



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

118 Jewett Street, Georgetown MA

James Tolman

ZBA FILE File #15-02

Use Variance

August 5, 2014- Immediately following the first hearing at 7:30pm

Board Members Present:

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

Applicant present: James Tolman
& Mark Tolman (son of James Tolman)

G. Thibeault opened the Hearing at 8:11pm, and read the Rules of Procedure paragraph.

P. Shilhan read legal ad; A Public hearing will be held on August 5, 2014, immediately following the first scheduled hearing at 7:30pm at the Georgetown Town Hall 3rd Fl. Meeting Room at for a Petition filed by James Tolman of 16 School Street, Georgetown Ma, for the property located at 118 Jewett Street, Georgetown, MA, Assessor's Map 17, Lot 98-C in the IB zone. The Petitioner requires a Use Variance from the Zoning Board of Appeals to construct a single family residence which is prohibited in the Industrial B District under the Georgetown Bylaws Chapter 2 (use schedule) and Chapter 165-84 and pursuant to M.G. L. Chapter 40A, Section 10 of the State Code.

ZBA File #15-02

Chairman, Gina Thibeault introduced the Board members.

Applicants Presentation:

M. Tolman, applicants son – We would like to build a residence on the lot there is a mix of residential and commercial.

M. Tolman states the reasons he supplied with the application to grant the permit, as follows;

1. Detention and retention ponds that are required and mandated by the conservation commission in industrial and commercial zones can't be constructed because of the configuration of the lot, high water table and distance to the wetlands.

2. Topography is unsuitable for the construction of any type of commercial or industrial slab type foundation because all of the lot with the exception of a small area are just above the water table.
3. Topography of lot does not allow for any type of a commercial or industrial type building to be constructed because so much fill is needed to bring the lot up to street level. Also compaction will not allow for a stable base for a slab foundation.
4. Numerous out cropping's of ledge makes it difficult to design and install a commercial sized septic system.
5. Setback for the construction of a commercial or industrial building with a parking lot in front and fire land around the side and rear of the building will be virtually impossible to construct given the shape and rear slop of the lot and the location of the wetlands within the lot.
6. Construction of a single family home would be more suitable for the neighborhood which will coincide with existing homes.
7. Excavation, utilities and installation of a septic system for a single family home would have no effect on the surrounding environment regarding encroachment into the wetlands, altering the topography of the lot and the creation of more traffic, noise and odors in the neighborhood. Any Questions

M. Tolman – We did submit letters from neighbors.

Letters were submitted in support by neighbors at 120 Jewett St, 26 Jackman St, 63 Jackman St. Also a letter in support but then rescinded on 6/20/14 from Mr. Kenneth Kumph of 113 Jewett St.

Mark Tolman – Has anyone driven by the lot?

J. Moore – Yes I did.

New Correspondence

1. S. Freeman read into the record - Letter received today 8/5/14 from Cianbro Fabrication not opposed, just letting the board know they are a business. (see attached).

2. Email from Conservation - P. Shilhan – We have and Email from our Conservation Agent that states “*Hello Patty, I have reviewed the public hearing notice for the 118 Jewett Street proposal that you sent me and wanted to comment on it.*

The site plan does not show limit of work or the septic system so it is difficult to comment on the wavers needed for grading and site work. Based on the Local and State Regulations wavers would be needed for a significant portion of the proposed house and as such I presume wavers would be needed for site work around the house on the side closest to the wetland and Vernal Pool. The applicant would have to file a NOI with the Conservation Commission asking for wavers to the Regulations in order to construct the project as shown. Any questions feel free to contact me. Thank you. Steve.

J. Tolman – We are aware that we have to go back to Conservation.

M. Tolman – We do have an approve septic design for a four bedroom single family, the only reason we have to go back is the house itself sits back within the 100 ft. buffer, but it's well out of the 50 ft.

Gina asks for audience.

Audience - Jim Rogers, 117 Jewett St, I am the abutter across the street and I have correspondence from Edward Surette, of Prime Realty Trust located at 124 Jewett in opposition and a letter dated from Andrew LeBlanc of 129 Jewett in opposition. I know Ken Kumph of 113, and 114 Jewett, I know he does not know support this, he already gave you a letter. I am also representing my mother at 117 Jewett, and 121 Jewett Street. Some history on this; my father owned it in the late 1960's, it went around the corner to where Repairs Unlimited is now, it was one large parcel, the reason he purchased it, so no one would build a house on it next to his business at 114 Jewett. Then later the flood maps came out and the entire parcel became part of flood zone, and he didn't and never tried to build on it, and it was deeded over to my brother in 1979, he tried to sell it many times as industrial and was turned down by the town they always denied it because of all the wetlands.

In the late 1980's, Mr. Tolman came to my mother and wanted to buy a vacant lot at 139 Jewett, to build a house for his mother, he insisted he wanted the lot, but my mother told him you would have to buy both lots which is now 118 Jewett St. and he bought both lots, he developed 139 and 139R Jewett in an industrial zone, he got the Zoning changed or the Zoning was changed, to build 2 houses there, later on Mr. Tolman came to the town to build a large building and was turned down by the town, at the time we had no problem with it, because it's industrial zone. Things happen when homes are close to commercial business, it's a recipe for disaster you get complaints. We feel putting a residence on this lot would be detrimental to the industrial neighborhood and our own future plan to develop a lot at 121 Jewett Street. We are strongly opposed to this and we ask you please deny this use variance. We would suggest to Mr. Tolman to design a smaller building that would comply and we would not oppose it. Thank you. I also have other letters.

Mr. Rogers submits his letter, which he read from (see attached) and other 2 letters to the Board;

S. Freeman reads a letter from Andrew J. LeBlanc in opposition (see attached)
Also a letter from Richard Brescia of Cianbro Corporation; not in opposition just stating they are a Company on the street. (see attached)

D. Kapnis reads letter in opposition from Edward Surette of 124 Jewett St. (see attached)

G. Thibeault – The issue of putting a residence in a commercial area, are you not concerned with the sale of the house.

J. Tolman – On 139 Jewett when I went for that, we changed the zoning because we got so much slack from residential. Twice I came to do a commercial lot and they wouldn't let me. Down the street there is the state housing.

D. Kapnis – We have had people come before us like this and its always the issue of the noise/traffic and you may sell it down the road, and what's to prevent them from coming in and filing complaints.

J. Moore – You said you had other lots rezoned; did you try to have this lot rezoned?

J. Tolman – No.

J. Moore – Is there a reason why you don't want to have it rezoned instead of trying for a Use Variance?

J. Tolman – I didn't. If you look at the use schedule you can put Housing for Elderly in there with a special permit maybe we come back and do that.

J. Moore – You have the right to do that.

Gina – Does it meets all setbacks, you mentioned something about the buffer.

M. Tolman – The back of the house is in the buffer zone,

G. Thibeault – Conservation was ok with that? M. Tolman - We have to go to Conservation for that.

P. Shilhan – You made it a small parcel, so you created that yourself. Paul reviews with applicant.

Tolman – We did that because of Conservation with the vernal pool, have to stay 100 ft. away.

J. Moore – All these lots have the same issues.

Inaudible – all talking at once

Gina – If you owned the two lots you can't build anything commercial there?

J. Tolman – No because of the wetlands.

Discussion on surrounding lots and all the wetlands.

G. Thibeault – Variance, (use variance) are very tough to satisfy the requirements.

J. Moore to abutter Mr. Rogers- The concerns you and other abutters you have, I am questioning the concern about a residential use vs. a commercial use in the neighborhood, you said something about your lot, that you are considering developing is zoned commercial; I am curious what you're concerned about if a residence goes in there.

Mr. Jim Rogers – Truck traffic, and what if they just put it up for sale, then new owners start complaining about the noise, we have seen it happen. I have a vacant lot; I have a buyer for commercial use.

J. Moore; to Tolman – You have an argument to rezone the lot through town meeting. For a variance I want to consider more, this is really a conservation wetlands issue. You may not be able to do this because you're in the wetland buffer. It's the same situation with the other lots as far as wetlands. My concern is the hardship you have to prove it's unique to the lot not common throughout the district, therefore, you have the same with all the lots it's not unique.

S. Freeman – In my opinion is we can't go by conservation, it's not our purview. Our issue is the use.

J. Moore – Hardship is the soil, shape and typography of the lot. The problem is the variance gives you the ability for the purpose for which it's varied or the original zoning, It doesn't rezone the lot.

G. Thibeault – The issue I have is hardship. The criteria states “not affecting the general zoning district in which the structure is located, and literal enforcement of the bylaw would involve substantial hardship”, but I don’t know if that’s true because if you built something commercial, something different.

J. Tolman – Let’s continue it.

S. Freeman – Why would we continue it. What would change?

J. Moore – I am not sure were conservation stands.

S. Freeman – There was another one we had commercial zone; Mirra needed to expand and I remember all the abutter’s coming in to complain, if this were to happen again, and I am very compelled and I understand, but what we have done consistently, like the 5 Elm that was rezoned. In my view I think that is what I would be more comfortable with, I feel badly, but I don’t think I can support a variance if it’s continued or not.

P. Shilhan – I thought putting a quieter option would be good, but now thinking about it peppering it with residential can be an issue. You may have known there was always wetlands on it.

J. Moore – I am not opposed to continuing, but if you answer the 3 variance questions your all set, but nothing is changing.

J. Tolman – We have to go back to conservation.

D. Kapnis – In my opinion it is not unique to that lot.

J. Moore – I thing you had a pretty good argument for rezoning. The town just approved one.

Discussion on other lots zoning.

Inaudible Mr. Rogers in audience.

S. Freeman – I will continue, but I can’t say I will change my mine.

P. Shilhan – I would like to look at the property again. G. Thibeault – You already went to conservation?

J. Tolman – Yes about 3-4 months ago to do the applicability (delineation). And he asked to continue to next meeting.

D. Kapnis – Have you already submitted a certified plot plan showing where the house is located to Steve the Conservation Agent?

J. Tolman – Yes. D. Kapnis – Did they approve it? J. Tolman – No we have to go back.

D. Kapnis – I don’t believe the hardship is not unique to that lot.

J. Moore – I think you have a good argument for rezoning.

Plan that was reviewed at this meeting.

Plot Plan certified by Hayes Engineering of Wakefield, MA dated June 20, 2014.

Continued

Motion - J. Moore I make a motion to continue to September 2, 2014 at 7:30, seconded by D. Kapnis, all in favor to continue. Yes. Motion carried.

Patty Pitari
Zoning Administrative Assistant

Approved 9-2-14