move back to town, it was agreed upon that they could move into

the back structure as it was already built and only use it as a single family residence only until the litigation was resolved with the primary dwelling there was no indication or assurance that this would be a two family in the future. This is actually the third time he has come for this special permit. The permit was for a garage not a two family structure to clarify.

SF – From the neighborhood analysis color sheet, is the two families there preexisting nonconforming. I am thinking about the balance.

DK – I would assume they were preexisting because they would not conform to today's bylaws, as far as lot size.

After discussion an audience member stated she knows one is 41 Prospect.

JM – They to upgraded the septic, as far as these upgrades that have occurred, that was done at their risk is this was intent to use it as a two family, and before you wanted 9 bedrooms, now it's 7.

Simmons – Yes 7.

J. Moore –To clarify this application is really for a use at this point, the use has always been a single family. Is there any further construction to be made?

Simmons – No, only indoor work in the original home.

GT – So you will continue to live in the back and rent the front.

Simmons – Yes I would like to rent the front.

D. Kapnis – You had to remove the stove in the primary. Simmons – Yes.

JM – This is a single family structure they never had a permit to build an additional residence, in order to move into it, the inspector said you would need a two family and that hearing was going on and on, and I spoke to the building inspector at the time, and I said why don't they just flip, at that time they want to get to live back in town, I asked the prev. inspector in 2010, does it make a difference which part they stayed in to get them back in as long as it's only one family in there, but they had no permit at any time for a two family and the 3 bedroom septic tied into that, the point being, it was not to be a two family but to get them to live there because of the insulation, and it was already built. He had to remove the stove in primary home to get an occupancy permit and the town had to be assured it was a single family.

Simmons –It was more the Board of Health than anything for the septic. I didn't have the money to put an upgrade septic in. So the primary house has been remediated.

Mcquire, abutter– One of the things it comes down to, the permit was pulled as nonconforming and last time we were here there were not funds available to upgrade the septic, so all that's been done. From where I sit they always wanted to put in a multifamily, the math doesn't add up, and the board members at that time agreed.

GT asks Paul Shilhan is he was the only one here in 2010.

PS – Me and Jeff. DK – I missed the 2010 hearing, I was here for 2013.

JM – To address abutter Mcquire any work that was done on the property was done at the owners risk, they can upgrade their septic system if they want, they are not necessarily entitled to the use unless granted by this board, the other structure, was worked out with the previous inspector, because of insulation issue, but as far as any of these upgrades that have occurred over the last years, that was done at their risk, if in fact they always intended to use as a two family.

JM - The original septic or the last time you were here you had proposed a 9 bedroom septic correct.

Simmons – Correct, I wanted a 9 bedroom septic so I never had to do it again, not for 9 nine bedrooms just for over flow. JM – So what's built is for 7. Simmons – Yes.

JM – The only thing that came into question was in the new structure there were a couple of rooms downstairs that the building inspector J. Metivier in 2010 indicated that no work would be required to convert them into bedrooms.

GT – On the first floor there is an office with a closet in the primary front dwelling, which could be a bedroom.

JM – One of the key concerns we had and the abutters as well, is the concern of the number of people coming in and out of this particular lot and because everything was already built at the time, we addressed this before there was nothing we could really do to mitigate how the structure was to be used because it was already done, we didn't have the option of saying this part should be smaller etc...It's a lot of parking; this is why I want to know about the surrounding two families.

Sid – We had hired a consultant and he said a ballpark for traffic would be 10 trips per single family, on trip would be to and from work per day.

JM – My point is at the time it was 9 bedrooms, and if he moves on and a new family is in there and now you have a building that can support 6 bedrooms, we have to look down the road at what this can become, you could have a substantial family in both. The rear unit can support a pretty big family, and then 3 in the front, down the road, it could be really up there for the use on the lot, we can't change it, it's built.

DK- If this remains a single family because nothing is granted and Mr. Simmons decides I have to sell this 7 bedroom home, would the impact be worse for the neighborhood, you could have 15 people living there, or if he decides to rent it out, and move, that's a concern also.

Discussion follows on impact of keeping it a single family.

P. Shilhan – What this is in very plain terms is you found a way to skirt the law to build this what looks like a duplex when you filed to replace a garage, but this is what happened, through some twist of fate, your main house was uninhabitable so you took a barn/garage and turned it into a residence and because of the good will of the town they allowed you to move in to the addition you built, now your back to exactly what you wanted 6-7 years ago, which is two separate units, which we already voted on and denied, and nothing has changed from 2 years ago, we said no, it was detrimental, the parking is not right, it's too dense, this is what we decided in 2013, and nothing has changed now we are all of a sudden talking about an existing situation in which we have two buildings on the lot, I don't think we have to do anything, you need to move back into your original house the front, and build the barn/garage that you applied for 6 years ago, it's quite simple, that's what you were permitted to do and now your saying no, I always wanted to have a two family here, we didn't allow it. Because of the way you did this, it was a perfect way to get around these bylaws, it was a perfect way to do it and not follow the laws. Who would think you could pull this off, but that is where we are at now, that's why we are sitting here again for a 3rd time, you found a way to build two residences on one lot, and we were upset 6 years ago, when you came in and kept changing the plans multiple times and the new inspector in 2010, Jon Metivier went over to your house and said there are way more bedrooms there then there is supposed to be etc. and we were very suspicious about what was going on, but somehow someone blew some bad insulation into the main house, and that's how we got here, that's no reason to build 2 residences on one lot. You should have started at the beginning were this board can sit here and actually allow it or not, but we had no say. It's not even allowed without us, this is what has happened, so whatever the board decides, but it's so obvious what is going on here, I am not a lawyer, if you me to I will be to read through every single detail of this mess over the last 6 years and pretend that I truly understand what has gone on, I will do it if you want and I will layout the whole thing of how you got to this point, this is just not the way you do it, I am sorry that's the way it is as I see it.

Simmons – If I didn't have the backing of the building inspector I would have never done it.

P. Shilhan – I was here when this started, you didn't have the backing of the building inspector to do this and you know it, when you applied to build that garage that's all it was and now you say that's not how it happened.

DK – That was the plan?

PS – No that was not the plan, you can't even do that. Sorry I just go back to when this started and all we went through.

Atty Connolly – Do you think the building inspector, didn't give him permission to do what he did, or are you thinking he shouldn't have given him permission. We actually contacted the previous inspector Mr. Caldwell and I have a letter right here. Attorney Connolly reads the hand written letter.

JM –Let's not confuse addition living space, written on the permit for garage with an additional dwelling.

SF – He said you can do this or that, live in the back while the litigation is going on with the front dwelling, not both and if you live in the back the kitchen appliances needed to be removed. So the inspector gave permission to live in the back, which is completely different.

JM – I would like to see if he gave permission to put a full kitchen etc... In there also, when the new inspector started (J. Metivier) he found that there was a kitchen in there and everything else, that's what precipitated the original hearing in 2010, because there was not anyway he was going to give an occupancy permit for it.

GT – It says it was to be living space above the garage, in this letter and the letter is not dated. In this letter he mentions a possible in law not multifamily.

JM – This was a huge garage and it blew up into what is there now, because this is so much bigger than what would be a garage. I don't know what the original intent was when you have a space that large.

GT – Some advantages were taken, we are here now, and we need to vote on what's here now, I think some advantages were taken, I don't know if it was a grand scheme.

SF- I don't think we can go back can we, can what happened in the past be part of this now?

Attorney Eichman – You have your special permit criteria and you have an application and the building, the question is does it satisfy those criteria for you to grant a special permit.

SF – So what's here today, regardless of what may have happened can we factor in what happened?

Attorney Eichman – I think you can take into account to some extent what happened, I wouldn't say that that could be the sole basis for your decision; I think you have to reference the special permit.

GT – Shall I read the letter from John Caldwell?

DK – I am not comfortable with it, only because it is not notarized, it's not dated its hand written, I don't know if it's appropriate to pull out a piece of paper like that.

Attorney J. Eichman – You can read it into the record as its stated and make the observation that it is not notarized, the person who wrote it is not here, it is what it is.

GT – Reads John Caldwell's letter into the record

"I am writing to confirm that in 2009 I issued a building permit for you to take down and rebuild the existing garage at 36 Prospect St. After you had to vacate your home because of the toxic insulation, we determined your home to be uninhabitable till the insulation lawsuit was finalized which could take years. At that time I agreed to permit you to construct living space over the garage. I was going to add additional paperwork to the existing garage permit with the sheet floor plan you supplied to me; this would have completed the application pack you filled out for garage construction. With that done you could go to the ZBA for a special permit allowing use of the original house as a multi-family or possible in-law over the garage. Some of the paperwork or plans maybe misfiled at town hall, I was the ZBA administrator at the time giving me certain authority to make decision on certain properties, if you have any further questions, please let me know. Sincerely, John Caldwell." (see attached)

GT - You can't really read the signature, but I am assuming its John Caldwell.

J. Moore – The key thing is that there was living space above the garage that he had permitted, and somehow that became what's before us now, which is 3 floors of living space, that's what's missing. Does this constitute an over use on this lot, how do we control this use, this has the potential to have a lot of people living there, I am not sure. I have some of the same concerns as some of the abutters. The denial we wrote on this in 2013 was no small effort.

Mcquire, abutter - I think there was a scheme involved apply for a barn/garage and then building this huge addition, and it was in between two inspectors too.

JM – The building inspector did review it and did issue a cease and desist, because he was not about to give him an occupancy permit for what was built, I would like to how this total occupancy of this address can be mitigated and limited somehow, either deny or approve with conditions, personally, I still think the 4 bedrooms and the back, kids with cars it could be a lot of traffic, I want to come up with ways we can address that, either they can choose to live it in as is, or sell it, I need to give this more time.

DK – I think we need to come up with conditions, if we have to mitigate this.

PS to the Applicants – The intent was to build a garage, not a multifamily, that was your first permit. If you came to us first and say you wanted an in-law you would probably have it, but you didn't do that. The intent after the fact was to help you to get your family back into town. The garage is what you wanted that was your first permit.

SF to DK – So you are concerned with it being rented it out if they sell it?

DK – I think the worse thing for everyone is if they sell and and the new owner rents it out.

GT- Could we condition it.

J. Moore – Yes. Can we condition on time or ownership for a special permit.

DK – If it was conditioned, could we make it owner occupied?

PS – It's too big for the neighborhood. Jeff agrees it's already built and it's too big.

SF – Could a decision say its livable it's now a barn, make the addition a non-living space.

JM – The restriction you're suggesting, to Sharon, if denied it would be a single family.

GT – Can we condition it if new owner's purchase it do they have to come back before the board.

Attorney Eichman – To do what?

GT – Saying it would be owner occupied two family?

JM – How do you restrict occupancy? But restrict the tendency for a large number of people moving in its already 7 bedrooms. The septic is in.

DK – I think we need more time, I think we are in agreement there would be conditions. Maybe counsel and Mr. Simmons would like time also.

GT – Mitigation needs to be done. We can find out how many bedrooms are in the other two families.

Patty – In old files.

SF – I am not sure the difference between multifamily and two family. I do think what here now changes what this neighborhood looks like; I am not convinced, if this came to me brand new, I think I would say it's too big and would impact the neighborhood.

Shilhan – Why would you get an upgraded septic for 7 bedrooms without having a permit for a multifamily. Why would you upgrade the septic sitting on a denial for a two family?

Mr. Simmons – We had so much fog about it.

PS – So you invested in a 7 bedroom septic system on a Denial for a two family, again I just feel like why would you do that?

Simmons – I was trying to satisfy what you were looking for.

PS – We denied it in 2013.

GT – We can continue do some research.

JM – How do we keep the occupancy or potential low? I think Counsel for applicant can help come up with keeping the occupancy of this property low, because I can see 6 rooms you can use for more bedrooms, we are looking down the road, I would request to Attorney Connolly come up with some ideas. I have a big concern.

S. Deane – I have the same concerns, I agree with Dave, worse case if it gets sold, and I don't know how to mitigate use, it just the sheer size of it, I am not sure, can we say limit it to two bedrooms?

JM – We can say have only two bedrooms to the back addition, and restrict it to an in-law.

Attorney Eichman – You can limit occupancy, per 165-78 states conditions may include limitation upon the size, number of occupants, method and time of operating for the duration of the permit, so it's in there you can craft a condition, with that said I would be careful with condition of ownership, that's a much more dangerous area because generally zoning does not zone based on ownership that's generally a legal focus on zoning, so having someone come back based on change of ownership is tricky at best and usually not going to work.

JM – But owner occupancy is would not?

Attorney Eichman – Right, but owner occupancy is based on limiting and the type of use, and that's why that's limited that way.

JM – And the duration of the permit. Eichman – Yes.

Mr. McGuire, abutter – The original was a garage, without occupancy. If you pull the occupancy for the garage this goes away.

GT - Discusses occupancy follows.

SF – However they configure the 7 bedrooms, they have the septic.

JM - For clarification, what is in front of us now is if the town should allow one family or two family reside at the property, we have had cases before where, someone has said tear it down, and we can only make them do certain things, allowing it we can put restrictions. There is an occupancy permit for the front structure. The only way we can condition is if we allow a special permit.

Attorney Connolly- What do you want us to come back with?

SF – What do we want them to come back with?

JM – to Attorney Connolly, what would you mitigate?

Connolly – Maybe one of the units having a certain number of bedrooms. You can condition to one unit to two bedrooms. Can we do that?

Attorney Eichman – Yes in the bylaw 165-78 B (4) re: occupancy.

Connolly – We could condition it on no more than 2 bedrooms in say addition, and its recorded at the registry so the next person who buys it will see that, and will see they can't have more than two bedrooms in one unit, if the neighbors would have to complain, and the building inspector would enforce it.

JM – We have to think down the road.

Betsy Amsel – He has assured me in the past that he would keep family in the house.

Simmons - That is not true.

DK – A possibility is reduce number of bedrooms, I am concerned about the parking you have parking spaces you have 5, we don't want to it look like a parking lot, that should be tweaked.

Discussion on parking follows.

Attorney J. Connolly – Can the board do that, can they say no more than 5 or 4 people in one unit.

Attorney J. Eichman –As I said before the section of the bylaw does allow permits with conditions based on number of occupants.

SF – We can say multifamily, and which one should be owner occupied?

Attorney Eichman - The owner occupancy is a difficult condition in this particular instance, because that is a special use as an accessory apartment that governs the characteristics of that use, there is nothing in the bylaw that says anything about multifamily housing, relating it to the ownership of the particular unit, so to craft a condition based on owner occupancy there is some risk here that it would be outside the scope, I can't say that for now, but I don't see that here in the bylaw.

SF – So we can't have it be multifamily owner occupied?

Attorney Eichman –I am not convinced that it can be a solid condition.

JM to Eichman – Can you confirm that for next meeting because that's a big issue.

GT – Agrees.

MOTION J. Moore /D. Kapnis to continue to February 2, 2016 immediatly following the first hearing at 7:30 pm, all in favor- yes, Motion carried to continue.

Connolly – How do we send the information?

GT – Send to Patty.

*Patty Pitari
Zoning Administrative Assistant*

Approved at 2/2/16 Business Meeting