



Georgetown Zoning Board of Appeals

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

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MINUTES OF A PUBLIC HEARING 64-74 East Main Street - ZBA File #14-03 Zoning Board of Appeals

Special Permit, for Alteration or Extension of Pre-Existing lawful
Nonconforming Use and Structure, Use Variance & Modification to Variance Decisions
& Water Resource Special Permit

Constantine G. Scrivanos, Trustee, Mystra Realty Trust

64-74 East Main St., Georgetown, MA 01833

September 3, 2013, **Postponed to tonight October 1, 2013**

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

Zoning Clerk: Patty Pitari

Also present:

Representative for the applicant Mr. Constantine G. Scrivanos;

John T. Smolak, Esq., Smolak & Vaughan, LLP, East Mill, 21 High St, Suite 30, North Andover, Ma 01845

Chris Sparages Engineer: Williams & Sparages LLC, 191 S. Main St, Middleton, MA

Matthew Juros, Fishbrook Design Studio

Roseanna Francis, Sr. Manager, Real Estate & Asses Management for Constantine G. Scrivanos

Chairman Paul Shilhan opened the Hearing at 8pm, stating 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, once the minutes are complete the recording may be taped over.

G. Thibeault read legal ad: *A Public Hearing for 64-74 East Main Street, will be held on September 3, 2013 at the Georgetown Town Hall 3rd Fl. – 7:30pm. Applications/Petitions have been made by Constantine G. Scrivanos, Trustee Mystra Realty Trust, 3 Pluff Ave, North Reading, MA, 01864, owner of 64-74 East Main Street (Georgetown Plaza) Georgetown MA, 01833, in the RA district and identified on Assessor's Map 11A, Lot 85. The proposal includes exterior and interior updates and site alterations and uses involving no change in building size or sq. footage, but require; A Special Permit to allow for change, extension or alteration of a preexisting lawful nonconforming use or structure (exterior building only), a Use Variance to allow additional uses in an RA zone, and Modifications to Two Variance/Section 6 Finding Decisions; to modify/amend two previous ZBA Decisions, (97-17) and (02-09) in regard to the existing pylon sign pursuant to M.G. L. Chapter 40A, § 6, 9 and 10 and the Georgetown Zoning Bylaws, Chapter 165, Sections 9, 78,79, 84, 87 & 94.*

A Water Resource Special Permit is required for a sewage flow exceeding 110 gallons per day per 10,000 sq. ft. of lot area, pursuant to M.G.L. Chapter 40A, § 9, and Chapter 165, Article V, Sections 29 -39 of the Georgetown Zoning Bylaws. ZBA File #14-03

Chairman Paul Shilhan introduced the board members and noted this was postponed from 9/3/13.

Applicants Presentation:

John T. Smolak, Esq. representative for Mr. Scrivanos - In the denial letter it stated we would not require relief for exterior building. History found for the site with town records and Zoning decisions is the site has been used for a grocery store, other retail stores, a liquor store, industrial uses involving solvents operated by the former Western Electric, a lawn mower/small engine repair service, light industrial and restaurant use.

The existing site, 64-74 East Main Street consists of approximately 2.66 acres of land; it is located entirely within the Central Residence (RA) District (the "Property"). Within the RA District, commercial uses are not permitted, but the site has been confirmed as a pre-existing lawful nonconforming use and structure in multiple ZBA Decisions shown the applications.

It has been in the Water Resource for years and the previous building inspector did not require the previous owners to get a Water Resource permit.

Attorney Smolak explains the site on a locus map.

Smolak – In terms of existing conditions and improvements; Current tenants include a restaurant (Dunkin Donuts) as well as a physical therapy office and a medical office. The existing parking lot provides for a total of 62 dedicated parking spaces. The current owner has owned the property since the late 90's.

Currently there are 3 tenants, the medical office, physical therapy, and Dunkin Donuts, there is an issue of adequate parking for the businesses, and the building needs some exterior upgrades. We want to upgrade the building and sign to attract tenants; we have been meeting with the Conservation Commission.

Site improvement in regard to parking, the existing gravel area, approx. 15 in total, which was discussed with the Conservation Commission, and the side of the building we are asking for an additional 20 parking spaces, and around the back, it's unimproved right now and we are proposing to upgrade the rear of the building. The septic system will also be updated under the parking area to the left of the building, with the Board of Health and the Conservation Commission.

Smolak – The applicant is having a difficult time attracting quality tenants, due to the lack of adequate parking, also a difficult time of securing tenants for the building, and one of the major problems is that for every new tenant, there may be a need to secure approval from the ZBA which can lead to a 90-120-day delay between the time a tenant expresses interest, and the time at which the ZBA issued a variance and the 20-day appeal period expires.

The existing building has not been renovated in a number of years and we would like to renovate it, but no change to the existing building square footage is proposed.

Sign Plan – The sign changes are just coloring and it will actually be a bit smaller on top.

Smolak – In regard to the uses, the types of uses are typical used across the street, The Owner would like to use the Premises for any one or a combination of uses: Retail stores and service, Business and Medical offices, Animal Hospital, Printing Shop, Restaurant and Nursery School, these are the types of uses currently allowed in the Business and Commercial Districts, are considered to not be noxious uses, and are consistent with the (and in certain circumstances, of less intensity than) intensity of uses allowed at the Premises historically.

Chris Sparages of William & Sparages, (Engineer) in Middleton MA - The Water Resource district we believe the improvements proposed will improve the site from the existing conditions. Smolak - The Building Inspector stated the 1997 decision was the driver to amend this, so we are swapping out plans to what was granted in 1997.

Attorney Smolak explains the 1997 decision, Condition #1 was the referenced plan, #4 would need to be removed to allow for 2 way traffic, that would not have to be modified, and #5 the building insp said it would have to be removed, 'the North exit will be 31 ft. at the property line and 40 at the curb to curb, it's the existing condition.

P. Shilhan – The entrance will stay the same. Smolak – yes.

P. Shilhan – So someone didn't do what they were supposed to.

Smolak – Condition #6 – 2 lanes, it's actually one lane and it will stay that way, and #7, the directional turn, it doesn't even exist.

Chris Sparages of William and Sparages explains Water Resource existing conditions on the locus map, the back is all gravel, the gravel gets washed out into the brook, we can't just pave it, so we want to eliminate 2000sq. ft. of existing pavement and replace with impervious pavement, and we can't have that impervious pavement on top of the septic system, our focus is low impact no curbing, the ground water is only 2-3 ft. below the surface, so our options were limited, he show the green area in the back is a treatment swale. Storm water management improvements, as I stated include removing the 2,000 s.f. of paved impervious surfaces and existing gravel surfaces with pervious pavement which will serve as storm water treatment and infiltration systems which will significantly improve storm water management, particularly within the riverfront area closest to Penn Brook where a vegetated bio filter area will also be installed to provide additional storm water detention and treatment mechanisms.

New Correspondence - Read into record by P. Shilhan Email from Conservation they met with application on 8/15/2013, next meeting is 9/26/13 they are getting a 3rd party reviewer to review both the wetland and the engineering, Patty stated as of 9/30, the Conservation agent they are still working with 3rd party review.

Smolak - The proposed Site and Building Improvements: In addition to the proposed extension of uses, the Owner is proposing both site, building and sign improvements, principally designed to both make the site more appealing, while at the same time providing extensive environmental improvements, include the existing vinyl siding and trim is replaced with cementations clapboard cladding and trim (commonly known as HardiBoard). Colors as shown in attached drawings, the existing columns in front of the in-line retail spaces will receive simple, Doric order column covers. The gutters and downspouts will be replaced behind a new sign band with rain leaders properly tied into storm system. New Sign Band will have trim and linear external illumination. In-Line Retail will have new storefront glazing system with brick and masonry sill. Colors to match the cladding and trim. New doors and windows will be added to spaces at the rear of the building.

The freestanding sign will be renovated and improved, but will have almost the exact same dimensions as existing today (a bit smaller), but will be modified to match the color and design of the building cladding and trim.

Audience

Cynthia Holzapfel, 60 E. Main St. – They are next door to me, our issue is the septic with the parking on top, and my yard is next to the new parking, over the fence, the cars will be higher and the leaching field will be higher, and cars will be facing our property which will make it about 8 ft. maybe.

G. Thibeault – What is the grade change from her property to the top of the proposed pavement?

Chris Sparages –It’s about 6-7 ft., it varies, there is an existing retaining wall also.

D. Kapnis – Is there a buffer?

Chris Sparages – We had a meeting with the neighbors in August about screening, and we can do a retaining wall and have a fence either 42 inches or 6 ft. high that would sit on a guard rail system or on top of that wall, a stockade type of fence so if a car parked it would block the view, or doing a fence in front of the wall also. We walked the property line, and walked the Holzapfel’s property with their permission and found there were gaps, and Mr. Scrivanos offered to put screening in those gaps. He presented a large picture of the existing screening. Landscaping will be done with Site Plan Approval.

Cynthia Holzapfel – We have never had an issue with Dunkin’s owner, my issue is what it might do to my property value.

Discussion following on retaining wall and screening.

J. Moore – What’s the difference between the existing elevation of the septic and the proposed.

Chris S. – 1 foot, instead of a normal 4 ft. separation from the bottom of the septic system, we need to pick up the septic to 5 ft. because the soil is so good, it’s sand and the land perks to fast.

J. Moore – Do you have any toxins.

Chris Sparages – We have submitted the required materials in the application as required marked as Exhibit E, which describes safeguards with no toxic or hazardous materials stored outside of the existing building, The medical office does generate limited amounts of medical waste, these are managed in accordance with 105 CMR 480.00, “Minimum requirements for the Management of Medical and biological waste,” administered by the Mass DEP. We have provided a copy. There are no on site operations that allow the evaporation of toxic or hazardous materials inside the building. As far as Disposal – There are not toxic or hazardous wastes produced as part of the onsite operations that fall under MGL. 21C, also a copy has been provided.

P. Shilhan – Obviously you are squeezed for space, is there a way to tier it, with the retaining wall, in other words, have like a 3 ft. and a small planting area and then another 3, but I doubt you have the room.

Chris S. – We don’t, because we are so squeezed, in this skinny rectangle, and we have wetland issues there, we looked at this for over a year because of the ground water is so high, this is the only available spot on property for the septic system.

J. Moore – What’s driving the need for the septic is the desire to change the use? Is that right? Why do you need to upgrade the septic?

Chris S. – The system from 1997-98, was a 1500 gallon per day system and it does limit the number of tenants, even what where are doing we can’t even have a restaurant, so it’s just to give us more options for tenants.

J. Moore – Is it the medical use that the largest for septic. Which is the big driver?

Chris S. – The restaurant is the highest, a sit down restaurant has a 30 gallon per seat, per day, the doctor if 250 gallons per doctor, per day, it's a lot of flow and it limits the other part of the building.

P. Shilhan – Are the two vacant units.

Roseanna Francis of REM Central, LLC Real Estate & Asset Mgmt. – There are 3 units.

P. Shilhan – What are you increasing it to?

Chris S. - We are increasing to 2700 gallons from 1500 gallons.

Roseanna – We don't know if those tenants will remain who are there now.

J. Moore – I would be interested in seeing what kind of mix would max you out.

D. Kapnis – I don't think they will know until someone signs a lease. Isn't this the prevue of the Board of Health, did they approve it yet.

Chris Sparages – The board of health has not approved it yet. It difficult to predict who the tenant will be that's why we gave you a menu of uses.

P. Shilhan – What would a worst case scenario would be, like a Lahey clinic took it over.

Scenarios were discussed.

Smolak – In terms of the septic system the Building Inspector stated that does not require Zoning relief and we are already working with people on the buffer.

P. Shilhan – I would like to see the visual impact from the road when you're looking at the hood of a car is 6 and now 3.

Chris – The retaining wall will only be about 3 ft. height.

G. Thibeault – Asks about the retaining wall; is it higher than the parking?

Chris – There will be a guard rail.

D. Kapnis – What's the increase in parking?

Chris Sparages. - Adding 36 spaces.

G. Thibeault – The parking in the back is a concern, I drove back there, there is really not access, will there be access for people? Smolak – It will probably be employee parking.

Smolak – And that will also be addressed with Planning.

G. Thibeault – Is a nursery school an appropriate use?

Smolak – The requested uses were based on requests the owner received.

Roseanna Francis of REM Central – We want it to be neighborhood uses.

D. Kapnis - #7 on 97-17 old decision – I don't know with condition #5 and 7 how that didn't happened.

Chris S. – There were some improvements on Rt. 133, and that might have been part of it, we could strip it, (paint it).

Smolak – Maybe a condition be dealt with at Site Plan Approval.

J. Moore – Are the current tenants open til 10pm?

Roseanna Francis of REM Central, LLC Real Estate & Asset Mgmt. – I think we had a driving school inquire.
J. Moore I think 11pm is kind of late.

Smolak noted the parking and screening will be dealt with, with the Planning Board.

Smolak – We are looking to modify both decisions, we are trying to cleaning it up.

D. Kapnis – There are 2 different names Konstantino and Constantine with last names.

Inaudible – multiple board members speaking at once.

Roseanne – Yes, they are 2 different people, they are related, so Konstantino is not involved in this anymore, its Constantine G. Scivanos.

Sign

Matt Juros of Fishbrook Design Studio – The pylon sign has two light fixtures below, the plan of the sign cleans up the existing sign, this would be 8 ft. wide a little smaller with fewer sign panels.

Discussion followed on the pylon sign.

Roseanna – Septic and parking will dictate how many panels on the sign. Two of the spaces on the sign are for storage, people who would not need a sign.

Matt Juros – The sq. footage of the sign will be a bit smaller.

D. Kapnis – I would want a more detailed plan on septic, and I am not comfortable amending a condition that was never done, and the parking is increased by 50%.

Smolak – This will be with Site plan review, the Building Inspector is now on top of this, I can't change what happened in the past, and if you can have faith in us going forward.

D. Kapnis – I don't have to have faith it has to be earned.

Smolak – If you do buffering, and then planning does buffering, do a condition that the boards concerns relate to buffering, for example, see plan x.

J. Moore – I would like to see Cynthia 's concerns met, there are a lot of different scenarios, for noise, car lights, and come back with a plan that is your best effort, maybe another neighborhood meeting.

G. Thibeault – I would like to see the landscape plan on this set of drawings and whether or not a fence is required, so as far as a detriment to the neighborhood, the abutter is now your neighborhood and I think you need to make her happy, and as far as having it as a condition, I think we can condition it.

J. Moore mentions when Dunkin did change their color scheme the applicant didn't comply with the sign in the decision in 2009 and it was ignored, and they were on notice with the Building Inspector at the time. I would like to understand more.

G. Thibeault – Do we have an opinion on the color, does it have to be gray scale or not, we need to think about that if we have an issue we should tell them now.

J. Moore – As far as the tenant signs, do you envision color scheme on those signs, they can get busy looking.

Smolak – It's hard to say without the tenants.

Roseanna – They would have to go to the building inspector, for a signage permit I believe.

J. Moore – Is this sign what you want with the colors? You may have another scheme or are you limiting yourself, or do you want something else.

Matt Juros – We are trying to stay close to what is there.

Roseanna – We can go back and look at it.

P. Shilhan – I think the intent is good for the town, I am not going to require it of you, but I am wondering what the true visual impact will be, I walk by it every day.

J. Moore – As far as usage related to water resource, toxics etc.....relative to the potential uses. If you haven't done so already.

Smolak – We supplied all that information. Patty – It's all attached to the Water Resource application.

Smolak – Yes, we have provided all the information in the Exhibit in the Water Resource application.

Exhibit Marked at hearing - Plans Submitted;

Exhibit 1 - Site Plan Existing Conditions (sheet 1 of 4), drawn by Williams & Sparages, dated 7/29/13.

Exhibit 2 -Site Plan Proposed Layout Plan (sheet 2 of 4), drawn by Williams & Sparages, dated 7/29/13

Exhibit 3 - Site Plan Proposed Grading & Utility Plan (sheet 3 of 4), drawn by Williams & Sparages, dated 7/29/13.

Exhibit 4 - Site Plan Proposed Landscape/Lighting Plan, (sheet 4 of 4) drawn by Williams & Sparages, dated 7/29/13.

Exhibit 5 - Pylon sign drawing marked "Street Sign with color option A, dated 7/22/13 by Fishbrook Design Studio, of Boxford MA

Exhibit 6 - Elevation Drawing Sheet A3.0 – Exterior Elevations & Reflected Ceiling plan, by Fishbrook Design Studio, dated 7/9/13.

Exhibit 7 - Floor Plan Sheet A1.1 – Georgetown Retail Center by Fishbrook Design Studio, dated 7/9/13.

Exhibit 8 - Sign Plan – Exterior Sign Elevations dated 7/31/13, with dimensions of sign, by Fishbrook Design

Water Resource Application Plan submitted;

Exhibit 9 - Watershed & soils Map, dated 6/29/13 by Williams & Sparages, Middleton MA.

Motion J. Moore/G. Thibeault to continue to November 5, 2013 immediately following the first hearing at 7:30pm.

Patty Pitari
Zoning Administrative Assistant

Approved 11/5/13