



**TOWN OF GEORGETOWN**  
**ZONING BOARD OF APPEALS**  
**Business Meeting Minutes**  
**October 6, 2009**  
**7PM - Town Hall, 3rd floor Meeting Room**

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**Board Members Present:**

Paul Shilhan, Chairman  
Mike Muller, regular member  
Matt Lewis, regular member  
Jeff Moore, regular member  
Scott MacDonald, associate member

**Absent:** Joseph Young, regular member, Jon Pingree, associate member &  
Paul Taraszuk, associate member

**Zoning Clerk:** Patty Pitari

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Chairman Shilhan called the business meeting to order at 7:10pm and stated 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.

**New Business:**

The board reviewed and signed the business minutes of September 1, 2009.

P. Shilhan stated he would entertain a motion to amend the Rules of Procedure to be consistent with our 9-1-09 meeting of changing our application fee schedule.

M. Muller inquired of what happened at last meeting in regard to the fee schedule.

Patty explained the board voted unanimously to increase the fee for wireless communication facilities, as the amount of work, time and money spent on these types of applications are above and beyond a regular application, and this is just to add it to the Rules of Procedure to keep both documents consistent.

**Motion:** S. MacDonald to amend Page 2 of the ZBA Rules of Procedure adding Wireless Communications Facilities under Section G, to be consistent with the changes voted on at the September 1, 2009 business meeting. Seconded by J. Moore, M. Muller Abstained. Motion carried 4-0. M. Muller stated he was abstaining as he was not at the last meeting.

M. Muller asked if there was discussion on other fees.

P. Shilhan stated yes it was and it was decided that we are in the business of helping the community and not make things more expensive, but I would like to discuss it further in the future.

M. Muller stated he is concerned with raising other fees, as people may go about doing things they want to do the wrong way because the fee may be too high. Patty compiled information from surrounding towns and we were on par with some and higher than others so I would like to take a step back and look at the actual cost to manage the application process. I can certainly understand the fee for the additional time and support provided by Patty on the wireless communication facility applications because that's very time consuming process, but I am reluctant to increase any other fees.



### **Finance Report**

The clerk review the ZBA revolving and payroll account updates.

### **Correspondence:**

1. Letter from Attorney General's Office re: bylaw amendments from Town Meeting: Patty stated the items under our jurisdiction are the Accessory Buildings and Bed & Breakfast, and are now in effect.

2. Copy of letter from Building Inspector re: Dunkin Donuts sign: Patty stated you have the decision attached and as you can see the drawing. Patty sent out an email to the Building Inspector for an update. Discussion followed on what happens next, as the Building Inspector is the Zoning Enforcement Officer.

3. Merrimack Valley Letter dated August 5<sup>th</sup> for 4<sup>th</sup> session of CPTC workshop. – Paul Shilhan and Jeff Moore attended the other sessions; this is the final of the 4 to receive a certificate. This final session is also open to all for a reduced cost of \$30: Jeff Moore and Paul Shilhan will attend this last session of 4 on 10/29/09. Patty stated she has notified Merrimack Valley Planning to confirm their attendance.

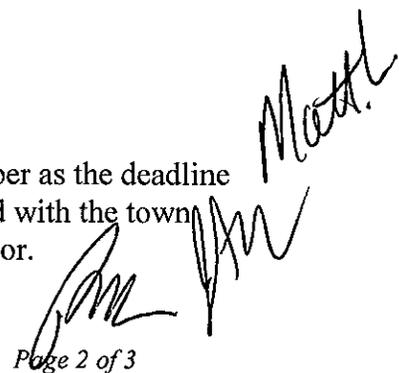
4. Notice/Letter to Selectman cc: ZBA from FEMA on Flood Insurance Study Report.

P. Shilhan asked how the floodplain district affects this board. Patty explained we deal with anyone who wants to work or build in a floodplain.

5. Report from Senie & Associates P.C. – Informational for the board.

### **Old Business:**

Schedule for January 5, 2010. Patty stated we don't have a hearing for November as the deadline has passed, and the cell tower application that was left on my desk was not filed with the town clerk, and it was incomplete anyway, and it had no denial from building inspector.



P. Shilhan stated his concerns to the board on why these applications are coming in without going to the building inspector first. I don't think Patty should be doing this follow-up work, since it should go to him first anyway.

M. Muller stated that what we are acting on is the denial.

Patty stated she did tell the building inspector and told the applicant they need to see him first. They should be coming back in on Thursday.

M. Muller asked Patty in your reduced hours to 10.75 do you feel in these times when your pulled away to provide this type of assistance we are talking about, is that prohibiting you from doing what we need you to do to support the administrative requirement of this board.

Patty stated yes, I get interrupted with phone calls, voicemails, the window, and also when I need to check something with another department like the assessor's or planning office, I end up rushing things and mistakes get made when you rush.

M. Muller stated I think in these times supporting each other in the office is necessary but it comes to a point, and that 10.75 hours per week, that has to come first.

J. Moore stated in my past experience, a lot of round and round in interpreting the bylaw takes a lot of her time, and in the future if we can work on defining our bylaws that will help.

Patty stated our next meeting is November 3, 2009, and we may have the cell tower for December, so January 5, 2010 will be our first scheduled meeting for next year.

**Motion:** J. Moore to adjourn the business meeting, second by S. McDonald to open the hearing Mohawk Circle at 7:37pm. All in favor, motion carried.

*Respectfully Submitted*  
*Patty Pitari, ZBA Administrative Assistant*  
*Georgetown Zoning Board of Appeals*

Date Approved: 11/3/09

Handwritten signatures of board members, including J. Moore, S. McDonald, and another individual.

# TOWN OF GEORGETOWN ZONING BOARD OF APPEALS

## MINUTES OF A PUBLIC HEARING 6 Mohawk Circle-- ZBA FILE #09-03 Variance/Special Permit Application Viktor Pankov - Applicant October 6, 2009

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**Board Members Present:** Paul Shilhan, Chairman  
Mike Muller, regular member  
Matt Lewis, regular member  
Jeff Moore, regular member  
Scott MacDonald, associate member

Absent – Joseph Young, regular member, Paul Taraszuk, associate & Jon Pingree, associate

Zoning Clerk: Patty Pitari

Applicant – Viktor Pankov

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P. Shilhan: The Board of Appeals will conduct this hearing 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.

P. Shilhan, Chairman – A petition/application has been made by Viktor Pankov for a Special Permit/Variance under M.G. L. Chapter 40A, Sections 9 & 10, and the Georgetown Zoning Bylaws Chapter 165, Sections 8-11 and 78, 79 and 84, 87 and 94 to construct a 2 story enclosed front porch addition extending or altering a pre-existing non-conforming structure, 10 ft. from the front setback in the RB District where 30 ft. is required. The premises affected is 6 Mohawk Circle, and identified on the Assessor's Map 21A, Lot 66.

### Applicant's Presentation

V. Pankov, owner and applicant of 6 Mohawk Circle - Mr. Pankov stated he needs more space for activities for his daughter, as she is legally blind she likes the sunrooms very much, and to have her friends over and she feels more comfortable having them at our house. Mr. Pankov shows on his plot plan the location of this 2 story glass addition. He started work on the front, and the Building Inspector told him to stop the work.

M. Muller asked Patty why it is non-conforming, and Patty passed out a map from the assessor's office that used to be called Lake Mohawk Park, it was also was called Sandy Shores, and Patty stated she remembers a denial in the building file that it needed a variance to build the house.

J. Moore asked the applicant about the driveway and the front of the house or front of the lot.

Mr. Pankov showed his driveway goes around the side.

The Chairman asked if anyone in the audience who would like to speak

**Audience:**

Anthony Maimone, 30 Mohawk Circle stated that circle was put there in the 1950's that turn is the road, on the old map as a circle you can drive around, Mr. Pankov lives on the corner and that turn doesn't go into his driveway, his driveway is next to the house, down the side is where we used to be able to drive through. The driveway is on the side of the house, and next to it is the road, and I am in favor of the applicant.

Jim Thornhill of 5 Mohawk Circle stated he has some concerns and he did speak to the applicant, every house is non-conforming, no one has any frontage and looking south every house is aligned, (about 6 houses) that kind of forms the street scape of Mohawk Circle, I think Viktor is at a disadvantage because I believe his house is higher than the others. I am concerned a 2 story glass wall toward my house, takes away from the street scape, and infringes on my privacy as I am directly across the street. He did built another addition on the back that does have large glass sliding doors on both the 1<sup>st</sup> and 2<sup>nd</sup> floors, I am concerned that is the way it may be done, if it was windows or done in the manner where there is not such a large amount of glass that would work better.

**Board Questions:**

M. Lewis explained to the applicant you can't make anything more non-conforming than it already is.

V. Pankov stated he bought the materials and then the Building Inspector denied it so he stopped the work, my permit stopped.

M. Lewis explained because the lot is not conforming if you were to go for a Variance; you can't take something that's non-conforming and make it more non-conforming.

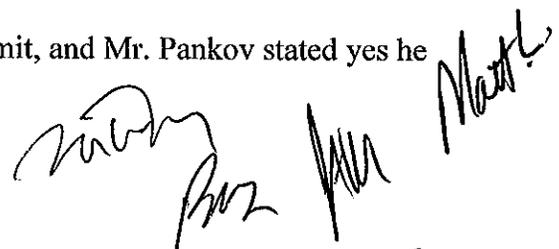
V. Pankov stated I didn't know because I got a building permit before and then building inspector stopped me on this part.

Patty explained that Mr. Pankov got a building permit from the previous building inspector back in 2004 for that addition on the back of the house, which did not come before zoning.

J. Moore and M. Muller asked if the other addition, if the porch was part of that permit. Patty stated the current Building Inspector told her the old permit is old and doesn't extend, to this front addition, and the other permit also should have come before the ZBA.

M. Muller stated we need to know if this front porch was part of that old permit, right now we don't have any documentation to support that.

P. Shilhan asked Mr. Pankov if he thought it was part of the same permit, and Mr. Pankov stated yes he did.



J. Moore stated the decision now is if that porch addition was included in the application at that time, but even then there may be a requirement that he has to complete the work within a certain timeframe.

J. Moore stated none of these lots have the frontage, the setback requirements that you are seeking relief for are different for the front, side and rear, so we need to establish which is the front, it makes sense to me where the porch is, in fact the front of the house, and that's the area you need to have a 30 ft. setback. It also appears on the sides, your left and right setbacks are 20 ft. and your 11.23 on one and 12.5 on the other so it's non-conforming on 2 sides and you have a non-conforming lot. So you have 3 sides now this would make it four. We need to make a determination if should be a Variance or a Special Permit.

Patty did remember seeing a denial a long time ago from the previous building inspector that stated it needed a variance to build the house, but would need to check.

P. Shilhan stated I think we need more information, if there was a variance to build the house does that mean it would need another variance.

S. McDonald stated we would need the old building permit and the variance if there is one.

S. McDonald asked the applicant what work was done and when it was done.

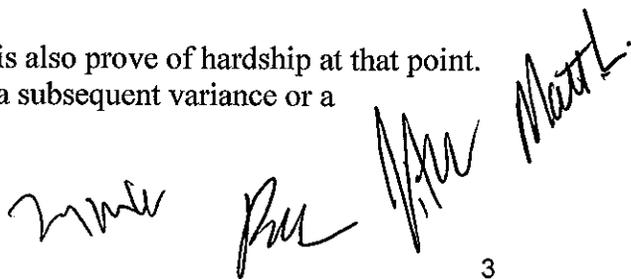
V. Pankov stated he put footings in last year in 2008.

M. Muller asked Patty if we are good on the time clock to continue, and she said it was fine to continue it to November 3, 2009.

P. Shilhan stated to the applicant we may have to continue this to next month for further information, if we decided it is a variance you would need to be prepared to tell us why it can't go anywhere else on the property. If it does need to be in the front of the house it can't be just because of the sunlight it has to be a hardship that is related to the land, like ledge or shape of a lot.

J. Moore stated his opinion and states to the applicant, on all these pre-existing non-conforming structures is if you're not creating any new non conformity, and your only manipulating one of the existing non conformities, that the board consider this as a special permit, and not all members may agree with that and previous boards have looked at this differently, that notwithstanding, where you have a significantly non conforming lot, nonconforming in 3 directions, and asking for a 50% increase in the distance which you want to go another 10 ft. you have to show that particular alteration, not that it is not detrimental but that is it not more substantially detrimental than the existing nonconformity that you already have, meaning in my opinion, all non conformities are detrimental by virtue of the fact that they don't meet the current zoning code, so does this change substantially increase the detrimental nature of your dwelling, that's the hurdle under special permit, but if the board determines you need the variance, you also have to meet the next hurdle of hardship that relates to the shape or typography of the lot.

S. McDonald asked J. Moore if he thought he previous variance is also prove of hardship at that point. J. Moore stated we would have to review to see if it would need a subsequent variance or a modification of the original decision.



J. Moore stated there is the whole issue, of the applicant thinking the 2004 permit was still intact, but I think the Building Inspector now has made this clear by writing the denial that it's not related. We have too many questions.

P. Shilhan stated Victor's house is at the highest point it seems, and this addition would intensify the situation. I would like to know more about that building permit from 2004.

M. Lewis asked Patty to get the applicant more information on Variance hardships.

M. Muller stated he agrees but there are some documents that we don't have here, so in fairness to the applicant, we should see both the variance with findings from the board and the 2004 building permit information.

**Motion:** M. Muller to continue to November 3, 2009 at 7:30pm, seconded by S. McDonald, to get more information being a copy of Variance when house was constructed and the Building permit application and all relevant information in that building file. All in favor, motion carried unanimously 5-0.

Patty let the board know we would need the same board members for the continuance and if they decided on a variance, it would need a supermajority vote, being 4 of 5 in favor to pass.

S. McDonald asked Patty if he was traveling could someone else sit in, she stated with the new law another board member would have to view this tape of the meeting, and review all the evidence and sign a form certifying they did so, but I would need to know in enough time to get that done.

Motion: M. Lewis to adjourn 8:20, seconded by J. Moore, all in favor. Meeting adjourned.

*Patty Pitari*  
*Zoning Administrative Assistant*

Approved 11-3-09

*Muller*  
*McDonald*  
*Lewis*  
*Shilhan*