



## 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 #14-09

Zoning Board of Appeals

60 E. Main Street & 64-74 E. Main Street, Georgetown MA –RA Zone

Special Permit for Alteration or Extension of Pre-Existing Lawful

Nonconforming Use and Structure, Variance for 60 E. Main St.

& Variance Modifications for ZBA File #97-17 & 04-03 Decisions

& Water Resource District Special Permit

March 4, 2013

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

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

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

Edward DesJardins – Historical Commission

Christine Cominsky – Historical Society

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Chairman Paul Shilhan opened the Hearing at 7:43pm, 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: *Public Hearing: 60, 64-74 East Main Street – March 4, 2014*

*Location: Georgetown Town Hall 3rd Fl. – 7:30pm - Applications/Petitions have been made by Constantine G. Scrivanos, as Trustee of Mystra Realty Trust, 3 Pluff Ave, North Reading, MA, 01864, for both 60 East Main Street, (identified on Assessors Map 11A, Lot 86), and 64-74 East Main Street (identified on Assessor's Map 11A, Lot 85). (Georgetown Plaza), Georgetown MA 01833, where both lots are located within the RA zone. The proposal includes proposed site alterations 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 and structure, the proposal includes an increase in parking area and other site alterations for 64-74 East Main Street portion of the lot pursuant to M.G.L. c. 40A, § 6 & 9, and Georgetown Zoning Bylaw Chapter 165, Sections 78, 79, 87 & 94.*

*A Variance in connection with the 60 E Main Street portion of the property to allow for commercial parking, septic system improvements, landscaping, and other uses/structures related to the Georgetown Plaza in accordance with Georgetown Zoning Bylaw Chapter 165, Section 84 & M.G.L. c. 40A, § 10.*

*Modifications to Two Previously Approved Variance/Section 6 Finding Decisions, including ZBA Decision Nos. (#97-17), and (#14-03), pursuant to M.G. L. Chapter 40A, § 6, 9 and 10 and the Georgetown Zoning Bylaws, Chapter 165, Sections 78, 79, 84, 87 & 94.*

A Water Resource Special Permit for both 60 East Main & 64-74 East Main Street portions of the premises 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, Sections 29-38 of the Georgetown Zoning Bylaws. ZBA File #14-09

Sharon Freeman, regular member – As I am on the abutter’s list I would like to recuse myself from the hearing.

Chairman Shilhan – Introduced the Board Members, and let the applicant know they would need a unanimous vote, as Sharon Freeman has recused herself.

### **New Correspondence – Fire Department**

Read into the record by D. Kapnis from Fire Chief Al Beardsley, dated 2/5/14 “The fire department has reviewed the plans set forth by your Board for the proposed changes to the Georgetown Plaza. At this time there is one concern I will note and that has to do with the proposed destruction of the residential structure of 60 W. Main St., Given the age of this building there needs to be confirmation as to the presence or lack thereof, of asbestos materials. In a structure this old the potential for asbestos material in siding, flooring material, piping and in and around the furnace area need to be checked to be certain there is proper abatement. Active destruction of a building containing asbestos will release asbestos fibers into the atmosphere as well become retained in the ground.

### **New Correspondence – Town Planner**

Read into the record by J. Moore from Town Planner

Patty,

In regards to the Notice of Hearing for 60 East Main Street and 64-74 East Main Street the Planning Office offers the following cursory comments in bullet point format:

- The introduction states the applicant is requesting from the Zoning Board of Appeals approval to enable the applicant to undertake renovations, parking and other improvements. Please be aware the Planning Board will review the applicant’s proposed site improvements with a site plan approval application.
- If the applicant seeks to complete ZBA review prior to initiating site plan approval with the Planning Board the applicant may be required to revisit the ZBA with any amended documents that were modified during the site plan approval process.
- Section II outlines site improvements and references storm water management improvements. The proposed storm water changes will be reviewed by the Planning Board.
- Has the Historic Commission been noticed or contacted regarding the residential structure on 60 East Main Street that is proposed by this application to be razed?
- Proposed septic improvements to be reviewed by Board of Health. Applicant should ascertain when they will develop a definitive design but the Planning Board will consider the septic design location during site plan approval.
- This is a complicated development with review my many Town departments. The applicant should consider a multi-track review process that involves all of those departments either simultaneously or with overlap.
- It is my opinion that the applicant should make site plan approval application before the Planning Board prior to completing their application with the ZBA. I have attached a PDF copy of the Town’s Development Review Guidebook. Note Section 3 Permits and Process.

These are my cursory comments and do not reflect any comments or imply review of the application by the Planning Board.

### **New Correspondence - Mrs. Matilda Evangelista – As a citizen not a planner board member**

Read into the record by P. Shilhan

Patti, I am writing this note as a town citizen for over 40 yrs. and as you know have been an activist in protecting the character of the town. The planning board did not discuss this application, as I would have hoped, because of many reasons of which the weather is one and a back log of work needed to be completed. Your cut-off date for correspondence is the 20th of Feb.so I am submitting this e-mail as a citizen. I am recommending that the ZBA deny the request of the applicants for the following reasons:

1. This applicant has created their own hardship by increasing the tenants and not by circumstances relating to soil condition, shape or topography.
2. The building has had a history of many different kind of tenants with many different uses of which the zoning board has granted which proves that the size of the parking lot is not critical.
3. Septic upgrade in 1998 required Title V and the high ground water table existed in 1998.
4. Granting a variance would substantially change the residential character of the zoning district especially with a Historic house of 1844.
- 5". A use variance is the greatest source of danger to the integrity of the zoning process, while at the same time being the most difficult to justify legally." quoted from Mass. Zoning Manual.
6. Modification of a Variance I was told by DHCD that the town must have that provision in their bylaws, so I am not sure that process is legal. I would appreciate my comments be read at this hearing. Thanks Tillie Evangelista, 10 Baldpate Rd. Georgetown.

## **Applicants Presentation:**

John T. Smolak, Esq. representative for Mr. Scrivanos – Back in December the board issued a decision 14-03, for an additional use on the property that also had the effect of amending other prior decisions from 1997 and 2002, the previous hearing we filed, there was an issue was raised about the retaining wall near the septic system, and at the time we had the rights to purchase 60 E. Main, and we withdrew that application to include 60 E. Main Street, that is this filing. This is a re-design of that previous filing.

We had initially filed which includes the removal of the home at 60 E. Main Street and in meeting with abutter's since, we have two alternatives. The reason we did not include the option of keeping the house as a part of the original filing is because we were unsure at the time, from an engineering perspective, whether keeping the house was feasible. So the plans attached above depict both: (a) a proposal which eliminates the house at 60 E. Main Street; and, (b) a proposal which keeps the house at 60 East Main Street.

Since that time, and based upon further engineering review, as well as feedback from the outreach with abutters and others, we feel that not only is keeping the house feasible, but keeping the house is the desired option.

Keeping the existing house has a number of benefits, including: maintains an existing house which is, by definition, historical; and provides the same screening as exists today for the residential abutter located adjacent to 60 East Main Street.

Attorney Smolak shows two boards on the easel as Ariel views showing the entire site and states unless the board feels otherwise, we would request to take the removal of the house off the table. While we submitted a filing with proposes the elimination of the existing house at 60 East Main Street, we have also examined the possibility of keeping the existing house at 60 East Main Street.

The Board is in agreement in keeping the house.

Smolak - So for the main plaza we are seeking the special permit, the same relief on the main plaza lot, same we applied for before to accommodate the additional parking along the northeasterly boundary, spaces to the rear of the site, also to the southerly boundary, the addition of the 60 E. Main St. property allows us to include a row of parking and flatten out the grade, and also 10 additional parking spaces the area on the 60 E. Main property, the first 4 spaces or so is really a divider from the property line. In addition the proposal includes alterations at the riverfront area of Penn Brook, and wetland resource area, based on discussion with conservation we will improve that area, and will eliminate paved impervious surfaces in that area.

Smolak - The Variance relates to 60 E. Main, we are proposing the relocation of the septic on the property and add the additional 10 spaces, on 60 E. Main St. and the area will be re landscaped with wild flowers etc.. In addition we would eliminate the existing curb cut at 60 E. Main St. and have the parking go through the plaza, and lastly the 60 E. Main house could be mixed use or an office, it's not clear at this time and could be conditioned as such.

In the building denial, there was a discussion of modifying certain conditions of existing approvals, we discussed at the last filing hearing, which are minor conditions incorporating site changes. One condition within the 1997 decision required the 50 ft. width of curb cut. The existing conditions are 30 ft. and 31 ft. 6", those reflect the 1998 plans, so we assume there was perhaps a typo, we believe that a narrower curb cut is good for these conditions, the other condition is that there would be a raised divider on the exit, a raised curb to divide, left turn out, right turn out, what we would be proposing is a stamped concrete divider as opposed to a raised island because of maintenance like snow removal would work better. Lastly is the request for the Water Resource permit. I would like to turn over to Chris Sparages.

**Chris Sparages of William & Sparages, (Engineer) in Middleton MA** referred to the site plan for discussion, he referred to the existing conditions and explains the condition of the back portion of the lot. He explains the existing septic system is located to the left of the building, the system was last upgrade in 1997-98, and the wetlands have changed slightly so portions of the leaching area no longer are in line with the Board of Health, and setback from wetland resources. We would eliminate approximately 2,000 safe of paved impervious surfaces and existing uneven gravel with pervious pavement will serve as storm water treatment infiltration systems which will significantly improve storm water management.

Sparages continues; if you go westerly across the property line to 60 E. Main St. as shown on the plan there are a couple of out buildings, the proposal into 60 E. Main St. has changed from what we last presented to the ZBA. Now we have changed very little of what is proposed behind the building closest to the brook, and have submitted it to the Conservation Commission. The pervious pavement will allow us to continually fix potholes and will alleviate the groundwater, and will allow ground water to infiltrate back into the brook. The previously plan was going to expand the existing septic and created a parking field on top of the septic system, which was a very high wall, for grading activity and at the highest point would get as high as 7 – 8 ft., so by addition 60 E. Main to the project, the new plan allows us to spread out the system, we will still need a couple of retaining walls, and lower the grade, so we want to create a leaching area called the Presby system, it works by having two areas where waste water will be pumped, and will allow us to do something the conservation commission wanted us to do is move the septic tanks out of the wetlands. This will not overload the leaching area. We will need shorter retaining walls, and the soils are very sandy. He describes in detail how the system works. We are working with Huntress Landscaping of Andover.

Sparages – I will go into storm water management slightly, the storm water management really has not changed, as the storm water hits the pavement will be directed to a bio filter or a treatment swale and as it flows across the pavement it will flow across the back it will first hit the impervious pavement part of the property and addition will hit the treatment swale, before going in an existing storm water management system in back before it hits Penn Brook.

### **Water Resource Permit**

**C. Sparages, of Williams 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. Georgetown is a little bit unusual, because these properties completely lie within the Water Resource district, and don't have any activities that allow containments. There are 7 items on the application form. To answer the seven questions on the Water Resource application;

Water Resource Question #1 – Ask to list all chemicals – There are no toxic or hazardous wastes to be stored on site.

#2 – There are limited amounts of medical waste associated with a doctor's office; any medical waste generated will be managed in accordance with 105 CMR 480.00. 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.

#3 there is no industrial treatment of water or wastewater and no system >15,000 gpd, the proposed size if a 6,000 per gallon per day system.

P. Shilhan – What is the existing size of the system?

Sparages – 1500 gallons per day.

Sparages - Question #4 there is no underground storage of toxic or hazardous materials.

**Sparages - Question #5** – Regarding the house at 60 E. Main is currently a residence and are no toxic and/or hazardous materials stored outside of the existing home. The home is fueled by natural gas; therefore they are not fuel deliveries of petroleum products. Any household and waste generated is disposed of at the Town transfer station by the owner.

Regarding the plaza building 64-74 E. Main St. – The Plaza, there are not toxic and/or hazardous materials stored outside of the existing building, it is fueled by natural gas, and there are very few household cleaning products that are stored inside the building. These materials are stored in closed containers. Waste generated through the use of household cleaning products is disposed of as municipal solid waste and stored in on site dumpsters who are emptied regularly by the owner. The medical office does generate limited amounts of medical waste. These materials are managed in accordance with 105 CMR 480.00, “Minimum Requirements for the Management of Medical and Biological Waste,” administered by the Mass Dept. of Health. We have provided a copy of these regulations to the application, there are no on site operations that allow the evaporation of toxic or hazardous materials inside the building.

**Sparages** – As far as Disposal, there are not toxic or hazardous wastes produced as part of the onsite operations that fall under the jurisdiction of MGL C.21C. As far as Drainage, the proposed site improvements provide for a significant increase in infiltration from impervious surfaces through the use of pervious pavement, and grassed channels that eliminates much of the direct discharge of storm water runoff to Penn Brook. The new storm water management system has been designed to comply with the Dept. of Environmental Protection’s Storm water Management Regulations in accordance with their redevelopment standards.

To summarize based on the information collected from the owner regarding the uses on the subject property and a detailed engineering design for storm water improvements for the property, the subject property is in compliance with the design and operation guidelines described in Section 165-34 of the Zoning Bylaw.

As part of the proposed project is site upgrade and renovations, the site improvements are designed to both make the site more aesthetically appealing by providing grading, landscaping, parking and related site improvements, while at the same time providing extensive environmental improvements over the existing conditions. We are making no change to the existing plaza building in this filing. The site improvements consists of;

\*Installation of a new upgraded septic system to be relocated further away from Penn Brook and other wetlands.

\*Installation of a new parking field consisting of 35 parking spaces located along the northwest boundary of the site, as well as along East Main Street, and replacement of the existing gravel unimproved area to the rear of the site surrounding the back and sides of the building with 15 improved parking spaces along with pervious pavement to improve storm water treatment and management. Storm water management improvements including the elimination of approximately 2,000 s.f. of paved impervious surfaces and existing uneven gravel with pervious pavement will serve as storm water treatment infiltration systems which will significantly improve storm water management.

\*Also the extension of grading and parking/septic improvements with improved grading to the rear and along the common boundary of 60 East Main, along with parking enhancements, and landscaping along East Main.

\*We are also requesting the Board allow for commercial, parking, septic and other commercial improvements and uses located on 60 E. Main Street as depicted on the site plans, these types of uses are consistent with the intensity of uses historically allowed at the Plaza.

P. Shilhan – What was the first proposed septic size in the first application.

Sparages – It believe it was 2700.

Smolak – I want to address the Parking Plan and table we submitted on January 27, 2014, we have 4 different scenarios and with the tenants on property, that space adds up to about half the space in the building, so we are about 50% occupied. Mr. Smolak explains the parking table, stating they are mixed out on parking today. We are proposing 111 parking spaces on both parcels. See attached Parking table for 4 different scenarios.

J. Moore – Just to clarify your design, on the east side the parking behind the building, are any of those new or existing? Smolak – They are all new, unchanged from the previous submittal.

J. Moore – Let me rephrase – Are you adding any new parking back there from what's there today? Of the 62 spaces you have now, are they all in the main front area, Smolak – Yes. J. Moore - that includes what's in back.

Smolak – Yes there are 39 additional spaces on the plaza site, and then at the dividing line we have 10 additional on 60 E. Main.

G. Thibeault – I count 12, are there supposed to be 10.

Sparages – That's more of an illustration so it's 10.

Sparages – Conservation asked us to pull back some of those spaces (he points to back of lot near Penn Brook), so we change the shape of it, for the town Fire Dept. to get back there.

### **Landscape Plan continued**

Sparages – Huntress, the architect is traveling and couldn't be here, but initially we had prepared the landscape plan, when we added 60 E. Main, Mr. Scrivanos wanted to bring on Huntress Landscape, so the plantings that are conservation related are high bush blueberry's and other wetland related plants the other change is moving the septic system over the adjacent property, the planting of wild flowers on top of the septic system, the plan shows what the splatter of color over the system. With more area to work with on 60 E. Main, we graded to save all the existing vegetation and also near the Freeman property, in addition we are proposing to fill in around those existing trees, Colorado blue spruce, 4 plantings of ever greens, and some other scrub related plants next to the blue spruces. In the parking field in front, a stone face wall along the parking spaces and in front of that wall a series of junipers to fill in the gap between the wall and the parking. The proposal between the parking and the main road to continue the picket fence of composite material into the front of a portion of the existing home, with the new parking we can add more plantings especially along the front of the property. Also some islands with tree plantings.

Mr. Sparages show street scapes views to the board from across the street both ways.

Smolak – As far as landscaping in term of the Freeman property, the mature vegetation will remain in the back of 60 E. Main, and it provides a natural screen, and a consistent feel in front along with the picket fence that exists now.

### **Shilhan- Asks for comments from the Audience**

G. Thibeault first I just want to ask – The existing grade is 83 and top of the retaining wall is about 87 so that's roughly 3 and ½, but then looks it looks like the top of the flower field is at almost 91 so it's going to hump up above the retaining wall and additional 3-4 feet.

Sparages – Yes that's correct, it will be a shallow grade and be spread out over a distance.

### **Audience**

Peter Freeman, 58 East Main – I am curious, they are asking for a variance on 60 E. Main or on both, what are they asking for specifically?

J. Moore – They are combining into one hearing a variance for 60 E. Main, and along with variance condition modifications, various other for 64-74 E. Main. Special Permit to allow for change, extension or alteration of a preexisting lawful nonconforming use and structure as well as site improvements sections 6 & 9 of 40A in connection with the proposed site improvements on the 64-74 parcel; and a Water Resource Special Permit.

Peter Freeman – So the Variance for 60 E. Main has to meet the 3 criteria for a variance, the soil shape, typography, I have not seen that hardship. Mr. Freeman states he has not heard the first two criteria addressed.

J. Moore to Mr. Smolak I am sure you will address these criteria. Smolak – It's in the filing.  
Patty – it's the 11 pages in the application.

S. Freeman, 58 East Main Street – I am speaking as a direct abutter, not a Board member, I have read the 11 pages, that contains the criteria they presented, and I would not like to hear that at this point.

P. Shilhan – If anyone wants to speak, please try and be brief and then the applicant can address each issue as a bullet point.

**Audience Continued;**

Ed DesJardins of the Historical Commission & Historically Society as a director – In 1638 Athicial Rogers settled here, this is a very historical community, in fact Georgetown was not formed until 1838, it was known as West Rowley, the 6 houses near the site, 3 are 200 years old, the others are over 150 years old, and Harry Murch park is a little down, and we just spent 150,000 restoring it, this project is creeping over to it. If I took the amount of parking you have and stretched it over, you are almost doubling the amount of cars we are seeing, into this street and into the historic area of the community, this is known as the Village District Historic Survey, there are 90 houses you see in yellow (referring to a historic map) those in red have been documented on the Mass Historic Data base, which includes the building your speaking about, granted they are not going to take the house down, that's a plus, the rest is not a plus, to see double the amount of parking coming down the street. The request should not impair the character and it will impair the character with the parking down the street. Harry Murch Park began in 1810 I am not sure about the view of a septic system and parking. We talked about 1500 gallons per day in the septic, what if they triple it, they are quadrupling , going 4 times the size the septic system in this area, but to increase the septic system by 400% is mind boggling, they say they are having a tough time getting tenants, we have Georgetown Crossing, (Crosby's), Building Supply lot, Eagle building has 2 vacancies, the CVS lot, there are so many vacancies, the Georgetown Crossing has 3 vacancies and there are several vacant buildings in the center of town.

Chris Cominsky President of the Historical Society – My concern is about the existing building of 60 E. Main, they say they don't know what they are going to do with it, will it no longer be a single family residence (owner occupied dwelling), we have a lot of buildings falling into disrepair and ultimately having to be torn down, we want to have this building preserved, we don't want it rezoned.

Steve Desisto, 15 School St. – I have seen that parcel there go from a market and liquor store to a nice little center, these people are making it more attractive and more efficient, I applaud their attempt to re do this, much like Building Supply across the street, I don't see the problem, they are not expanding the building, and the reason the stores are vacant downtown is because there is no parking, this allows for parking. I don't understand the big deal for parking, it's really necessary.

Rick D. – Historical Commission – What is the septic sized, and why is it that large, and can we get the parking off the street, and I wanted to make sure the parking in front is for the store, and the long term plans for the house is there any guarantee that will remain.

Ed Desjardins – Because we don't have sewer system in town it's tough for businesses.

Smolak – I will try and address most of these comments, the last point made, yes the septic is an issue in town, yes there are other vacancies, but I don't think it's a crime to get better restaurants and stores without more parking and attracting quality tenants, we are trying to make it a more attractive area, we are creating the screening for the neighbors, and changed the septic with a smaller grade and retaining walls and make it look better. In terms of the existing house, we are keeping it, we are looking at residential or office use, we don't want it vacant, if it was a business use, something like a law office.

J. Moore – There is nothing that I have seen in your application in the variance request relating to the use of the house. The variance request relates to the proposed changes to the site, which include non-residential, site upgrades, to just clarify, there would be no rezoning of this, even if a variance request was granted, the variance would specify the use on the lot, the application does not specify any other use for that structure, so it would have to be residential I assume, unless you have something you would like to change.

**Argument for Variance**

Smolak – As I said before, we did address the criteria in the application, I will summarize the criteria, we are treating this site as a single lot, we are treating 60 E. Main as an extension of 64-74, so in terms what you have heard, you have hearing the large expanse of the wetlands in the back of the site and on one side of the site, the shallow groundwater, the extensive area of river area are all factors that related to the soil, shape and topography, so we feel that we more than adequately addressed that criteria and because those are the special circumstances related to the site, in terms of involving substantial hardship financial or other, I think we have indicated that this site is really constrained by the parking and the septic so in order to make this a viable site, that's more than 50% occupied that has diverse sets of uses we need to have those additional amenities to make the site work and without those additional amenities, I am not sure you're going to see much of any change to what you have out there today, and they may become worse because we need the new revenue from new tenants and quality tenants from a financial perspective, so again to be able to utilize this space, existing space, we need additional parking and septic capacity to have additional tenants otherwise we can't accommodate them. We don't just want medical offices we want something diverse, and lastly the desired relief can't be granted without substantial detriment, I don't think there is a substantial detriment to this proposed layout with the addition of the refacing of the building, providing the additional landscaping to buffer and mitigate the impact to the neighborhood, maintaining the existing house, to soften the changes in the elevation we are doing all that we can but we do need to the parking. So I think we do meet the criteria.

J. Moore – So you're suggesting that any use that's allowed by the variance at 64-74 E. Main would than automatically apply to the other lot, is that what you are suggesting?

Smolak – No, I think what we are looking for is either a residential use or an office use for the house on 60 E.

J. Moore – You didn't ask for that in the application.

Smolak – I am asking now as part of this hearing.

D. Kapnis – Where would the additional parking be for 60 E. if it was residential or office use?

Sparages – The parking that's adjacent to the house would be dedicated to 60 E. Main St.

D. Kapnis – So some of the additional spaces would be dedicated to 60? Sparages – Yes.

G. Thibeault – I think the extension of the parking is a detriment to the neighborhood, has there been any thought of 90 if so it's here (she points on map) for it to go back instead of along the front.

Sparages – We are trying to limit the height, there isn't enough room to do that for the isle way to accomplish that without cutting the size of the septic.

G. Thibeault – I just feel with that hump (grade) that would be there, there is still a 7 ft. difference in elevation from this road to the top, approximately, so if you left all the trees that are already there, there is specifically one evergreen, it's gone in this plan, if there is a way you can tweak that I think it just would look better, because they landscaping is beautiful.

Sparages – It falls within the parking field.

G. Thibeault - I don't know if you need 6,000 gallons per day, I don't know what's driving that, maybe 4,500 could do it for you.



D. Kapnis – I think if the last two spots where the tree is and put those up against where the septic is, just move the two over so they are facing the side of the house. Move them parallel to the field so they are not on the street.

Sparages – That’s something we can look at.

G. Thibeault – Do you ever answer what’s driving the 6,000 gallons?

J. Moore – You had a table for the parking, how is that driving the parking, what about the septic flow, is the parking driving the septic flow. There is nothing in the parking plan about septic flow.

Smolak – It’s both septic and parking.

G. Thibeault - Why did the septic increase so much from the last time you were here?

Smolak – Because we didn’t have the ability to go to 6,000 given our site constraints without 60 E. Main.

G. Thibeault – But your footprint doesn’t change.

Smolak – Restaurant uses are higher intensity uses. We would like to attract that.

Shilhan – What about tearing 1/3 of the building down and use it as parking, I am not interested in expanding parking along E. Main, personally I would not like to see that.

Rossana Francis (on behalf of the owner) – We get calls weekly of people wanting to lease space at the plaza, we are constrained by the septic so we are very limited, so we have the Triad driving school, so they don’t use a lot of septic and that’s great, it’s very limited to what doesn’t use septic, it’s a very attractive spot. We don’t market this plaza and we get calls on it.

Sparages – So the existing scenario, the 2<sup>nd</sup> scenarios on the parking table (proposed condition #2), he reads the sections of uses and square footage with units of seats and spaces provided, 35 gallons per seat per day. He goes through one by one. (see attached), the nail salon has the smallest. Added up the total up at 5800 gallons per day for this scenario. This plaza can’t support Dunkin and another restaurant, Mr. Scrivanos is willing to invest hundreds of thousands of dollars to improve this site. This site can’t support another restaurant. The town is lucky to have Mr. Scrivanos to invest in improving the site.

Smolak – I would think you would want to get quality tenants.

G. Thibeault – I am a proponent of new business in town but not at the expense of the character of the town. I feel like right now that’s what you’re proposing, and I would like to stick to that.

J. Moore – This has been in use for over 50 years for a variety of uses, what happened that all of a sudden without this variance a substantial hardship will be imposed on your ability to attract and secure tenants, why after 50 years do we need a variance.

Smolak – We can’t have an electronic manufacturer’s into this building which I am sure would pay a lot higher rent. J. Moore – Have you had one over the last 50 years. Smolak – I don’t know what we have had here.

J. Moore – You have had the right to have similar uses, we cleaned up this a couple of months ago, so we cleaned it up to allow specific uses that would give you a little more flexibility on who you can have in there, the argument at the last hearing was; we can’t keep going through this use variance process because it take too much time, you said we have tenants wanting to come in, but because it’s not allowed, we don’t have enough time, so we cleaned it up we granted a clarification of that for specific uses that the site is able to accommodate

you. And you recognize that they were very specific restrictions on parking and septic, we talked about it. So again, what happened? What happened over the last 50 years that you now can't operate as a viable facility? That's what you're saying in the application. You're saying it's a substantial hardship on your ability to operate.

Rossana Francis – We are not saying we can't ever operate the plaza and we have to shut down. The substantial hardship doesn't mean it's impossible.

J. Moore – It's your entire basis for us granting a variance here. It's the entire thing.

Smolak – But substantial hardship doesn't mean bankruptcy.

Rossana – We would like to improve the plaza, we are at capacity with the septic.

J. Moore - A use variance is extremely, extremely hard to justify legally, and to me this is a convenience, you would like to attract more tenants you would like to fill that building up, the site doesn't allow for it, we granted in our last decision last year, that clearly stated you would not expand the intensity of the use and it was up to you to manage these uses that were going to require certain amounts of septic and parking within the natural constraints of the site and as part of our justification for that we had to go through what about the detriment to the neighborhood no, because the site is naturally constricted to these things so, parking, traffic, septic, are going to be limited to the amount of parking, the amount of septic that can flow, that was part of the justification for previous decision we granted, so here we are saying ok, now we have all these uses, let's try to fill up the table as best we can and in order to do that we need all this stuff, so for me to get comfortable, first of all the hardship your suggesting applies to 64-74 E. Main St, there is a whole other issue 60 East Main St, I am not sure how your saying this applies to another lot, but that is another question, but I need to understand what specifically is going on that this plaza that it can operate for 50 years and now evidently you have issues here.

Rossana – It's not just about us making money, it's a benefit to the town, there are a lot of vacancies in town. I am not discounting the detriment there is a balance.

J. Moore – We talked before about fixing up the plaza was good.

Smolak – I am not sure why this is a surprise we discussed this at the last hearing about parking and septic limitations, we discussed we had the ability to secure rights to the adjacent parcel, so we withdrew some of that application, and were careful to increase the number of uses, and we communicated that we were going to come back. I understand your concerns.

Shilhan – I am not sure you do, town's everywhere are trying to avoid this kind of situation. There is an audience question.

### **Audience**

Richard Hopszel, 60 E. Main – We own 60 E. Main, we are happy we want to keep the house, and the 50 years of what went wrong, I have been here 40 years, there was a supermarket and it went out of business because no one went in there, when Mr. Scrivanos purchased it, it was a god send, they fixed it up, and we have people contact us wanting a business there, but it's a home, so no one wants to buy it when you have to look at the NAPA across the street, and the pool guy across the street, I would like them to maintain the building the was it is, I think this is a good thing, I don't like the parking I the front either, but the grading before would have been an eye sore, and this is better.

Cynthia Holzapfel, owner 60 East Main St. – We came to terms that maybe it was time to sell; we hoped they would save the house and the tree, the septic for the house, is that included in the plaza.

Sparages – Yes it would be incorporated.

S. Freeman – Does the board get to determine if these lots are viewed as one lot, who makes that determination.

J. Moore – There are two lots; just because they abut each other doesn't make them one lot.

J. Moore – You have a lot at 64-74 that has some legally existing nonconforming uses on it, there is the abutting lot that is zoned residential as far as I know it has always been used as residential as far as I know, I have yet to hear what it is about the soil condition, shape or topography of 60 E. Main St. that contributes to some sort of hardship at 60 E. Main St. That prevents it from being continued to be as a residential lot? Because there is a nice house there for as long as I know, and to me I don't see any possible way that a use variance can be granted on that lot, because I don't see any hardship. Somehow you're saying that a hardship over on one lot applies to another lot.

Smolak – We would go to Planning to do an ANR, to combine the lots, we would not get the plan endorsed only to get the variance denied so what we would propose is a condition that requires, if we are looking for a hardship based on a single lot, that it would be subject to obtaining an ANR endorsement from Planning which you know only need adequate frontage. So that's our proposal that's how we establish the hardship for the single lot, it's not a separate lot, if you view it as a single lot because we would be proposing to combine both lots. In terms of the parking, we could propose to eliminate that parking going along 60E. Main St. (the row of 10 spaces), and maybe retain the existing driveway on 60 E. Main.

S. Freeman – So as an abutter, the piece about the separate parcels is taken away from the conversation, not by our choice then treated as one lot, as an abutter I strongly object to those 10 spaces, but that is pre conditioned that there is an external decision that this is going off of. I agree I don't see a hardship.

Shilhan – What about more than one building on a lot.

Smolak – I discussed that with the Building Inspector before; I didn't think we needed relief. If we did it would be a special permit I believe.

J. Moore – This is completely a self-imposed hardship, especially now you have 2 dwellings on a lot, you're creating your own non conformity, you can't have more than two structures on a lot. If you're saying that you're going to make one lot out of two with a structure on each your creating non-conformity.

Smolak – If the Building inspector says we need relief it would be a special permit or could be a variance.

J. Moore – My personal opinion if they didn't have doctor's offices in there and a few other tenants that seem to use an awful lot of parking and septic, they would not need more parking or septic system, it seems to me it's your desire to max out that facility with tenants that have high parking and septic usages, that creates your own hardship, that's a self-imposed, self-created hardship and I don't believe it justified a use variance on a lot next door to try and create some relief there, and I also believe that it adds substantial detriment to the neighborhood with the parking and everything else we discussed, and I don't think it can be granted without substantial detriment to the public good and I think it derogates from the intent and purpose of the bylaw, frankly because I think we are here to enforce the laws of the Zoning Bylaws and I just don't see it, that's where I sit right now.

Smolak – If we don't have uses that the market is dictating, we can't support a building without tenants, there is no market for office use.

J. Moore – Because you don't have you don't have the soil, shape or topography.

Smolak - If we go to lower intensity uses, no one is coming.

J. Moore – You're not going to lower intensity uses, your just not going to higher intensity uses, It's always been lower intensity uses. You would like to go to higher intensity uses. I understand it, I am in business, but the fact is that there is nothing about the soil, shape or typography of the lot contributing to that hardship, just

saying you don't have the space to install a septic system on that space to accommodate it, but the size of the lot doesn't not substantiate hardship either, and the soil conditions in that district are the same, and the high water table and sandy soil doesn't substantiate hardship, so I don't see how we can carve this up legally.

P. Shilhan – Just for the record we need to be unanimous on this vote. Patty – Yes.

G. Thibeault – I would want to see, what are you going to do if this parking the 10 spaces in front goes away, are you leaving the existing landscaping there? Will you still need to put in a retaining wall? You could feather.

Smolak – The retaining wall would go away.

Sparages – It could be feathered down.

Shilhan – We have a real challenge here, Use Variances are very hard to get, I agree with Jeff it's so hard to proof the hardship, as much as I would love to see the building be used to the max, I just think the price is too high, I just don't see us granting a use variance.

J. Moore – You can add the parking around the back, are the spots in the back are not included.

Brief Discussion of process, they have filed with conservation.

G. Thibeault – Are you filing at the same time?

Patty – They have to file with Zoning before Site plan approval.

D. Kapnis – What is the septic gallons now.

Smolak – It's maxed out at 1500 gallons a day.

Shilhan – Are you maxed out with the vacancies?

Smolak – With vacancies.

J. Moore - It's the medical offices that takes up the parking and septic that's the choice they made.

D. Kapnis – The issue I would have half the spaces would go to 60, if we leave 60 the way it is or reconfigure, I am more flexible, don't combine the two lots, eliminate the strip of 10 spaces, if you kept it at 60 the way it is and reconfigure 2 or 3 spaces or just eliminate the 10 spaces. And 1500 gallons a day is not a lot. The medical is taking up a lot, I do have some sympathy.

Brief discussion on septic continues. Dave – So there is more room on 60 for another septic.

Gina – If they share a septic and own the lot and condo it.

J. Moore – I think there is a lot to be said for an owner occupied dwelling there, if they shaved off some of that lot and said we will leave the 60 lot alone, and expand the septic by dividing a piece of the lot, it may give them room to do the septic they had a proposal a couple of months ago.

G. Thibeault – No one would ever buy that house with the grade of that plan. J. Moore – they are buying it.

Shilhan – I can't vote for this now, if you want to go back and look at it again. However this board wants something nice to happen with the plaza and 60 E. Main, if you can take a part of 60 but I am not the designer you guys need to figure this out the best way possible for all.

G. Thibeault – In the interest of 4 more meetings, I don't want to go over this again. We should give more direction.

P. Shilhan – I think we have given plenty of direction.

G. Thibeault – If planning makes it one lot?

J. Moore – It's still zoned residential; they have to meet the variance threshold.

J. Moore – As proposed I can't see it. If you can find case law that a variance that suggests a hardship on one lot be applied to a lot next door, I have never seen that.

Smolak – We are suggesting the lots be combined as one lot, we would have to combine them with Planning, so I can find you case law on anything, but if you can work with us.

J. Moore – If you take a sliver of that residential lot, put the septic down, park on half of it do very little change to 60 E. Main and keep the parking off that side, I would be a little more comfortable, I would like to see more on the hardship that exists, somehow not just the intensity of the use but the area of the use on another lot.

Smolak- The hardship applies to the lot, so we would combine the lot, if the board would condition it subject to combining the lot through an ANR from planning. We can also go to planning and come back.

J. Moore – I don't think my concern would be addressed.

Richard Holzapfel – I assumed where they dug holes, they would leave my leaching field where it is, this plan shows it differently.

**Motion** to go passed the 10pm rule. Moved by G. Thibeault /D. Kapnis all in favor, motion carried.

Smolak – We are confined with Board of Health rules.

Shilhan – Can you come in at 4,500 gallons a day? Comprising.

Sparages – To accomplish what. Shilhan – So it's not quite as high and parking on top of it as well, minimize the impact.

### **Recess request**

Smolak – Can we take a two minute recess?

Back from recess at 10:21pm

Smolak – I would like to continue for one month, and a one or two members become a subcommittee to see if we can get a dialog going.

Patty – I am not sure we can do that with open meeting law.

Smolak – I have done this before. To come up with some ideas, dialog with one or two members. If we can't we can't.

G. Thibeault – Patty you can we ask if we can do this. Patty – I will email Town administrator.

J. Moore – I would suggest you withdraw as there would be changes. But if you don't I would include the town planner and building inspector.

J. Moore – I have some issues of the legality, I will be out of the country end of this month.

J. Moore – I would include the building inspector and someone from planning.

**Exhibits presented in the application;**

Exhibit A – Building Inspector Denial letter

Exhibit B – Prior Zoning Board Decisions includes# 97-17 and #14-03 in the request

Exhibit C – Proof of Ownership, deed tax bill and Letters of authorization

Exhibit D – Certified Abutter’s List

Exhibit E – Water Resource application and supplemental materials

Exhibit F - All Site Plans (to be marked separately at hearing)

**New Plans presented at hearing;**

Sheet 1 site plan existing conditions showing the house at 60 E. Main being saved and not razed, marked 60-74 E. Main Street by Williams & Sparages dated 2/27/14.

Sheet 2 – Proposed layout, Sheet 3 –Site Plan proposed grading/utility, Sheet 4 – proposed landscape plan, and Sheet 5 – Proposed construction details.

Patty will have these revised plans stamped in by the town clerk.

**Motion** - G. Thibeault/J. Moore to continue to April 1, 2014 immediately following the first scheduled hearing at 7:30pm.

*Patty Pitari*  
*Zoning Administrative Assistant*

*Approved 4-1-14 business meeting*