



Georgetown Zoning Board of Appeals

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

MINUTES OF A PUBLIC HEARING

ZBA FILE 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 and opened 10/1/13,

Continued to November 5, 2013, **Continued to tonight December 3, 2013 @ 7:30pm.**

Board Members Present:

Paul Shilhan, Chairman
Gina Thibeault, regular member
Dave Kapnis, regular member
Jeff Moore, regular member
Recused- Sharon Freeman, regular member

Zoning Clerk: Patty Pitari- absent

Representative for 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

Rossana Francis, Sr. Manager, Real Estate & Asses Management for Constantine G. Scrivanos
(REM Central, LLC/ NGP Management, LLC, 3 Pluff Avenue, North Reading, MA 01864)

Paul Shilhan opened by hearing at 7: 30pm, 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.

This hearing was postponed from 9/3/13, Opened 10/1/13, and on Nov. 5, 2013, the applicant requested to Continue to tonight 12/3/13, and signed an Extension of time form for the Variance.

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.

Dave Kapnis read the letter dated 11/25/13 into the record

Dated November 25, 2013, from Smolak & Vaughan to Mr. Paul Shilhan, Chairman

Re: Applications for Special Permits/Variations for 64-74 E. Main Street

Dear Chairman and other Board Members:

On behalf of the applicant, Mystra Realty Trust, this letter constitutes a formal request to withdraw without prejudice the following applications:

1. The Special Permit Application to allow for change, extension or alteration of a preexisting lawful nonconforming use and structure under Chapter 165-87 & 94 of bylaw and MGL 40A Section 6 & 9 in connection with certain proposed site improvement; ALSO to consent to partially withdraw without prejudice, the use variance petition as it relates to both the proposed animal hospital and printing shop uses,(part of File #-14-03), Filed on July 29, 2013 for the property located at 64-74 East Main Street, Georgetown, MA.

2. The Water Resource application and the Special permit application Ch. 165-29-38 of bylaws.

The reason for the withdrawal is that the applicant has recently entered into an agreement to purchase the abutting property known as 60 E. Main St. The addition of this 0.75-acre parcel provides the applicant with more flexibility as to site layout and design. So as to avoid confusion with the other pending applications, however we request the Board to vote to accept the withdrawal of the filing of water resource and special permit for change, extension of pre-existing use and structure , section 6 and 9 in connection with proposed site improvements. It is anticipated that the applicant would re-file such special permits, which would incorporate the additional parcel, once engineering is completed.

Further since out last meeting we have received strong interest from a driving school to lease a portion of the building, so we are modifying the pending use variance petition in connection with the proposed school use from nursery school to driving school use. We would like to proceed with the variance petition, including the request to modify the existing standing sign as per the petition. At the Board's December 3rd hearing we will elaborate on these developments. Sincerely, John T. Smolak. (see attached).

Applicants Presentation:

John T. Smolak, Esq. representative for Mr. Scrivanos – Rossana Francis, representative also of the applicant is here. As per the letter we submitted, we have secured the property directly abutting the plaza, 60 W. Main Street, as a possible extension or expansion of the existing commercial property and as a follow up to our original hearing in October, one of the concerns was the high of the retaining wall and the height etc... and this additional land would soften that and we can have more flexibility as to site layout and design. So as to avoid confusion with the other pending applications, and not to confuse the process, we request the Board to vote to accept the withdrawal of the filing of water resource and special permit for change, extension of pre-existing use and structure , section 6 and 9 in connection with proposed site improvements. It is anticipated that the applicant would re-file such special permits, which would incorporate the additional parcel, once engineering is completed. So tonight we would like to continue with the Variations.

We consulted with the building inspector; he suggested that a change of a driving school from nursery school is within the scope of the legal ad. We have drafted a decision to assist the board in your review of the proposal; the driving school is approximately 1200 sq. ft. we think it's a less intensive use. There would be some limited classroom use, and the students would be dropped off at the property and students will be picked up at their house.

Shilhan – What's left of what you're asking for?

Smolak - Use variances and dimensional variance the modification of the 1997 and 2002 decisions, with respect to the property, with respect to the uses, the variance request is now limited to; Retail stores and service; Restaurant; Business and Medical offices; and, Driving School use, so the nursery school, animal hospital and print shop have been withdrawn

J. Moore – Of those uses which ones are you already granted?

Smolak - The office uses have been there for many years, we don't have the records of when the medical uses were given, with respect to the dimensional is the change in the design of the sign, which you have and the building façade (under building dept.), the other issue that was raised was the number of panels, we are proposing that the applicant could modify those panels as long as we stay within the envelope of approved area of the proposed sign. Also as part of a draft decision was try to maintain the decision as part of the 2002 decision with respect to the sign.

Shilhan – So medical office was there before. Smolak – yes according to the building inspector.

G. Thibeault – The freestanding sign from Fishbrook Design, is it going to remain the same, because there was discussion on changing it, so you are going to keep it the same?

Smolak – Yes. In the 1997 decision are not consistent with what's in the field today. If you look at the plan that shows the sign side by side with dimensions, as far as the conditions, it seems at the time it did not go to site plan review. There are a couple of way we can deal with it, we can come back and go to Planning which are more under Site Plan Approval, or we can do it with ZBA and then go to Planning, the condition are more traffic related, which falls under Site Plan Approval that was not done in 2002.

Shilhan – Yes possibly, and we have a letter from last meeting from fire dept.

New Correspondence

1. P. Shilhan read the memo into the record from the Fire Chief dated 10/24/13 stating *“in reviewing the plans for the project to improve the exterior of this location to include the parking areas the Fire Departments only concern is over the narrow access ways around the building. Due to the length of some of our apparatus we need to make sure the area on the Dunkin Donuts side is no less than 20 feet wide, other than that, there are no other issues at this time. (see attached)*

2. **J. Moore read into record from Sharon Freeman;** I recused myself as a ZBA board member for this hearing. I write as an abutter to the Dunkin Donuts Plaza. Generally speaking, my husband, Peter Freeman, and I support the concept of pre-approving specific uses provided that it is allowed by law and does not change nor diminish the current zoning regulations for the property. Of the uses in the initial proposal, we had concerns about the print shop and the veterinary clinic. Without additional information it is difficult to assess the noise impact and potential chemical waste. Of paramount importance is that any pre-approved use be consistent with that of a residentially zoned area. General concerns are noise, waste, hours of operation, and potential detriment to the residential community and to residential property value.

With regard to the proposed parking lot on top of the expanded septic system, we are extremely concerned about elevation impact, the noise and light pollution, all of which will diminish quality of life and adversely impact the residential property value. We are aware that the owners of the Dunkin Donuts plaza may be in the process of purchasing 62 East Main Street. We respectfully request that if as a result of this purchase there are changes to the current proposal that this hearing be

formally closed and a new hearing be opened so that the proposed changes can be fully reviewed by the abutters and the community in general. Thank you in advance, Sharon and Peter Freeman, 58 East Main Street, Georgetown.

Smolak – In response to the Fire Dept. our engineer has met with the Fire Dept., after that letter, and that will be undertaken with Site plan review when we re-file and revise the site plans. That's one reason for the withdrawal requests. And we can address Ms. Freeman concerns also. So we are narrowing what we are asking for tonight.

Audience - Shilhan asked for Audience – There was none.

Board Questions

J. Moore – I am trying to figure out the variance part, so modifying an existing decision for the site, or a request for a new variance?

Smolak – We could have re-filed for a new variance, but because there are some conditions attached, the 1997 was a combination of a variance and a non-conforming use decision, so we thought the simplest way was to modify those conditions. There are various addresses for the project; it was called 66-68 E. Main St. in all the previous decisions. I have addressed that is the decision with the hand marked changes.

J. Moore – So we are looking at modifying an existing variance decision for the site. Smolak – Yes.

J. Moore – Looking back the allowed use was for a restaurant and that was for 66-68 E. Main St. which was I assume 3 units at the time.

Smolak – It was unclear, but yes the address 66-68 was used in 1962 and on, and according to the assessor's records, its 64-74 E. Main Street, we will clarify in a draft decision we did for you.

J. Moore - I haven't had a chance to review that draft decision. The uses that you're requesting some uses have been used in the past, some haven't. In 1997, was it for a restaurant? Anyway a restaurant was granted with certain conditions, the uses that you are requesting over a period of time perhaps have actually been already implemented and some haven't, they may or may not be being used now, I am not sure, some are vacant, I don't know when it went from 3 units to 10 units, it was sometime after this decision was made. All we have are these decisions, it was a restaurant and I haven't seen a plan from before.

Smolak - As far as the previous use, it's been there, we reviewed the files and plans, but we could not locate those records. But the intention of this latest filing is to make sure it is clear what the uses may be, my sense it that the building may have been carved up internally but the uses remained, and yes the 1997 was for Dunkin Donuts.

J. Moore – These requested uses sort of trigger, or there is a link between the necessary uses and the necessary site improvements that are going to be required in order to implement those uses and we had a plan that you submitted earlier, that you now want to modify, which has now been removed, which I understand but that was the master plan that was going to allow for the uses you were requesting, not that plan is gone which required some substantial modification to the site and your still asking for the uses, which we know if these are all granted by definition are going to require some substantial modification to the site, I don't know what that's going to look like yet, what the impact will be physically to the site. I have an issue knowing you don't have adequate parking or septic, to implement those uses that may be considered detrimental, if any.

Smolak – In terms of the proposed uses, this is a partial list of what we initially requested, we will come back with site plan changes, but by virtue of the fact that we are withdrawing the special permit for an extension of the preexisting lawful non-conforming use which governs parking, means we are stuck with the parking that we have, if you classify Dunkin as a restaurant or store, it's unclear how you classify that, there are existing medical

offices out there as well, we will come back within a about month or two to address those issues, but we will be limited to parking today , and the driving school will have 1 or 2 cars.

G. Thibeault – None of these are heavy septic issues.

Smolak - The building inspector said these uses will not require septic changes at this point.

G. Thibeault - What kind is there medical waste?

Rossana Francis – Pentucket Medical is already there are 2 doctors there; in their lease they are required to give us list of medical waste.

Smolak – As far as medical waste it heavily regulated, and we did provide the board information on medical waste in the water resource application you were given with the application. It's not a significant amount of that type of waste, and the other is a rehab.

Shilhan – This is the first application is 64-74, before it was referred to 66-68 E. Main St. going back to 1962. So we need to mention that.

D. Kapnis – I have a question on the entrance, back in 1997 one of the conditions was to have with an island separating it, more like 30 feet now.

Smolak – We have not gone to planning yet, the ZBA is first then Planning. We rather come back with a comprehensive site plan. Tonight we would like to modify the sign, and the driving school use. Also the fire dept. has not made a comment on the entrance and they have been notified, but when we come back we can address that.

D. Kapnis – If back in 1997 they wanted 50 ft., and now you're going to increase traffic flow, parking and people frequently that plaza, that may be detrimental.

Smolak – Yes keep in mind that the building site has not changed, so in 1997 the decision includes the building of the same size and the site changes I am sure that Planning Board would handle that and may want 30ft. as it is standard for most retail plaza's in terms of the width. We will address those when we re-file with you and then with Planning through Site Plan Review. Right now we would like to get this tenant in now if possible.

D. Kapnis – In 1997 there were conditions not adhered to? Smolak – Understood.

G. – What is your intent with the property next door it's a residential zone to give us addition flexibility on that side for site improvements, septic, but we need to do our revised engineering. We don't know what we are doing with 60 E. Main St.

J. Moore – That new lot that you bought is residential and it may be difficult to change that. I don't know what the master plan would look like, so I am a little uncomfortable granting uses, I am not saying I am against it, but can these uses trigger major modifications that neighbor's may have an issue with, it could be detrimental, I would like to see the whole scheme.

Smolak – We will make that a priority with the new plan

Rossana Francis – I will ask the board to consider the tenant who is here tonight, is there a way to go forward with the driving school, this is a here and now situation.

J. Moore – I don't have a problem with the driving school, they are kind of getting dragged along.

Smolak – 1/3 of the building is currently occupied. So we have enough parking.

G. Thibeault – I am concerned with the lot next door, it's a beautiful old house with beautiful landscaping, it will change the way it will look when you drive into Georgetown, I didn't move to Georgetown to look at a strip mall, that's not Georgetown.

I don't have any concerns with the sign. P. Shilhan agrees about the sign. I asked about the medical part. We can clean it up when you get us a new plan. I don't have an issue with the sign.

P. Shilhan agreed.

Smolak – I understand the concerns, in terms of the adjacent parcel we don't know what we will do yet. We don't want to impact the character.

P. Shilhan – I don't have an issue with the driving school either, the conditions on the site itself I believe it should go to Planning, I am not comfortable with amending these condition, I would like the planning board to do that as its their jurisdiction, so the use variance, can we separate, can we pull more out of this?

J. Moore – Some of these uses are already in play, we could grant this use, the issue with the driving school, that's private educational is a special permit. And say not further changes without coming back to the board.

Smolak – Our concern with special permit will be a month or longer that's why we went the variance use.

Recess was taken at the request of the chairman at 8:19PM

Back from Recess at 8:22pm.

Smolak – We would like to propose to grant the use variances only for the uses that are there today until we come back and re-visit, and also to get the driving school in. Until we come back.

P. Shilhan can we go over that list.

G. Thibeault – There are Retail stores and service; Restaurant; Business and Medical offices; and, Driving School. The existing tenants

P. Shilhan – I don't have a problem with that. J. Moore – As existing tenants is clear

Rossana – If we have a physical therapy can another physical therapy come in there or do we have to come back. P. Shilhan - I think whatever is there now should be an existing use.

G. Thibeault – I feel differently, I feel you should have to come back, that's my opinion. If something where to happen in the 60 days you should come back.

J. Moore – Variances are for here and ever after. I don't have a problem conditioning with the existing site, with no changes.

P. Shilhan – But it for example it it's another restaurant but bigger that's an issue. They are limited to what it there now.

J. Moore – I don't see a problem with any of these uses being detrimental as the site remains. But if you lock in these uses, for the long term, then you acquire the lot next door and you start expanding the density of this use to the maximum possible it, that's where we run into potential problems, but I have not seen this new plan.

D. Kapnis – I have no issues with these uses we just discussed, with not modifications to the site.

J. Moore – I am worried about the septic, parking that house you purchased and this expanding and you putting a parking lot over there.

Smolak – The building inspector said the exterior changes are under him and we would not have to come back.

Discussion on the building getting larger potentially, and potential site modifications and the footprint of the site.

J. Moore - You're going to come back in a couple of month with a new plan anyway, I don't have an issue with the driving school and the sign at this point.

Smolak – You can say only modifications to the building façade and the interior and sign as show on the plans.

J. Moore asked the attorney to write up a couple of lines for the board.

J. Moore – We need a motion that address the correct existing decision, and that nothing is to be changed until they come back. I think we are good with the driving school and the sign.

Smolak – You can word to grant the requested use variances for Retail stores and service; Restaurant; Business and Medical offices; and, Driving School with respect to the existing tenants, as well as the new driving school as well as a grant of the modification of the 97-13 and 02-09 decisions to allow for the modification of the freestanding sign as per the plans that are contained within the decision/application, marked exhibit B.

P. Shilhan - Or modification limited to sign and building. Or no physical modifications.

P. Shilhan we shouldn't say current tenants. The amendment to eliminate those conditions, should we address now. Smolak – That was part of the modification, the conditions are in force and effect as of the 1997 decision.

J. Moore - Can we make this a modification of the decisions. We need a motion that address nothing be changed and then the sign. Discussion on wording.

Smolak – There are 7 or 8 conditions to the site in the 1997 decision.

J. Moore – We haven't mentioned anything about hardship, if they were able to find hardship in the previous decision, then they found it, the leverage has already been done, the determination they made is that you can't be used for residential, like converting it, which is not financially viable.

Smolak – I think you make the finding as part of the decision? Use variance is substantial hardship because you we would not be able to use the property.

Discussion follows on options on variance vs. amendments.

J. Moore – I see what you're saying as far as variance it's all in the history. We are modifying and adding one additional use. It's got to be tied to the site, it's hard to make the connection, the determination they made is that

you can't use it as residential. This is a different animal in that they issued a variance at this site for a particular purpose we all now recognize there are now other uses there that are reasonable. So we are granting a modification which also includes a different use.

Smolak – We did outline the variance in the application.

MOTION

J. Moore – I make a motion that the board modify an existing variance decision file #97-17 dated 12/31/97 to include the following uses in addition to the restaurant, retail stores and services, businesses and medical offices and a driving school, and to grant dimensional variances with respect to the freestanding sign as per the freestanding sign plan identified and marked as Exhibit 8, and additional condition that site changes are limited to the proposed building renovations depicted on the plans listed in Exhibits 5,6,7 & 8 and that all other conditions of decision 97-17 shall remain in effect.

Seconded by D. Kapnis. Discussion – This is pretty sparse, but the decision will go much deeper.

P. Shilhan asks for a roll call vote. G. Thibeault – Yes, D. Kapnis – Yes, J. Moore – Yes, P. Shilhan – Yes. **Motion passes unanimously**

MOTION'S to Withdraw

Withdraw Water Resource Application & Special Permit (section 6) finding part of application

I make a Motion G. Thibeault/J. Moore to allow the applicant/Petitioner; Constantine G. Scrivanos/Mystra Realty Trust, being represented by John T. Smolak, Esquire of Smolak & Vaughan of North Andover, MA;

TO WITHDRAW WITHOUT PREJUDICE, WATER RESOURCE APPLICATION, Filed on July 29, 2013 for the property located at 64-74 East Main Street, Georgetown, MA.

AND ALSO TO ALLOW THE APPLICANT TO WITHDRAW WITHOUT PREJUDICE;

The Special Permit Application to allow for change, extension or alteration of a preexisting lawful nonconforming use and structure under Chapter 165-87 & 94 of bylaw and MGL 40A Section 6 & 9 in connection with certain proposed site improvement; **ALSO** to consent to partially withdraw without prejudice, the use variance petition as it relates to both the proposed animal hospital and printing shop uses, *(part of File #14-03)*, Filed on July 29, 2013 for the property located at 64-74 East Main Street, Georgetown, MA.

P. Shilhan – All in favor, all noted YES, motions to withdraw pass unanimously

Close Hearing

G. Thibeault/D. Kapnis Motion to close the hearing at 9:14pm.

Appeal

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.

The following plans and specifications were filed by the Petitioner, and entered into the record by the ZBA:

- A. Site Plan Existing Conditions (sheet 1 of 4), drawn by Williams & Sparages, dated 7/29/13. (Exhibit 1).
- B. Site Plan Proposed Layout Plan (sheet 2 of 4), drawn by Williams & Sparages, dated 7/29/13 (Exhibit 2). ***Continued next page***

- C. Site Plan Proposed Grading & Utility Plan (sheet 3 of 4), drawn by Williams & Sparages, dated 7/29/13 (Exhibit 3).
- D. Site Plan Proposed Landscape/Lighting Plan, (sheet 4 of 4) drawn by Williams & Sparages, dated 7/29/13 (Exhibit 4).
- E. Pylon sign drawing marked "Street Sign with color option A, dated 7/22/13 by Fishbrook Design Studio, of Boxford MA (Exhibit 5).
- F. Elevation Drawing Sheet A3.0 – Exterior Elevations & Reflected Ceiling plan, by Fishbrook Design Studio, dated 7/9/13 (Exhibit 6).
- G. Floor Plan Sheet A1.1 – Georgetown Retail Center by Fishbrook Design Studio, dated 7/9/13(Exhibit 7);
- H. Sign Plan – Comparison of Standing Signs dated 7/31/13, with dimensions of existing and proposed signs, by Fishbrook Design (Exhibit 8).

Patty Pitari
Zoning Administrative Assistant

Approved 1-7-14