



Georgetown Zoning Board of Appeals

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

September 4, 2012

MINUTES OF A PUBLIC HEARING

ZBA FILE #12-08

22 Pleasant Street, Georgetown, MA

Use Variance

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

Zoning Clerk: Patty Pitari
Applicant: James Roberts

P. Shilhan opens the Hearing at 7:30pm, and introduced the board members.

J. Moore reads legal ad; A hearing will be held on September 4, 2012 in the Town Hall 3rd floor meeting room to hear a Petition made by Owners; Sandra DeVellis & Helen Murgida, and Petitioner James H. Roberts proprietor of Clockfolk of New England, Reading, MA for the property located at 22 Pleasant Street located on the Georgetown, Assessors Map 11A Lot 95, proposing a "Retail Sales and Services Use", in a Residential A district which requires a Use Variance under M.G. L. 40A §10 & Georgetown Zoning Bylaw, Chapter 165-84.

Petitioner's Presentation

James Roberts, Owner Clockfolk New England and his brother David – We are a two man company and run a small, quality oriented company with only 2 employees, myself and my brother; we want to give you a better insight into who we are and what our intention is at this location. We have been in business for more than 37 years; we were in Wilmington for 12 years, and then the last 28 in Reading, MA. In speaking with some residents, we found no opposition, although some neighbors were not home. We have 4 repair jobs offered to us already, most of our work comes from Middlesex and Essex County, as well as almost all states. The photos provided give you an idea of the restorations we would like to do. We believe we are a far less invasive type of business and ask that you grant us the permit to establish ourselves in this great community to continue our small business of preserving, restoring and general repair of all types of antique, new, large or small foreign or domestic clocks. On an average day we will see 3-4 people and one will be the mail man. Most of our work we go out to collect and bring it in.

Mr. Roberts presented a list of some neighbors that feel it would be an asset to the neighborhood, it has six signatures, he stated he only spoke to the neighbors that were home at the time.

Audience:

J. Pingree, 18 Pleasant Street – Before I give feedback, I would like to hear a case for a variance, I heard about their business, but they haven't made a case for a variance, I would like to hear that first and then I can ask some questions.

J. Moore – What Mr. Pingree means is, a Variance application requires some stringent items for you to meet, that there are unique circumstances related to the shape, soil or typography of the lot, that are linked to the lot that are unique to the code. They are listed on the application.

Roberts – Yes, the retail is about 5% of the bulk of the business is the restoration/repair. As far as the variance there are no typography problems, there is nothing like that, the only hardship might be the it may be hard for the two lady's selling it, because it needs a lot of work, it's not setup inside for a home, unless you have to completely redo it, I don't know if that's the right definition of hardship. We don't have any other things that fall in line with a variance.

J. Moore – I have been by the property and I agree it's a unique structure for the lot, and it had a special permit for an education use, but a retail use clearly requires a variance here, and the hardship has to relate to the lot. What you are describing is not the type of hardship, having to spend a large amount of money to sell it, is not a 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, also we have to look at the use which is not allowed in the RA district.

D. Kapnis – What is the basis for the retail is that typically walk ins or is there advertising involved.

Dave Roberts – We have some advertising we have a website; it's mostly word of mouth, which is our best form of advertising. We don't have more than 6 people come in a day, it's a low impact business.

G. Thibeault – If retail is not really what you are, I am not sure this should be a variance for retail sales.

J. Roberts – In our present location you wouldn't even know we sell them unless you look us up in the phone book, sales is not what we concentrate on, sales is an easy extra.

D. Roberts – We do have some people come in to buy in clocks, but it's not like a Wal-Mart environment.

P. Shilhan – The problem is if the property is ever sold the variance goes with the land, not with the owner, and it can be anything.

J. Roberts – Can't you make a condition for that.

J. Moore – You can't condition a variance to ownership.

P. Shilhan – If down the road you guys leave, this use goes with the land. I don't see anything that allows us that relates to the land, there are other locations in town.

P. Shilhan - What about a home occupation.

Patty – You have to live in the dwelling.

J. Moore – I looked at your business online, I think it's perfect for this town, it's just this particular area/lot, in the residential neighborhood, it's just not allowed, you are still asking for a store front, it's retail, and you want signage and other things that go along with that.

Mr. Roberts – You mean a Dunkin Donuts can be there someday.

J. Moore – Yes. Once it's declared a Use Variance for Retail, that lot can now be used for a retail use, it will follow the lot for here and ever after. That's why you have to meet those 3 criteria for a hardship, when we talk about dimensional variances it's different. Now is down town zoning hard to understand, there is spot zoning, I don't know why, we don't have the authority to change the zoning. We don't have jurisdiction to change the

zoning, it's not for us to say, that's for the planning board. Again, I think the business is great it would fit right in, but for this area it's not allowed.

Audience

Pricilla Dullea, 28 East Broadway, Haverhill – I used to live in town for several years, I thought you said you can put restrictions on a variances. Can you describe that?

J. Moore – We can grant a variance on a proposal, for example we could put a condition that relate to that particular proposal, if we wanted to put a condition on for example a dimensional variance, we can put something like screening as a condition, to protect an abutter, or any requirements that will alleviate any detriment to the abutters or neighborhood. We are not allowed to limit a variance to ownership.

D. Kapnis – Were you provided with the criteria for a variance? Jim Roberts – Yes, the rules of procedure, it's a little confusing, but yes.

Patty – We sat down with the Building Inspector as well as the Planner and went over the hardship issue.

D. Kapnis – The issue is the retail aspect of it, it still wouldn't prohibit another retail business to come in at a later time.

J. Roberts – I think I didn't understand that if we sell it, the retail use would remain there.

J. Moore – If it were a special permit, it can be restricted to the owner, not a variance. You have to justify the variance first; a special permit can be conditioned and doesn't require a hardship.

Pricilla Dullea, 28 East Broadway, Haverhill - If you could limit hours of operation, does that travel with the land also. It seems to me if you tell them you can only sell on Wednesday. I will ask to be clear to grant a variance, and restrict their hours of operation, and at some future time.

J. Moore – We can't control zoning what allowed in that zone, you can go to the Planning Board, and to Town Meeting, that's a different avenue. This is a judicial body not a legislative body. Our zoning use schedule in our bylaw specifies what you can do in that zone; this is prohibited in a residential zone.

Pricilla Dullea, East Broadway St. Haverhill – I still don't understand why you can't condition the hours.

J. Moore – You still have to meet the state law (the hardship) the 3 criteria being; there has to be something about this lot that are unique relative to the soil, shape, or topography of the land, the need to use this lot for something other than which it's allowed to be used, and it has to be unique relative to the other lots in the area, which specifically affect the land or structures in question, but not affecting generally the zoning district in which the land/structure are located; a retail use is not a hardship, and the hardship does not relate to the land, it also has to show that we would not be creating a substantial hardship, financial or otherwise, and; desirable relief my only be granted without substantially derogating from the intent and purpose of the zoning ordinance or bylaw. If all 3 of those were met, then we could grant a variance and perhaps condition it, but there has been no argument made for the hardship.

P. Annaloro, 38 Sarah Jane Circle, Haverhill – How does a preschool get there?

J. Moore – It's allowed in the use schedule in the bylaw with a special permit.

P. Shilhan – This is not allowed in the use schedule.

Thomas Wentworth, 9 Maple St. – Having spoken to quite a few of the abutters in the neighborhood we have a lot of unique old homes, it has a historic feel, but I think the problem lies, that if this is granted retail it's the issue of what it can become when it comes to the future sale of the property, that's the concern.

J. Pingree, 18 Pleasant – I think Jeff has explained this great, we are way ahead of talking about hours, it's shape, soil and typography, and they have to be connected, I think it would be better but again it's down the road it will be a problem, so I think the board should focus on the criteria.

Tom Mulligan, 70 Bailey Lane – I actually came in support of this, but yes you have to hit the criteria, in regard to conditions it has to be constricted to the time and use, but it's hard to meet this criteria, but this is a monumental task getting retail in there. Can the board explain to the applicants their options at this point?

J. Moore – You can withdraw your petition without prejudice and the board would not vote.

J. Moore – There are some other businesses close by, you can go to the Planning Board and go to town meeting to change the zone, or the allowed use in RA. What you are asking for is very high threshold to get approved.

G. Thibeault – If you did it that way, like clockwork in a residential zone, that might appease the abutters.

J. Moore – I can say I can't vote in favor of this, if you feel this will not pass, you can withdraw or ask for a vote. You would need a supermajority 4 out of 5 for this to pass or you can withdraw w/o prejudice.

Discussion on zoning changes follows. S. Freeman – I don't think this will pass, out hands are tied.

J. Roberts asks to withdraw without prejudice.

Motion - Gina Thibeault/D. Kapnis motioned to allow James Roberts (Petitioner) to withdraw without prejudice. Discussion – None. All in favor to allow to withdraw without prejudice. Motion carried unanimously. The petitioner and the chairman signed a withdrawal form.

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.

Motion - J. Moore/D.Kapnis to close the hearing on 22 Pleasant Street, all in favor at 9:20pm.

Patty Pitari
Zoning Administrative Assistant

Approved 10/2/12- Business meeting