



Georgetown Zoning Board of Appeals

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

MINUTES OF A PUBLIC HEARING
John & Nancy McManus of 118 Thurlow Street, Georgetown MA
118 Thurlow Street - ZBA File - #13-12
Modification of Previous Decision & Special Permit
June 4, 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/Applicant: Nancy McManus/Kim Senko (daughter), 118 Thurlow St, Georgetown

Building Inspector: Jon Metivier

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 Applicant/Petition has been made by John E. and Nancy L. McManus of 118 Thurlow Street, Georgetown Ma, to modify the previous decision for a variance by modifying or removing a 1985 variance condition and potentially issuing a new Special Permit for modification to a preexisting nonconforming single or two-family structure, prior to the issuance of a building permit, under M.G. L. Chapter 40A, Sections 9 & 10 and the Georgetown, MA, in the RB district and identified on the Assessor's Map 12, Lot 71. The Application will be heard by the Georgetown Zoning Board of Appeals; at the Georgetown Town Hall 3rd Fl. Room on June 4, 2013 at 7:30 PM. *ZBA file # 13-12*

P. Shilhan asked the applicant if she would be ok with moving there hearing to the second hearing of the night, she agreed that was fine.

Motion to Continue the hearing – J. Moore/G. Thibeault to continued 118 Thurlow immediately following the first hearing on 36 Prospect St. hearing, all were in favor, motion carried.

9:10PM

Motion - J. Moore/D. Kapnis to open the continued hearing on 118 Thurlow Street for this evening immediately following 36 Prospect Street, all were in favor motion carried.

Applicants Presentation:

Nancy McManus, 118 Thurlow St. - For the past year, Kimberly Senko, my daughter, and I have been working with the office of the Georgetown Building Inspector in order to enlarge our home at 118 Thurlow St. We had our land surveyed, hired an architect and an engineer to design the building and create the necessary plans, and

installed a new septic system. In May we presented our final plans with all of the necessary paperwork and signatures, to the building inspector. He was shocked to discover a 1985 variance on the property. It prevents us from changing the exterior of the house in any way.

When we learned the news we were stunned. I felt positively sick when I thought of all the time, effort, and money we had spent, only to learn at the last moment that all of our efforts were in vain as the variance was not disclosed, by previous owners, to us at the time we purchased the house in 1995, nor discovered by the town staff until this year. We are asking you to modify the variance because we would face enormous hardship if we try to move our family. My husband and I live in our three- bedroom house with my daughter, my son-in-law and their two children, Alex is almost 7 and Bella just turned three.

When my daughter moved with her family from California in July of 2010, it was with the idea that they would only stay for a short time before finding a home of their own. Unfortunately in July 2011, Kimberly was hospitalized for a week for Peritonitis so they extended their stay so she could recover and I could help with the children. In January 2002 my husband suffered a stroke, which destroyed some of his memory and left him with a visual handicap that prevents him from driving. Later that same year the teachers at Perley School suggested that my daughter talk with her pediatrician about her son Alexander's behavior. Several months and several doctors later, Alexander received a diagnosis of PDD-NOS, ADHD, Sensory Integration Disorder, with a Mood Disorder. Therefore, it was not a complete surprise received a diagnosis of Autism. Bella has a Global Delay and the Perley Special Education team has created a sub-separate classroom in order to help her learn to communicate so that she can, hopefully, be integrated into a general education classroom in the future.

I provide daycare for Alex and Bella since both Kimberly and Matthew work outside the home. I also drive the children to and from school as well as to their weekly therapies so that Kim and Matt do not have to take time from work in order to do so. Kimberly works as a teacher at an extended day school in Lawrence, MA. Matthew works in Reading at Keurig. It would be impossible for them to hire someone who could manage both children, provide transportation, and communicate with the numerous therapists and IEP teams at Perley. The Georgetown School System takes phenomenal care of both children and we are concerned that Bella especially would suffer serious regression if she had to move to another school. I am also very concerned that moving my husband into a new home would be too stressful and challenging for him. John already has difficulty with memory and moving to a new home would be detrimental. At this point in my life, I need my daughter and son-in-law here to help me. They in turn need my help with the children.

We love Georgetown and our home on Thurlow Street. We have done our best to follow the rules and meet all of the regulations but now we need your help. Please modify the 1985 variance and give us a special building permit so that we can continue to move forward in Georgetown. I have spoken to all the neighbors who are in visual distance of our house and they have no objections. Thank you, Nancy McManus

J. Metivier to the Board – Our files were lacking, we looked in the office files and in the archives, and Patty found the old decision in the archives. I urge and ask you to consider their application.

New Correspondence

Abutter letters in favor of project

Letter received 5/29/13 from Steven Pinto of Thurlow St., read into the record by P. Shilhan dated 5/24/13 to ZBA stating his family is the sole contiguous neighbors of the McManus Family and have discussed this addition with them. We have no objection to the addition or its placement and would agree that it be allowed to proceed. As I will be traveling out of state and cannot attend the meeting, I request this letter be entered as our comments regarding this zoning request.

Letter from Susan Parker and Jeffrey Barnes of 115 Thurlow St. dated May 30, 2013 in support of the application. (*see attached*).

J. Moore explained we would need to modify the variance. In the denial, it just should have come here anyway, our rules of procedure have changed and there are rulings that have changed.

Jon Metivier – That old decision today would not even require a variance today.

J. Metivier said that the the proposed 8 ft. side setback is allowed under Chapter 165 Section 94. The current structure is located approximately 3 ft. from the side lot line. The proposal does not increase the non-conforming nature of said structure, just to be clear.

J. Moore – This is an undersized lot 31,000 sq. ft. that doesn't meet the frontage requirement. The non-conformities would be the side setbacks, frontage and lot size. The original addition was granted under this variance, so we would have to find substance to remove that condition from the variance, and then based on the discussion in our business meeting about Gale v. Gloucester MA, then grant a special permit on the property. In the denial I think the application for the building permit should have come here anyway just to be clear. Our Rules of Procedure have changed and the laws are changing and we are trying to keep up with them.

J. Moore reads the Building Inspector's denial. (*see attached*)

J. Moore - We can substantiate removing that condition/variance due to the fact that the laws have actually changed, this variance today would not require a variance, when the decision was written in 1985 at that time the interpretation of the board was that a variance was required, we don't want to remove it, this can be a modification, it doesn't require a variance, we can now substantiate the removal of a condition by virtue that a variance is not required, and following the current Rules of Procedure for modification of a single family pre-existing non-conforming structure which is a special permit.

S. Freeman – The original variance was on the Pinto side of the property.

S. Freeman – Asks procedurally do we remove the condition first.

J. Moore –The decision can be written based on the agreement that the board found that the current law no longer requires a variance.

Audience - None

Modification of Variance

Motion - S. Freeman/D Kapnis I make a motion to grant a Modification to the October 18, 1985 Variance condition, ZBA File # 85-19, to John E. and Nancy L. McManus of 118 Thurlow Street, Georgetown MA in the RB district and identified on the Assessor's Map 12, Lot 71, by removing the condition that states "That absolutely nothing be added to the exterior of the building". Discussion – Based on the fact that the current law would no longer require a variance for the proposed changed. All in favor. Yes by all. Motion Carried 5-0. Modification of Variance granted.

Special Permit Discussion

J. Moore – I was there yesterday and the house is nonconforming on the Pinto side, and will now be on the conservation side. Can you tell us why it needs to be where you have it?

Nancy McManus – We have a boy and a girl, and have 3 bedrooms, there is my daughter Kim and we really need a fourth bedroom so we want to expand the house laterally and create a stone wall, and create a 2 car garage with a master bedroom over it, and the current garage will be turned into a room for my husband.

Kim Senko (daughter) – The living room the 2nd floor above is only 2/3 rd of the house so if my dad wants to go to bed early because he is not feeling well, and the children can get up and play we wanted him to have a room where it would be quite.

Jeff – So it's three bedrooms now, and your enclosing them?

Nancy – No, it's a half wall, it's not another bedroom, we want it open as the child has a GPS system on her she is a runner and she escaped one day, and we need to keep an eye on her.

S. Freeman – Are you raising the roof on the Pinto side of the house, the slope, it comes up 5 ft.

Kim – Yes, the slope yes its 5 ft. We wanted to do that for snow.

S. Freeman – I wonder if they are aware, it doesn't state in their letter. It seems your house sits a bit higher.

Kim– I am pretty sure they are, you can check with them, in their letter it says they have no objection to the addition or its placement and would agree that it be allowed to proceed. It would be only if they would be on their deck, it doesn't impact their view. We have talked to them about this a lot.

G. Thibeault – I think in the last case it was higher than allowed.

J. Moore – Where the existing garage is there is a peak is that new?

Kim – Yes.

J. Moore – So you are bringing the other roof into match.

Kim – The architect suggested it match as it could create issues, and we were trying to avoid a new roof as its only 10 years old.

S. Freeman – The cars would pull in side way, now it will go in straight.

P. Shilhan – Are you going with shingles or metal roof. Kim – Shingles.

J. Moore - I think a special permit is required not a finding, that the new proposed change is not more substantially more detrimental.

We need to make a finding that the construction is also non-conforming with regard with the side setback, I think it does increase the existing non conformity; it creates a non conformity on the other side.

J. Moore - I think we need to make a further determination about the proposed change extension or alteration will or will not be more substantially detrimental, to the neighborhood and if it's not, then it would need a special permit 165-79. There has been a substantial amount of artichectual work done to make the house look consistent with the neighborhood, and there is no one on the other side and it will not affect anyone's view. I am happy with it.

Gina – My biggest challenge always is how does it look, it doesn't look like two separate houses, it looks like a single family, and I like the design, it's done really nicely.

P. Shilhan – I agree, there is a practical issue here. Also I think the roof line is good, otherwise it would look like there was an addition put on. I agree it is a special permit.

Discussion on Conservation.

Patty stated they have already had a signoff from Conservation.

P. Shilhan read the exhibits into the record.

PLANS

Exhibit A - Plot Plan for 118 Thurlow, dated 8-2-12 by Craig Vancura Professional Land Surveyor, and by Vancura & Brennan, 1 Jackson St, Newburyport, MA 01970

Exhibit B - Sheet A-1, A2, A3, A4, A5, - dated revised 4/2/13 by ENS Associates

Exhibit C - Sheet A6, dated 1/16/13 by ENS Associates

Exhibit D - Sheet L6, First Floor reflected ceiling plan dated primary 4/2/13

Exhibit F - Sheet S1, marked foundation plan and foundation elevation details dated 4/2/13

Exhibit F - Sheets S2-S5, framing plans 4/2/13

Motion - J. Moore/S. Freeman to grant a new Special Permit to John E. and Nancy L. McManus of 118 Thurlow Street, Georgetown MA for modification to a preexisting nonconforming single or two-family structure, prior to the issuance of a building permit, under M.G. L. Chapter 40A, Sections 9 & 10 and the Georgetown Zoning bylaws, Chapter 165 Sections 9, 79, 84, 89, and 94. I further move that this board finds that although the requested use does intensify the existing non-conformities, that the use will not be substantially more detrimental than the existing non-conforming structure to the neighborhood and further move that the requested use per Georgetown Zoning Bylaw 165-79, is essential or desirable to the public convenience and welfare; will not overload any public water or other municipal system so as to unduly subject any area to hazards affecting health, safety or general welfare, 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.

Discussion: J. Moore – A technical note, being that this is a nonconforming lot in several respects, I think that you probably would be here anyway, even if the change was otherwise conforming, because you have an undersized lot and you have inadequate frontage, which requires a review from us.

P. Shilhan - 5 years ago this would have not granted that.

J. Moore – Well, it would have been a variance based on the boards interpretation of the code and since there have been some Supreme Court rulings that that is no longer a requirement.

Vote: All in favor; 5-0. Motion Carried unanimously. Special Permit Granted.

P. Shilhan - 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.

P. Shilhan - Lapse of 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 appeals referred to in Section 17, if a substantial use thereof has not sooner commenced except for good cause, or in the case of permit for construction, if construction has not begun by such date except for good cause.

Lapse of VARIANCE Permit - Per M.G.L. 40A § 10, If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such on year period.

CLOSE hearing

Motion – D. Kapnis/G. Thibeault to close the hearing for 118 Thurlow Street, all in favor. Motion carried.

Patty Pitari
Zoning Administrative Assistant

Approved at August 6, 2013 business meeting