



Georgetown Zoning Board of Appeals

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

Phone (978) 352-5742 ♦ Fax (978) 352-5725

MINUTES OF A PUBLIC HEARING

ZBA FILE #14-07

Owner; Konstantina Bournakis, 550 Farm Road Georgetown, MA
& Applicant/ Lessee; Mohammed Jammader, 20 Silver St., Malden, MA 02148

Special Permit – Retail Store and Services

February 4, 2014 @ 7:30pm

Board Members Present:

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

Zoning Clerk: Patty Pitari

Applicant present:

Mohammed Jamadder , 20 Silver St., Malden, MA 02148

Konstantina Bournakis, 5 Fazio Farm Road, Owner

Attorney Gary Evan, 65 Central St., Georgetown, MA

See Attached Abutter's list

P. Shilhan opened the Hearing at 7:30pm, and read the Rules of Procedure paragraph.

Jeff More read legal ad: A Public hearing will be held on February 4, 2014 at 7:30pm at the Georgetown Town Hall 3rd Fl. Meeting Room for an application/Special Permit request for 70 West Main Street, Georgetown, MA for an application filed by Konstantina Bournakis, 5 Fazio Farm Road, Georgetown, MA and Lessee, Mohammad Jammader of Malden MA, to operate a convenience store (retail store and services) at 70 W. Main Street, Map 6C, Lot 117, located in the IA zone. The property is a previously existing non-conforming use as a restaurant and will require a Special Permit under MGL 40A, Section 9, and Georgetown Zoning Bylaw Chapter 165, Sections 9, 78, 79 and 94 in order to operate a retail store or service use. *ZBA File #14-07*

Chairman Paul Shilhan introduced the Board members. We only have 4 board members tonight so you need a unanimous vote.

Letters of Authorization

G. Thibeault read the letter of authorization dated December 24, 2013 authorizing Mohammad Jamadder to make the application to the ZBA.

S. Freeman read the letter From Attorney Gary Evans to represent Mohammad Jamadder in regard to obtaining any and all necessary zoning applications and or permits for the operation of a retail convenience store at 70 W. Main Street.

Applicants Presentation:

Attorney Evans, representing the applicant – It is a two part process, for you we have an existing non-conforming use at 70 W. Main, and this first part is for the change in use for the property, then we go to the planning board for site plan review. Mr. Jamadder currently leases the Richdale at 65 W. Main Street and wants to move across the street to 70 W. Main Street which is empty, and the Building Inspector did a denial letter. It's my hope the board would be able to approve this, so we can submit plans for Site Plan Approval.

Attorney Evan explains the Criteria

Evans - A. First Criteria - per 165-79 that the use is essential or desirable to the convenience and welfare, that is the very nature and the proposed use of the convenience for the public. Evans gave a brief explanation of this type of convenience store.

B. The second criteria is that the use would not overload any public water or any municipal system so as to unduly subject any area to hazards affecting health safety or general welfare. Actually this proposed use will actually use less water than the existing use as a restaurant, now a proposed convenience store and by its nature it will not be subject to any hazards affecting health safety or general welfare of the community.

C. It shall not impair the district or adjoining districts, this is in a light industrial district, and it really won't change the character, the structure is going to stay the same, no additions for the outside of the building, the parking will stay the same so nothing will be different there.

D. The last criteria - The requested use should not cause an excess of that particular will not be detrimental to the neighborhood; there will really be very little change.

P. Shilhan –Is the square footage about the same at 65 W. Main where you are now than 70 W. Main? Are you expanding?

Evans- Its close but it has a public bath and the current does not, so I believe it's a little larger, it's just configured differently.

Konstantina, Owner – We have 1700 sq. ft. – We are not expanding.

G. Thibeault – Right now there are two separate area's the restaurant and then the ice cream area, will that change?

Mohammad – It will all be one, one wall will come down.

S. Freeman – Why are you relocating.

Evans – The existing Richdale property is owned by the Scangus family from Lynn they didn't renew the lease, (*I am not speaking for them*), not sure but I believe they have other plans for the property, and they are allowing Mr. Jamadder to take the Rich dale name with him across the street. The property owners also own the Brown house that's abandoned next to the Rich Dale.

Audience

Attorney Geoffrey Dowd, representing Mike and Jody Gauron the abutters that live next door at 68 W. Main St. since 2006, they moved in and were aware the property was there and it was a restaurant, they experience some issues, there is loitering on the property, and kids smoking, and trucks idling in the parking lot. I think the Building Inspector made a determination that it is an existing non-conforming use as a restaurant, I am not sure of your ordinances, if they have a grandfathering aspect to it and if discontinuance of that use terminates the use altogether and that would make this property a regular light industrial use. They realize they border a light industrial area such as the water dept., having a restaurant there has limited hours compared to a Rich Dale. My

clients believed it was going to go from existing non-conforming to conforming from one restaurant to another. Another issue is kids pulling up with the car running and loud music, this will be right next door to their house not across the street. They feel it will decrease their property value.

Atty Dowd - Your zoning ordinances Section. 165-9, the use shall not be offensive, and not reduce property values, shall not be detrimental or offensive, by reason of dirt, fumes, noise, vibration, like the cars pulling in and out. In addition to that 165-79 under a) desirable to public convenience and welfare this would not be in accordance. We believe it will impair the character of the neighborhood, it's not across the street now, it will be next door.

In Chapter 165-79 (d) – I do not believe the court would hold up, the requested use will not cause an excess of that use, I don't know what they are going to do across the street, if they put another store it would be an excess of that use.

J. Moore – Your clients are in the lot that directly abuts the lot. Atty Dowd – Yes

S. Freeman – Does that lot sit higher than the restaurant.

Dowd – Yes the house is slightly higher. We would ask that you deny the request.

Konstantina (Tina) Bournakis – There are more fumes coming from the fenced area, the biggest part of the property is the leach field, so no one goes near the part near their house, the parking is on the front on Moulton St. and a little on the side of the building. More fumes came from the restaurant because of the fans from the grill and fryer that would come from a store.

J. Moore – Is there a Fence?

Jody Gauron, 68 W. Main – We have a fence that only covers the parking area. There is a lot of teenagers that stand out there smoking, it doesn't bother us because it's across the street, but this will be next door, and music pounding, and now if it's on the side of the house we feel we can't sell our property the way we want to. We have a 5 year old and its constant noise.

Attorney Gary Evans- If I may reply; I live in a residential area and I have a neighbor on the left and one on the right, one is the best neighbor, the other the worst neighbor, the point is it really is not a function of the business, If you put a sub shop there you will still get kids and loitering, its downtown, you can never tell, I purchased home between Village Pizza and the Skieriks' dentist office, I know what they are dealing with, now its fine there, things change, now there is a fence there and it's much better, it's what you get when you live in that area, the long term plans for the town, is things move in downtown. We have a nice mixed used in the downtown area. It's a mix of commercial residential.

As far as abandoned that's 2 years that does not come into play, and then this will go to Site Plan Approval which is much more extensive and will address items such as noise, the traffic noise is not bad, there house is elevated up on their lot, and you would not hear a lot of traffic because it is elevated up, it actually kind of quiet when you walk on the lot, they are probably hearing more noise from Richdale

Across the street where it is now, because it would project up into the house than they would hear from next door. As far as the amount of odors from a restaurant, you don't have a dumpster with a lot of food in it, a convenience store business is a much cleaner business that a restaurant. If we can continue the hearing maybe we can discuss with the neighbors and do something to appease them and come back next month.

J. Moore – Please talk about the hours of operation and the services.

Evans – The hours would be the same 6-11pm, 7 days a week, same hours, same goods and services. We would agree to a restriction for 6-11, or the Planning Board can also put it on also.

Evans – My gut feeling is the Gaurons have had no neighbor because it's been empty for a while. Down town areas are mixed uses that's what makes a downtown.

J. Moore – My thoughts are the abutter argument is correct in that this a change in impact from a restaurant to retail use, so, what is the difference is what it is now and what will it be, to me I look at all the items, traffic, noise, and I look at the sub/pizza shop, fumes they did have those fry-olater having that gone would be a plus. If you think about what could potentially be there, think realistically what this is going to do, there could be an opportunity with some conditions with fencing/screening we can put on and consider that, and someone else another restaurant can come in there and it be worse or more detrimental, what can you do now to improve it in the long term. I personally think some screening and hours can be worked on. I would like to go down and look at property.

Mohammad – Most of the parking is in front of the building I think it would be less noisy. They come buy a ticket and they leave.

Atty Dowd – Maybe we can talk about conditions. What about alcohol.

Mohammad – I have not intentions on selling alcohol.

Konstantina – We owned restaurant for 30 years, you can also sell alcohol in a restaurant.

P. Shilhan – I think I need more time to think about this, and you should talk to the neighbor's.

G. Thibeault – I too need to get out there and look at it.

Motion – J. Moore /S. Freeman to continue the hearing to March 4, 2014 immediately following the first scheduled hearing at 7:30pm. All in Favor, motion carried.

The hearing shall be continued to March 4, 2014.

Patty Pitari
Zoning Administrative Assistant

Approved March 2014