

TOWN OF GEORGETOWN ZONING BOARD OF APPEALS

MINUTES OF A PUBLIC HEARING

6 Mohawk Circle-- ZBA FILE #09-03

Special Permit Application

Viktor Pankov - Applicant

November 3, 2009 *(Continued from Oct. 6, 2009)*

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

Absent – Scott McDonald, Joseph Young, regular member, & Jon Pingree, associate

Note: Paul Taraszuk in under the Mullen Rule.

Zoning Clerk: Patty Pitari

Applicant – Viktor Pankov

P. Shilhan, Chairman - With no objection the Chair asked the board to waive the reading of the legal ad for the continued hearing of 6 Mohawk Circle from October 6, 2009, for Viktor Pankov for a Special Permit/Variance 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, Assessor's Map 21A, Lot 66.

P. Shilhan stated just for disclosure that P. Taraszuk is sitting in for S. McDonald as he was scheduled to be out of town and Mr. Taraszuk reviewed the DVD, minutes, all relevant evidence and application and has signed a certification form pursuant to MGL Chapter 39 Section 23D of participation in a session of an adjudicatory hearing where the undersigned member missed a single hearing session.

P. Shilhan stated the board has received the information on the building permit from last hearing and has spoken to the Building Inspector.

J. Moore reviewed the requests from the last meeting being the question of an old variance, and the building permit from 2004.

There was no variance on the property.

Shilhan stated he spoke to the building inspector and the 2004 building permit has expired. It was clear on the original permit, was not properly handled, but that is a non issue at this point.

P. Taraszuk asked about the lapse of permit.

BSL *MDC* *[Signature]*

Patty stated under Mass Building Code (6th edition), which this falls under the 2004 permit.

Shilhan stated the Building Inspector closed out that permit anyway.

V. Pankov stated I would be willing to place 2 sliding windows instead of 2 sliding doors, at the request of a neighbor. Mr. Thornhill had a privacy issue with it.

Audience:

Mr. Jim Thornhill, 5 Mohawk Circle, the neighbor stated eliminating the privacy issue helps; it eliminates the large sliding glass doors.

M. Muller suggested closing the audience section of the hearing.

Board Questions:

Discussion on Variance or Special permit.

Discussion on setbacks with P. Taraszuk and M. Muller.

M. Lewis stated the applicant is making it more non-conforming.

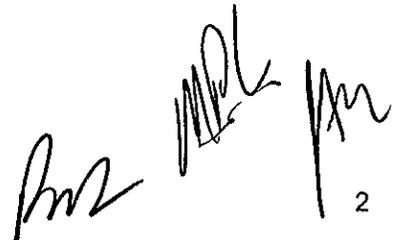
Discussion on the old building permit application, and existing and proposed elevations.

J. Moore stated previous hearings with the same types of situation, his opinion is to first identify the non-conformities, 3 in this case, in the front and both side setbacks, this is an existing non-conforming structure and is also a one or two bedroom, which in the bylaw falls under a special exemption clause, then we need to determine if the proposal is being intensified through this proposal, my opinion is all 3 non conformities are being intensified. If they are not, then he should be granted a special permit, if they are then we need to determine if it's substantially more detrimental than the existing nonconformity. If yes the special permit should be denied, or with conditions, so I believe we should go with the Special Permit.

J. Moore stated his opinion 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, where you have a significantly non conforming lot in nonconforming in 3 directions, and he is asking for a 50% increase in the distance which you want to go another 10 ft. you have to show that that alteration, not that it is not detrimental but that is it not more substantially detrimental than 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, 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.

If this proposal is more detrimental, it should be denied.

P. Taraszuk stated is that why you believe it should be a special permit.



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J. Moore stated on a previous hearing we have had a similar situation.

P. Taraszuk stated Elm St. was different, I think this is way over the line.

J. Moore stated in my view it either intensifies it or not, in my view he is, if he was pushing out in more directions I think it would be a variance.

M. Lewis agrees with J. Moore.

M. Muller agrees and states from the side how is he intensifying.

M. Muller asked by extending the property forward, you're saying that is intensifying the non conformity on the side of the house?

J. Moore stated by virtue of the fact that the side setback is still nonconforming even though you're moving it closer to the front, the side requirement setback is 20 ft. on the side, but I could be convinced that it's not intensifying it on the side.

M. Lewis stated if you look at the 11.3 ft. side, he is staying with the nonconforming existing house, if he only came out 4 ft., it would be a change in the plan, but if he wants to keep it as is, so it's more non conforming and it's more detrimental.

V. Pankov stated he wants to keep the size the way it is.

J. Moore stated the language says it has to be substantially more detrimental than the existing nonconforming structure, but is it substantially more. It is a lot of relief in a very tight spot.

Shilhan stated he agreed and maybe in a compromise may be limiting it to one story with maybe some railing or something to break up the front facade of the structure.

M. Lewis asked why not put it on back addition. V. Pankov stated it's not heated.

M. Muller asked the applicant what he wants to use it for.

V. 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. Her bedroom is on 2nd floor, but with us she is on the first floor, she will use both floors.

Further discussion on Variance vs. Special Permit.

Shilhan stated on the variance issue he did some research and having a smaller piece of property doesn't constitute a hardship for a Variance, and I will suggest again to with a single story with a condition and may make it less detrimental.

The board was in agreement to go with a special permit.

The board took a 5 minutes recess at 8:45 and reconvened at 8:50pm.

Shilhan read a section of the bylaw, where we can add conditions to mitigate the impact.

Handwritten signatures of board members, including one that appears to be 'Shilhan' and another that is less legible.

M. Muller stated I think making it a front porch would be less detrimental.

M. Lewis stated previously an application was before this board before me, you are still having footings supports in the ground still making it nonconforming whether it's ground level or not.

M. Muller stated we are talking about some modification to the plan to be less detrimental. I can see making it 1 story less detrimental also.

P. Taraszuk stated I understand the footprint issue, if he agrees to do a one level porch; you have the non conformity, if he agrees to the one level, and I could see it going that way.

M. Muller can we condition it with same dimensions.

Discussion on modifications, with a deck on top of a porch.

Audience: Mr. Thornhill stated he would object strongly to a second floor deck, and to attach conditions like that without review or approval it's open to vast interpretation and that may keep other neighbors from input if it comes down to just a board decision. The 1 story would improve the facade.

M. Muller asked Viktor if we would be happy with a one story and no deck. V. Pankov said yes.

Discussion on closing hearing and making decision at next meeting, or making it tonight.

Muller suggested modifying it with conditions.

MOTION: M. Muller to grant the special permit for Viktor Pankov of 6 Mohawk Circle, to construct a 1 story enclosed front porch addition extending or altering a pre-existing non-conforming structure, 10 ft. from the front setback, and the alteration is not substantially more detrimental than the existing non-conforming structure to the neighborhood, with the following conditions.

1. No deck shall be constructed on the roof of 1 story
2. The front of the addition shall contain windows not sliding glass doors.
3. The applicant will revise the proposed architectural plans to reflect the change from a 2 story to a 1 story addition with no other dimensional changes to the initial application, and submit an original copy of the revised plans to the clerk of the ZBA within 30 days of this approval;

Seconded by M. Lewis, Discussion; M. Lewis had concerns with 30 days.

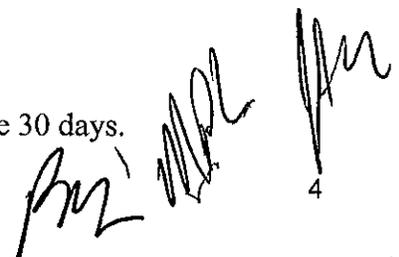
Friendly Amendment #1

M. Muller asked M. Lewis if you are open to a friendly amendment the applicant will revised to reflect and submit an original copy of plans to the ZBA clerk "prior to the issuance of a Building Permit", seconded by P. Taraszuk.

P. Taraszuk suggested amending how much time prior to the issuance of a building permit.

Muller asked why 30 days would not work.

J. Moore stated he may not choose to do this at all. Muller stated let's keep the 30 days.



Handwritten signatures and initials in the bottom right corner of the page, including what appears to be 'AM', 'ML', and 'PT'.

Discussion on amending the roof condition.

Friendly Amendment #2

J. Moore made a friendly amendment to modify the 1st condition to a pitched roof and no deck be constructed on the roof of the 1 story addition, P. Taraszuk, seconded.

Motion: M. Muller read amended 3 conditions, to go with the Main Motion.

- 1. The addition shall have a pitched roof and no deck shall be constructed on the roof of 1 story addition;**
- 2. The front of the addition shall contain windows not sliding glass doors;**
- 3. The applicant will revise the proposed architectural plans to reflect the change from a 2 story to a 1 story addition with no other dimensional changes to the initial application, and submit an original copy of the revised plans to the clerk of the ZBA within 30 days of this approval;**

Shilhan – Yes	Muller – Yes	Lewis - No
Moore – Yes	Taraszuk - Yes	

All in favor 4-1. Motion carries. Special Permit is granted with conditions.

Motion - J. Moore to close the hearing, second M. Lewis, all in favor. Motion carried.

Patty Pitari
Zoning Administrative Assistant

Date Approved 12-1-09

