



Georgetown Zoning Board of Appeals
Memorial Town Hall ♦ One Library Street ♦ Georgetown, MA 01833

MINUTES OF A PUBLIC HEARING
251 Andover Street - Use Variance/Special Permit
ZBA FILE #12-05
May 1, 2012

Board Members Present: Jeff Moore, Chairman
 Paul Shilhan, regular member
 Dave Kapnis, regular member
 Gina Thibeault, regular member
 Sharon Freeman, regular member
Absent: Evan O'Reilly, associate member

Zoning Clerk: Patty Pitari
Joelene (Jolie) Starr Pakkila – Applicant
Jon Metivier – Building Inspector

J. Moore opened the Hearing at 7:46pm.

D. Kapnis read legal ad; An application has been made by Joelene Starr Pakkila of 251 Andover Street, Georgetown, Assessors Map 5, Lot 48, proposing a retail sales use, (*gift shop*), in an accessory building, being an existing barn, and the also will use a part of the structure as an art studio for home occupation, the proposed additional use (additional to residential) is considered “Retail stores and services” and requires a Use Variance under M.G. L. 40A §10 & Georgetown Zoning Bylaw, Chapter 165-84 and/or a Special Permit under M. G. L. 40A §9, & Chapter 165-9, A.3, & 79 of the Zoning bylaw.

J. Moore introduced the board.

Applicants Presentation:

Jolie Pakkila and her son Alex Pakkila present for the hearing.

Jolie Pakkila – My husband and I built the barn, he has since passed away. I am a craftsman. We used to travel around the East Coast selling our items; we had the idea of selling local items out of our barn. I want to sell items I make and from other local artists, I won't be open on Sunday's or in January and February. I had asked for a Variance, but it was told to me that a special permit may be an option. Mr. Moore told me a Variance will also allow something like a CVS to open, I don't want that.

J. Moore – In reading your application/letter what you are actually applying for is retail.

Jolie – Explains what she does (explained I letter submitted). I would like to sell these items.
Letter submitted from applicant:

Applicant's description of project in letter reads; I am Jolie Pakkila and I am an artist and craftsman. I built a barn at 251 Andover St. with the vision of opening a shop and workshop, so that I can sell handcrafted items, as well as items of local artisans. My husband and I purchased our first house selling out crafts. For the last 23 years I have painted pumpkins for Mahoney's Garden Center, Smolak Farms, Brooksby Farms, and Crosby's, as well as others. Before I was married I worked for wholesaler designing millinery and accessories.

I am planning on selling handmade dolls, Christmas ornaments, handmade soaps and bird houses, jewelry, hats, scarves, hand warmers, various accessories, and a line of wreaths, using a lot of natural items in my designs. I also take old furniture and hand paint it with funky designs and paint textures. Additional, I make a lot fabric items, towels, aprons, tablecloths, which I have a friend from Georgetown, embroiderer. Also, there is a gentleman from town that makes wooden pens, wine stoppers and vases out of exotic woods that I would sell on property. I would also like to have some hand-blown glass, candles, and pottery, also from local artists.

J. Moore – So it is a craft store. Jolie – Yes.

New Correspondence – Email from Howard Town planner

J. Moore – Reads Howard, Town Planner email it states you would need site plan review through Planning.

J. Moore – I did meet with Jolie to go over some of the things you were considering doing and we reviewed the home occupation options, and I spoke to Jon Metivier (Building Inspector) about what is and is not allowed under home occupation in the bylaw. We discussed another version of the bylaw which grants the ZBA permission to give special permits for uses not otherwise specifically allowed in the bylaw, so long as they are similar to other uses in the district, and I sent Patty an email to summarize my discussion with Jon Metivier.

J. Metivier – Initially when this structure was built they did apply for a gift shop as part of the rebuild of the barn, and it was denied and later modified to be a barn, it has been that thought for a while and again has been denied in the past. As far as home occupation, an art studio is allowed, what is not allowed is a retail sales, in the RC zone, retail is a prohibited use. It is my opinion that this would be a Variance not a special permit, because we do have retail sales and services in the bylaw.

J. Moore – And that's what is being asked for in the application.

Audience

Linda Witz, 4 Davis lane – I have a major concerns for a retail store two houses away from my house, the bus stop is right there and small children get off the bus and the parking overflow would come onto our street, there are a lot of children on our street and it would be very dangerous for Davis Lane, and when I purchased my house I didn't plan on a store two houses away, there is plenty of retail space downtown.

Robert Gustison, 3 Davis Lane – I feel terrible about being against this, we are friends, but my first concern is there is no parking lot, as she has been open during Halloween and Christmas selling things, and they have used Davis Lane as a parking lot and as a turn around, and the kids ride their bikes, and

it's a cul de sac and the bus stop, it impacts the neighborhood. Rt. 133 is a major highway/ route, and having a store on a major highway is dangerous in that area, the turn around to have people back in and out, even for a residence, a friend of mine died at that intersection, let alone a child, with that being said, I am against a store being there for safety. Another thing is and the property line for Davis Lane, is theirs and it's not maintained at all on the side, the street side on Davis Lane they don't take care of that strip of land, there can be high weeds that can block, and if they were able to do this, would they tell the customers that there is a cul de sac, and to please respect it, it's not being respected now.

Jolie – He said I was open for Halloween and Christmas, I have not been open for Halloween, I had a Halloween party and yes they did park on Davis Lane, and a Christmas open house, but no one parked there then, and the strip of land near Davis Lane, and I have had people on Davis Lane telling me what I should do what I shouldn't do, my house is not as good as ones on Davis Lane, my husband had been sick for close to 5 years, ALS and was very sick, and couldn't take care of the lot.

J. Moore – I understand, but this has to be related to the Use.

Jolie – Beverly Enos sells things at her house, and the Viera's have trucks going in and out, they are all for it. Then you have the Country Club, we get 4-5 cars turning around in our driveway all the time.

J. Moore - This is a Variance application which requires some stringent items to meet, you have to show, that there are unique circumstances related to the shape, soil or topography of the lot, that are linked to our lot that are unique to the code. What you are describing is not the type of hardship. There has to be a hardship that relates to the land, not a personal hardship. I have not heard anything from you in that respect. You would also have to prove that this would not be a detriment to the public good or welfare, in that in granting the variance we would not be derogating from the intent and purpose of the bylaw which specifically that this is a residential use only, and Variances are permanent, they go with the property, and can't be conditioned on ownership.

Linda Witz, 4 Davis Lane – So if a variance is granted any store can be there? I didn't buy a house to be next to a store, I bought in a residential neighborhood. I am opposed to this.

Jon – It is another retail use, yes; they would still be subject to the Planning Board for Site Plan Review as a change in use.

P. Shilhan – It seems clear that you knew you could have a home occupation for part of this, but you are going for a Variance, do you have another plan, that's not retail, but for home occupation,

Jolie - The town planner said there were certain uses are allowed for home occupation, but those uses didn't match with mine. The town planner said I could do dog grooming and a gift shop.

J. Moore – That doesn't sound right, there is a use schedule in the back of the bylaw.

Jolie – There are some businesses on the street.

J. Moore – They may be home occupations.

J. Moore – I asked the building inspector if you have to apply for a home occupation by right, and you can he just keeps track and art studio portion would be allowed.

S. Freeman asks the Building Inspector; can you elaborate on the difference between a special permit and variance.

J. Metivier – It would have to be a Variance, specifically a Use Variance, because it is in the use schedule as prohibited.

J. Moore – Use Variances are extremely difficult to justify, it has to be a hardship relates to the shape, typography or uniqueness of the lot, it's not like a dimensional variance.

P. Shilhan – This is actually really not applicable. You are extending beyond what the law allows. A home occupation is different. You can have retail in a commercial zone. We have to go by the bylaw.

Jolie – I don't have the money to do this in a commercial area. If I just sold what I made can I do that?

J. Moore – It's still retail, as far as money, it cannot be a financial hardship in that way, again it must relate to the land.

G. Thibeault – You can sell items online. The building inspector said that would be fine.

Jolie – I know I can do that. The very first building inspector I talked to said I could do like a home show or party, like Avon or Tupperware, and I have had a couple of those by invite only.

J. Moore – That's a private party. J. Moore asks the building inspector his opinion.

J. Metivier – I think the bylaw is absent on parties, as it is a private party.

D. Kapnis – I think you can get in trouble with a party that people tell other people, and then you have all these cars, and it grows from there. As far as retail in residential we would be setting a precedent for others to open a retail store in a residential neighborhood, I would have trouble. I am sorry I feel for your situation.

Amy Purcell, 12 Davis Lane – Does it cost anything to go downtown to the farmer's market; they sell jewelry items and such. This is not personal it's a safety concern for our neighborhood.

J. Moore – There may be a nominal fee.

Jolie – I have done that before, and I am getting old and I am tired of doing that.

G. Thibeault – There is Scala that has antiques and the little block of shops downtown that you can sell items down there also. I feel bad about this, but there is nothing in the bylaw that allows me to vote in favor of this.

J. Moore – There is not technical legal justification for this, what you applied for requires a Variance, and again, you have to link some problematic issue with the lot, you have to link it to a hardship that would be in perpetuity with not this owner but any another owner.

P. Shilhan – I think the home occupation lists what you can do, it's just not retail.

G. Thibeault – You can still have an art studio and sell your items on the internet.

Robert Gustison, 3 Davis Lane – The parties she had has had open signage I don't think that should be allowed.

G. Thibeault - If you saw something going on you would have to call the building inspector.

Motion for Variance – make motion in affirmative

Motion – D. Kapnis/P. Shilhan- I would like to make a motion that the board vote to grant a Variance to Jolene Pakkila of 251 Andover Street, Georgetown Ma, for a Retail Use in a Residential district, finding the applicant met all of the prerequisites necessary to grant a variance. Specifically the Board found that owing to circumstances relating to the shape of the lot and topography of such lot and especially affecting such lot but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such by-law.

Discussion;

J. Moore – I personally don't feel comfortable voting for this

J. Moore – I should stop here and let you know you can also withdraw.

Patty – She can withdraw her application without prejudice, and that would be the end. J. Moore – We can act by a vote now, or you can withdraw the application without prejudice.

Jolie – Like I said, knowing that something else can go there, I didn't want a Variance, because I want a country type of store.

J. Moore – Just to clarify this doesn't stop you from doing any allowed use under home occupation.

The Board went forward with motion.

J. Moore – a G. Thibeault - No S. Freeman - No
P. Shilhan – No D. Kapnis - No

APPLICATION IS DENIED.

J. Moore – 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.

Motion - D. Kapnis/P. Shilhan to close the hearing at 8:37pm. All in favor. Motion carried.

Patty Pitari
Zoning Administrative Assistant

Approved, June 5, 2012