



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 - #13-11

Special Permit – Multi-Family

May 7, 2013

Board Members Present: P. Shilhan, Chairman
Gina Thibeault, regular member
Dave Kapnis, regular member
Sharon Freeman, regular member
Jeff Moore, associate member

Zoning Clerk: Patty Pitari

Owners/Applicants: Thomas & Lisa Simmons

Attorney for the Applicants: Martin J. Arsenault, 939 Salem St, Groveland MA

Jon Metivier, Georgetown Building Inspector

P. Shilhan opened the hearing at 7:30pm and stated 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.

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 May 7, 2013 at 7:30 PM.
ZBA file #13-11

Applicants Presentation:

Martin Arsenault, Attorney for Applicants- This is an application for a conversion from a single to a multifamily in this zone, it has somewhat of a tortured history, they have 2 children in the school system, and one adult child living with them. To give some background: The applicant has owned the property since 1990, in June of 2009; the applicant hired a contractor to install isocyanurate spray foam insulation in the existing home on the premises. Due to the negligence of the installer, supplier or manufacturer, the insulation out gassed and made the house uninhabitable. The installer allowed Mr. Simmons to stay in the home during the installation and he developed a chemical sensitivity which makes it impossible for him to live there.

Around that same time they had a permit to raze an existing garage and rebuild it. Because of the timing, Mr. Simmons went to Mr. Caldwell and discussed allowing him to convert that garage addition to be able to live in because the house was uninhabitable, and there was a miscommunication and the building application was never amended to reflect the change in the structure, then Mr. Simmons submitted a request for a special permit on 12/1/09 to the ZBA, this was filed at the time that the addition to the existing structure was under construction.

The applicant had originally applied on October 20, 2009 for a permit to demolish the existing decrepit barn on the premises. The applicant's original intent was to replace the existing structure with a modern garage, however due to the negligence of a workman installing insulation at his home that plan changed. That zoning application request 12/1/09 for a multifamily was withdrawn, because it was unclear what was going to happen with the primary dwelling.

They are back as they may be able to remediate the existing dwelling on the premises, and now want to be able to use the primary dwelling as a rental property. The plan submitted complies with zoning, all setbacks are met, we are showing 3 off street parking spaces, and we have an approved septic design by the Board of Health for 9 bedrooms. We need them to remediate and make use of the property. (See attorney Arsenault's memorandum). He continues to pay taxes on the property.

Tom will explain the situation with the primary dwelling.

Martin - There are at least 6 other multifamily dwellings, and some commercial building near, I don't think it will be detrimental. I don't think it will cause an overload of the use. In conclusion I think they have a strong case, that they should be entitled to have the special permit on the property, they have been put in this position by circumstances not of their making. They did make the conscious choice to put the addition on the house, I will give you that, they could have put a trailer on the property.

T. Simmons – We ask for your help to get this permit.

New Correspondence - 4 Items;

1. P. Shilhan read into the record Letter from Wessler & Wasserman, attorneys for the primary dwelling still in litigation. Patty received by mail, also marked in application as Exhibit C. dated March 12, 2013, Dear members of the Zoning Board of Appeals; Please be advised that this office represents Tom and Lisa Simmons in their on-going law suit stemming from the misapplication of foam insulation at their home at 36 Prospect Street. The name of the case is: Simmons v. Raymond et al., Essex Superior Court No. 2012-CV-00269. I am writing in support of my client's petition for a Special Permit to repair and occupy a two-family residence. This approval will allow my clients to move forward on their case, and will help to fulfill my clients' duty to mitigate their damages in the above-captioned matter. Signed Steven Wasserman, (see attached).

2. S. Freeman read into the record - Letter faxed to ZBA on 5/6/13 from abutter directly across the street from applicant Betsy Amsel of 37 Prospect St. in opposition "I own the property at 37 Prospect where I have lived for over 12 years and I have always had a very cordial relationship with Lisa & Tom Simmons, However as the only abutter with a direct view of 36 Prospect St, I would like to express my concerns about it being a multifamily dwelling. The appearance of the Simmon's property has changed significantly since I purchased my home in 2000. Most notably the large addition constructed in 2010 completely altered the view from my house. Photo A shows how the property looked when I moved in, and Photo B shows how it looks now. When I signed the petition to build this addition is was my understanding that is would be much smaller. Photo C provides a sense of how the property now looks as a whole. The areas used for parking have also been progressively enlarged in recent years. As shown in Photo D, in addition to the broad driveway leading to the garage, a wide strip of yard running the width of the property is now being used for additional parking. Photo E Shows that yet another driveway has been added at the right of the property. I've been told by the home owners that they intend to 3expand the parking areas even further to accommodate the tenants who are to occupy the front section of the home by dramatically altering the landscaping at the front of the property. From my side of the street, their yard already has an increasingly commercial appearance. Frankly if the Simmons home had been as large as it is now, or had been a multifamily to begin with, I would not have purchased my house. I fully respect the rights of homeowners to do what they wish on their own property, and I like the Simmons family and wish them well, Nonetheless, I am concerned about my property values and quality of life. I wonder if our small, heavily traveled street is already filled to capacity. In addition, if the original part of the structure is toxic, as I have been told, what kind of assurances will there be that it is safe for tenants? If Georgetown was to issue occupancy permit and there are related problems down the road, wouldn't the town and taxpayers be

liable? I respectfully request that the ZBA take my concerns into consideration when making a determination on this matter. I would be interested in learning if there is a way to address these issues and allay my concerns, Sincerely, Betsy Amsel (see attached).

3. P. Shilhan read into the record, email from the Board of Health when asked by Patty if the deed restriction was lifted. The Health Agent Debra Rogers replied on 4/23/13, it was approved to remove the deed restriction in order for the homeowner to refinance and install the approved septic system which he has not done, therefore at this time the deed restriction is still in place.

4. P. Shilhan – Stated a revised petition with two additional signatures was submitted by the applicant the two addresses added were 31 Prospect and 430 Andover St.

Audrey Parr, 23 Powerhouse Ave., Haverhill MA – I have color copies that go with Betsy Amsel's letter you read that had the with black and white copies of the property.

G. Thibeault – When was the original petition dated.

Patty – It's in the application as Exhibit H. P. Shilhan – It's not dated.

Tom Simmons – I got those signatures sometime before I filed the application in 2013. Exhibit H.

Audience

Audrey Parr, 23 Powerhouse Ave., Haverhill Ma – I am speaking on behalf of Betsy Amsel of 37 Prospect, she submitted that letter, she is here but she is a bit nervous, so I said I would speak for her, I am a lawyer although I am not here as a lawyer. She moved here because it was a quiet small street, that was already established, she is directly across the street from the Simmon's house, it's not a personal thing, it's a matter of quality of life and aesthetics, she has a nice little house. When she moved in in 2010 when the original application was done, she understood it was going to be a small addition, a garage with a small area above it for an accessory apartment. When you look at those pictures with this addition it looks like a Mc-mansion. It is higher than the primary house; she didn't expect that at all.

Then a couple of years later he applied for a multifamily, and now there are issues with toxic insulation. I don't know what's going on with any insurance claims, so he lives in the addition. There are two issues, if you provide an occupancy permit for that dwelling that's toxic I think there may be liability issues for the town, and beyond that the aesthetics for the town, and she is really the only abutter directly across the street, the other neighbor's don't look directly at it. From her view you have an area of dirt that you can put 2-3 cars in front, then a driveway that you can fit 3 cars side by side, then past that there is a small area and then an area with gravel, with what looks like some commercial stuff behind it. Once you create a 2 family, it's a much bigger structure, on this little tiny street.

Denise Langley, 41 Prospect St. - I live diagonally across the street, when I bought my house I understood it was a multifamily area; I don't have a problem with it.

Scott Mantel, 32 Prospect – I don't have an issue with it, the structure is there already.

J. Moore to abutter Scott Mantel, have you reviewed the plan? Mr. Mantel – No.

J. Moore – One of the things that will come up is parking. Being the closest abutter, if there is more parking you should see the plan; your house is to the left correct? Scott – Yes. J. Moore gave him a copy of the plan.

Questions from the Board

D. Kapnis – I am confused on the original permitting process, it's my understanding there was a garage there and you were going to demo the garage and you found out the foundation was unsuitable. What were the original dimensions of that garage.

Tom – Not sure, it was wider than what I have now; I made it less wide and more deep so I could house my family.

D. Kapnis – So you changed the footprint.

T. Simmons – Yes.

D. Kapnis asked Jon Metivier – Do you have any information on that.

J. Metivier - The dimensions of the new structure is 24 x 30 not including the decks.

D. Kapnis – What I am looking at is 19'8" toward front and 35' 4' on left, 36'.3" on the right end and it's narrow on the back, 28' 4" in the rear. The 2009 original garage plan show 19'4" front, 20' 2" left, 36' on right, and 24' 6" back.

G. Thibeault – That's because of the overlap.

D. Kapnis – So I have and 35 or 36 deep does that sound right, 28 x 36 approximately.

J. Metivier – The original footprint was 24 wide by 30 deep and then the original permit for the garage was those same dimensions 24 x 30.

P. Shilhan – How did that happen?

Tom – I went to the Building Inspector after moving about 6 times and showed him the plans for the new building and he said yes build it, and I did it.

P. Shilhan – I was under the impression you were to build a garage.

T. Simmons – No sir that was the original one. I went to Mr. Caldwell a second time and asked for permission.

Martin – Mr. Caldwell gave him verbal permission to build what he intended to build and what he did build on the property. The mistake that was made at the time was Mr. Simmons should have pulled a new permit, and didn't do so, and he subsequently did that with Jon Metivier's office in July 2010 after the structure was built, we cured that problem.

G. Thibeault – I wouldn't say it was cured, that's kind of a funny word to be using.

P Shilhan – But the building was already under construction as a garage, then perhaps this problem occurred with the primary dwelling?

T. Simmons - No there was no construction going on outside the house, until I pulled a permit to do the garage, I then went back to Mr. Caldwell gave him plans, and explained the situation and he just said go ahead and build it.

J. Moore – And you were not directed to come to the ZBA?

T. Simmons – No.

J. Moore – They why did you apply to ZBA in 2009 for a permit for a multifamily?

T. Simmons – You mean now?

J. Moore – No in 2009. What triggered that application if it wasn't the Building Inspector directing you to file with the ZBA?

Martin – He was consulting with Charlie Brett at that time, as a former building inspector and I think it was Charlie who told him to pull a permit, isn't that correct (to Mr. Simmon's). (No response from Mr. Simmons)

Martin - Mr. Brett helped him prepare that application.

J. Moore – Because you came before the ZBA for a special permit in 2009 for a 2 family, the one that you withdrew, it was triggered by a denial from the Building Inspector correct?

T. Simmons - Ultimately.

J. Moore- Ultimately?

T. Simmons - That's what he needed to do, I needed a denial.

J. Moore – And at some point he came to the realization that you were building a dwelling not a room over a garage and that you needed to go to the ZBA for a special permit.

Martin – Correct.

T. Simmons – No, the house was already built before the new Building Inspector started. It had inspections.

J. Moore – John Caldwell was the Building Inspector, sent you to us for a special permit. what I am trying to understand is he said you could build it, but then why you were here for a special permit. So I am having trouble understanding this, if he told you to build it, but he wrote a denial to come to the ZBA, and you were here for something that was already built.

Martin – This was never hidden from the town, I don't think it's correct that he was trying to pull a fast one.

G. Thibeault – Do we have that permit card? Jon gave the permit to the board.

D. Kapnis – It reads in handwriting, amended on 7/28/10 to include living space.

G. Thibeault - I want to see a plan of your original garage and a plan of what was built.

J. Metivier – I have both of those plans, what’s important I think, is those habitable plans were not in the file, when I started here, the plans of the livable space were not in the file or application. What was in the file at the time was that it was a garage, and when I went out for the first inspection, what was in the file was the permit for the garage. I went out expecting to see a garage.

P. Shilhan- That was my understanding, that you were transferring living space because of the situation, but not a 2 family and then that triggered the request, that was withdrawn in 2010.

Martin – If you look at Exhibit “E”, Mr. Caldwell stated he can issue an occupancy permit for the addition. J. Moore – right.

D. Kapnis – It says in Mr. Caldwell’s letter after the issues with the primary dwelling are resolved or cleared up then you can come back to the ZBA for the multifamily.

Martin – No, the way it was resolved was, we will allow you to occupy the addition as a single family dwelling and defer the issue of whether or not you’re able to obtain a special permit until such time you can remediate. There is no residential air quality standards in Mass. My clients’ intent and if he does remediate the front building, is to do the remediation and bring in an expert again, to test the air and make it safe.

D. Kapnis – When was the air tested?

T. Simmons – Last August, for the 3rd time.

D. Kapnis – Do you have any of that testing information with you?

Tom – No. It is still uninhabitable, I was expecting a letter from today, from a CPH with recommendations, but I don’t have it.

D. Kapnis – If you look at Exhibit E, Mr. Caldwell’s letter, it states when the issues are resolved with the primary dwelling you can then return to the ZBA. Are those issues resolved?

Tom – No

Martin – He needs to refinance in order to afford to do the remediation, it’s kind of a catch 22. His litigation counsel is telling him that he has a legal duty to mitigate his damages, so he has a duty to take appropriate steps to remediate the building to reduce his economic impact as a result of this event. In order to remediate the building he needs to go to the bank and get a loan, and he can’t unless the property is approved for the use he intends to make it.

J. Moore – It doesn’t have to be a 2 family, it could be just a larger house.

Martin – I don’t think he will get the financing.

J. Moore - A financial hardship is not an argument for a special permit. Right now you have a 9 bedroom very large house part of which part of you can't occupy, if a 2 family is denied, you still have a dwelling you can live in and occupy the entire place with one kitchen. Is that correct Jon?

J. Metivier – Yes, part of this process after seeing the prior inspector Caldwell's letter, was that he was going to allow this. I need to agree with the Simmons, that it's obvious from the permit and from the limited correspondence from the prior inspector, that he was aware that this was no longer a garage, but no plans were in the file, no application was ever changed, none of that, so as part of me moving forward, I required a deed restriction, that said this is a single family and can't be used as a 2 family until they go to ZBA and if a special permit is granted, upgrade the septic. The final point is we shut the power off to the original dwelling and removed the cooking appliances from the original dwelling.

Martin – The board of health has approved a new septic design, and they said they would lift the deed restriction to refinance. Patty – The Board of Health email states it will not lift the deed restriction until the approved septic is installed.

M. Arsenault - In regard to parking my client's is willing to plan to plan arborvitae trees for the neighbor.

S. Freeman - What other options do we have to mitigate, one would be a multifamily, is that the only way to do it?

M. Arsenault – For them it really is, they have no use for a 9 bedroom home. It is partially of their own making.

S. Freeman – The taxes are based on what's there now, if it was a single home, would that mitigate, what are the options. Sharon – I am asking about the sick building and I am trying to understand what other mitigation can be done. Is razing the original building an option?

M. Arsenault – Mitigation is reducing their economic damages, if they are able to convert the sick building. S. Freeman – Is (converting to a multifamily) the only option? I am just asking it's just a question.

Martin – I don't know of another option, tearing it down. I don't represent the Simmons in their litigation. I can't address the merits of that litigation, if this special permit was denied and he was unable to use this property that would be taken into consideration in any settlement or trial of the merits on the underlying claim.

J. Moore – Keep in mind this is a 3rd party lawsuit.

S. Freeman – I am trying to understand; I believe the request for the 2 family has everything to do with trying to mitigate. That is why they are requesting the multifamily as opposed to wanting a 9 bedroom home.

D. Kapnis – His intent is, it's beneficial to you to have a multifamily.

T. Simmons – Yes I am paying taxes on it.

D. Kapnis – But you did increase that footprint and there is no documentation /permit, we can't find any plans that showed what the living space entailed at the time and also it was supposed to be built on the same footprint, and you had the opportunity to come before the board for a special permit, prior to building this and now you have put yourself in a unfortunate circumstance, not entirely your fault because of the litigation of what is going on, but not coming to the board, you missed some steps here and making sure you have all your approvals, it kind of reminds me of the old “do it anyway and beg for forgiveness” that's how I feel looking at this. I put a tremendous amount of time looking at all of this, even what you have given us now, it just doesn't fit, with what the original plan was, and I can't find any documentation from the Building Dept. that supports this, and you haven't provided us any information about the primary dwelling and were the litigation stands, and something that shows some remedy. I would feel more comfortable if I saw documentation if you were doing something every 6 months or so, something.

T. Simmons – One of the main reasons for that was to get the chemical testing I did it three times, I did it immediately after, then in 2010 and again in 2012, and hoping it would drop, and the gases inside the home, its 10,000 each time, as far as the plans, I submitted everything I was suppose to, with the other building inspector, I don't know where the plans are, but he told me to build it. I need some help to move forward to make this work, for everyone. I did give plans and showed everyone in the neighborhood the plans, to make sure everyone was happy, and I went to that building inspector and gave him those plans and he said I could build it.

Mr. Simmons explains what he did to accommodate neighbors, and what he may have to do inside.

J. Moore – How long does that process take?

T. Simmons – The roof a week.

D. Kapnis – It's probably a 2 week project to demo inside as and maybe put another roof on. But we don't know the extent yet.

G. Thibeault – Who is fixing it. T. Simmons – Not the original contractor.

Gina – It's more expensive to demo and rebuild than just to demo.

T. Simmons – It's an 1889 home.

G. Thibeault - The old minutes state that maybe you want to condo it.

Tom – That was back then and off the cuff.

J. Moore – The reason I am asking for the remediation scope is, it seems to me it would be less expensive, would have been. Why wasn't that done 2 years ago, remediate and move in, because you spent a lot more money on the addition.

T. Simmons – I had no idea at the time if I had to raze the house, and now I have the backing from the chemical analysis people and they have given me guidance, I personally can't live back in that front house, I have asthma from it, the guy installing it let me stay there for 2 days breathing it. The answer is I didn't know what to do.

J. Moore – The option to mitigate that was not an option at the time?

T. Simmons – No, per the CPH, he wasn't sure then. I didn't have those answers at the time. I made the addition small enough but large enough to fit my family. I could have put 2 trailers there to fit my family. You are all more than welcome to walk through the house.

G. Thibeault – I struggle and I have driven down the street, and I have never noticed other multifamilies, I look today, for 2 doors or something that screams a 2 family. I feel like this is 2 houses together, it's enormous; it looks out of place, and I struggle that there is no history on this. I am not discounting what happened to you, but now you want to make it a multifamily and the parking looks like it would be bad, and I don't know what kind of precedence it sets with the town, and how will that work. I just want you to understand I have some issues I need you to make me feel better about this.

M. Arsenault – I don't think the intended use is out of character with the town.

G. Thibeault – I will go back and look for those other (6) multi families again, and the commercial stuff is at the very very end.

M. Arsenault – I think he makes a strong case, that you can make findings, I don't think it will overburden the district and we are open to any restrictions you want to place. As far as the parking front to back parking is not unusual. We are showing 3 parking spaces, and only 2 are required. We are only going to have 8 proposed bedrooms, and we have an approved septic design for 9.

T. Simmons – I proposed putting parking to the right, and circle driveway and my neighbor's said no, I want to see trees.

G. Thibeault – My fear is if it's a rental unit the parking will be on the street.

T. Simmons – I can accommodate multiple cars. There is a rock driveway on one side.

P. Shilhan – My feeling is that, somehow you were able to build this building, I don't know how, and if you came to the ZBA I would have been able to look at drawings. That why it should have been done, it should have been much more discrete, it looks out of place, you have the biggest building on that street, you should have come to us, before you built it, that's the problem I have with this, however this happened and frankly I believe that this is all not exactly how it went down, I honestly don't believe it. I believe something happened with the other building inspector, not a wink or a nod, maybe he dropped the ball. I was at the previous hearing, you clearly stated and said you wanted a multifamily, I remember that, it was your ultimate desire was to have a multifamily, you didn't apply for an accessory apt.

T. Simmons – I want to be able to occupy the front end of the home.

P. Shilhan – Can you set up a temporary residence in the garage and then when the house is done move back into it. Somehow it went from, I want a garage and then it was a multifamily.

M. Arsenault – I am not sure you can occupy a garage as a dwelling.

J. Moore – But he did because he built a kitchen and then didn't have permission for a 2 family, so we gave him permission to occupy the garage by putting a deed restriction on the front, you built a residence that you can move back into, but in doing so, you created 2 dwellings that you weren't allowed to have, and so the town made you do the deed restriction and allowed you to live in the addition.

Martin – With the Board of Health, I believe that idea came from Chris Rich.

J. Moore – And the Building Inspector.

S. Freeman – I don't think that Town's accommodation was to make to then make it a multi-family, I struggle with the multifamily.

M. Arsenault – See Exhibit D to Mr. Caldwell that was the grounds for the withdrawal, until the front building could be resolved, that's why we withdrew. Now that we know that the front building doesn't have to be razed. Now we need to have the multifamily

D. Kapnis to Jon –If this was being proposed today, would it meet all the requirements as far as setbacks go, is it non-conforming, if this was happening today.

J. Metivier – The existing is nonconforming. The addition is conforming setback wise; I just want to make clear the letter that Attorney Arsenault was referring to where the previous building inspector said they could occupy the space it was not this dwelling it was the addition.

G. Thibeault – And then the occupancy was removed from the original.

J. Metivier – That was me, in order for me to sign off on a final, I can't sign off on a final that is creating a second dwelling, so we had a lot of discussion on how can we get you into this, but then I still have to do my job, and that's where we came up with the deed restriction and removing of the cooking appliances.

Martin – On the plan I will point out, this very front of the building, it's approximately 4 ft. is over the setback.

J. Moore – Its preexisting non-conforming, Jon is that correct?

J. Metivier – Yes. The addition is wholly conforming?

J. Moore – To be fair under our current review process, if he made that finding that the addition is whole within? *Inaudible multiple discussions.*

P. Shilhan – Is the board comfortable with this or continuing this and look at this further.

J. Moore – I want to talk about the intent, your living in the back house (addition) dwelling, so you want to do what specifically?

T. Simmons – I want to rent the front, and live in the back house.

J. Moore – You intend to owner occupy this?

T. Simmons – I do.

G. Thibeault – So you are thinking of conditions?

J. Moore – I just want to understand, if there is a detriment to the neighborhood, which there could very likely be, or the board finds that everything has been met, there is a big difference between owner occupied 2 family and a non-occupied 2 family, that's number one.

G. Thibeault – That's why I was asking. Is that something you plan to always be living there as owner occupied.

J. Moore – it may not be his choice.

T. Simmons – I can't give you a complete true answer, I would rather not have a condition on that, I may want to be in Maine in 10 years.

G. Thibeault – But it would be a condition that would stay with the house. So if you were to sell it, it would stay that way.

J. Moore – It could be conditioned any way you want, on many things, that's why I am asking.

T. Simmons - We do not want to move from Georgetown.

S. Freeman – Assuming the front house can be rebuilt as it was, how many bedrooms was it?

T. Simmons – Its 3 bedrooms, it will be the same footprint. The whole second floor has already been sheet rocked and new insulation, but I am going to rip it all out. I don't know what I am going to do with it at this time.

J. Moore – How many bedrooms in the rear dwelling addition that you are in now?

T. Simmons – 5 Bedrooms.

J. Moore - That's a heck of a garage.

T. Simmons – I have a lot of kids, we have a step son too and 3 kids.

J. Moore – Alright I have asked my questions.

S. Freeman – The first time you had submitted the plans for the back addition, did you give the town the only copy of plans you had?

T. Simmons – I am not sure at this time.

J. Metivier – I have the original plans now, and the new ones you gave me on July 6, 2010.

P. Shilhan – To the board, do you have any conditions in mind.

G. Thibeault – I think it has to be owner occupied.

S. Freeman – If 4 parking spaces are what is required, I would not make it 6. 6 seems excessive. I don't feel ready to make a decision. I would try to minimize the number of parking spaces.

P. Shilhan – I am wondering if the parking situation is the least detrimental where they are one in front of each other.

G. Thibeault – Then kids will be driving soon, more cars. In the picture they are not lined up this way.

Martin – Would it be helpful to submit the testing? Jeff – What do they show?

T. Simmons – They are pretty technical.

Audrey Parr, 23 Powerhouse, Haverhill MA – When you talk about remediation, if there is a claim for that kind of damage, he should have been made to an insurance company or homeowners, has that been submitted and denied?

Martin – My understanding is the litigation pending at the Essex County Superior court in Lawrence, is that the home owners, and the installer's insurance company, and the manufacturer are all in this, all defendants, the homeowners insurance would not pay.

G. Thibeault – I would like to look at different options for parking, in your pictures you are not parking front to back, I think if you did a circular driveway near the planted area it would look better.

T. Simmons – My neighbor is objecting Betsy Amsel, she didn't like it.

G. Thibeault – May I ask her. Gina asks what happened.

Betsy Amsel, 37 Prospect St – When Tom came over he showed me a pencil drawing, and said they may be putting in a circular drive and maybe a driveway and maybe they would put it on the left side instead, as you can see there is so much parking now and the lawn is disappearing, and it's becoming unsightly, and the thought of even more parking is distressing to me, so I didn't care for either, the circular, then parking on left and right and going along the front of the property. It's a lot of parking.

G. Thibeault – I don't think they will park front to back, I think people will park along the street. I think if it's circular, people will be less apt to park on the street. I worry about the parking.

Betsy Amsel, 37 Prospect St. – That area where you would do that is much smaller than you realize.

D. Kapnis – I see 3 directions we can go in now there was a potential motion with conditions, or continue the hearing for more time or take a vote.

J. Moore – I am not ready to vote. Gina – I am not ready, I think there is more he can address.

S. Freeman – I am not ready.

P. Shilhan - The two buildings that are there, it's not uncommon to see that combination there, and the second is usually a barn, the scale doesn't seem inappropriate to me, but the use seems inappropriate to

me, there are a lot of people going to be in there. Addressing the parking in a serious way, so that no one can't tell it's a multifamily, maybe you can come up with a plan, but I think we should continue it.

T. Simmons – I would like to invite the board to my house.

J. Moore – As far as the potential detriment to the neighborhood I would want to see how that can be minimized in anyway, I think the owner would need to occupy, the rear unit, to minimize the number of rental bedroom, if you flip flop it and all of a sudden you are renting 5 bedroom, that doesn't sit well with me, if it's not conditioned to ownership, and it's sold, and a married couple moves in the front and rents out the back, there is a lot we need to consider in this parking needs to be considered in this. It sounds we may want to continue. Betsy Amsel may want to come up with some ideas, or concerns that can be talked about, it's difficult, but we are faced with a situation that's not great but here we are the structure is built and it's bigger than everyone expected, I feel for you on the (speaking to Betsy Amsel of 37 Prospect), I would love to get your suggestions and anyone else in the audience.

G. Thibeault – Maybe come up with some screening.

Plans submitted with the application:

Plot Plan – Dated March 20, 2013 by Engineering Land Svc, W. Newbury, MA – Shows plot plan with Addition marked as Existing 5 Bedrooms, and Original/Primary Dwelling as 3 Bedroom Unit, also shows 2 deck off addition, proposed paved parking for 6 vehicles

XO - Existing Basement Plan, by DMS Design, LLC, 100 Cummings Ctr. Beverly MA, Dated 11/30, 2009.

X1 – Existing First Floor Plan, by DMS Design, Original/Primary Residence, dated 11/30, 2009.

X2 – Existing 2nd floor Plan, by DMS, Original/Primary Residence, dated 11/30, 2009.

X3 - Existing Attic floor plan, by DMS, Original/Primary Residence, dated 11/30, 2009.

X4 – Existing Exterior Elevations, by DMS, showing original and addition, dated March 13, 2013

A1 – Marked as Proposed floor plans of Addition dated May 21, 2012

A2 – Marked as Proposed exterior elevations of Addition dated May 21, 2012

Motion to Continue

Motion by G. Thibeault seconded by D. Kapnis to continue the hearing for 36 Prospect to June 4, 2013, immediately following the first scheduled hearing at 7:30, all in favor - Yes, no discussion. Motion Carried 5-0.

*Patty Pitari
Zoning Administrative Assistant*

Approved at August 6, 2013 Business Meeting