



OFFICE OF THE ZONING
BOARD OF APPEALS

Town of Dartmouth

400 Slocum Road - Room 317
Dartmouth, Massachusetts 02747

Tel: (508) 910-1868
Fax: (508) 910-1833

MINUTES – April 9, 2013 ADMINISTRATIVE

Present: Chairman Michael Travers, Jacqueline Figueiredo, and Peter Smola
Also Present: Halim Choubah
Absent: Jay Peabody

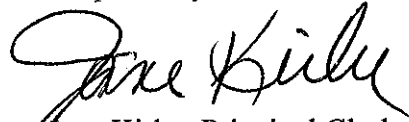
John George, Jr. was elected to the Select Board on April 2, 2013 and was not present

Approval of Minutes

The Board unanimously approved the following minutes:

- Administrative minutes dated March 12, 2013
- Case #2013-08 6 Park Street
- Case #2013-02 532 Russells Mills Road
Dated February 5, February 26, and March 12, 2013

Respectfully submitted,


Jane Kirby, Principal Clerk
For the Zoning Board of Appeals

APPROVED
4-23-13

RECEIVED
2013 APR 24 P 2:56
DARTMOUTH TOWN CLERK



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MINUTES --April 9, 2013

Case #2013-07

Petitioner: Peter C. Bullard, Esq.
Owners: Patrick & Ute Prevost
59 Nonquitt Avenue
MAP: 97 LOT: 57

PRESENT

The Board: Chairman Michael Travers, Jacqueline Figueiredo, and Peter Smola

Also Present

Alternate Board Member Halim Choubah
Peter C. Bullard, Esq.

Absent

Alternate Board Member Jay Peabody

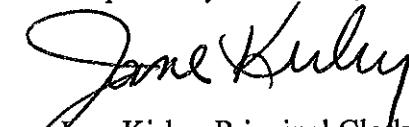
7:00 P.M. Chairman opened the hearing

- Chairman Travers noted that the Petitioner requested this hearing be postponed until April 23, 2013

Jacqueline Figueiredo motioned to postpone the hearing to April 23, 2013, which was seconded by Peter Smola, and made unanimous by Chairman Travers. Unanimous vote. Motion passed.

7:02 P.M. Adjourned

Respectfully submitted,


Jane Kirby, Principal Clerk
For the Zoning Board of Appeals

APPROVED

5-7-13

DARTMOUTH TOWN CLERK

2013 MAY -9 P 3:05

RECEIVED



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DARTMOUTH TOWN CLERK
2013 APR 24 P 2:56

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MINUTES – April 9, 2013

Case #2013-10

Petitioner: Dana Alfonso
Owner: Jose & Olga Medeiros (US Drywall)
18 Cove Road, Dartmouth, MA
MAP: 139 LOT: 94

PRESENT

The Board: Chairman Michael Travers, Jacqueline Figueiredo, and Peter Smola

Also Present

Alternate Board Member Halim Choubah
Dana Alfonso

7:10 P.M. Chairman opened the hearing

LEGAL AD

Notice is hereby given of a public hearing to be held on Tuesday, April 9, 2013 at 7:15 P.M. in Meeting Room #304, Town Office Building, 400 Slocum Road, Dartmouth, MA on the petition of Dana Alfonso who is representing US Drywall, Inc. The subject property is located at 18 Cove Road, Dartmouth, MA in the General Business District and identified on Assessor's Map 139 as Lot 94. The subject property is owned by Jose and Olga Medeiros. The Petitioner is proposing to convert the existing warehouse into office space, which will require an additional (4) parking spaces. The Petitioner is seeking a Variance from the Town's Off Street Parking Plan Regulations to keep the parking layout as it currently exists. Information is on file in the office of the Zoning Board of Appeals and may be seen upon request during regular business hours. (Section 36 – Board of Appeals; Section 16 – Off Street Parking Plan Regulations)

ADVERTISED

This hearing was advertised in the Chronicle on March 20, 2013 and March 27, 2013.

ABUTTER'S LIST

A certified abutter's list is available for review.

Jacqueline Figueiredo motioned to waive reading the list into the record, which was seconded by Peter Smola, and made unanimous by Chairman Travers.
Unanimous vote. Motion passed.

CORRESPONDENCE RECEIVED

- Application time-stamped with the Town Clerk on March 5, 2013
- Original Variance & Special Permit Decision for this property with attached brief dated 1999 (Case #1999-48)
- Parking Lot Site Plan of Record referenced in original decision
- Proposed floor plan and rendering
- Site Photos and Picture Reference Plan
- Letter from Donald Perry, Planning Director, dated March 21, 2013

Chairman Travers read into the record:

- Letter from Donald Perry, Planning Director, dated March 21, 2013

Chairman Travers invited the Petitioner or representative to present the case.

Dana Alfonso

Explained the proposal to convert the existing warehouse space in to office space.

- Remove existing interior door from current office space into the new proposed office space to allow the two spaces to become one
- New office space will only be used by U.S. Drywall, Inc.
- No tenants
- Proposing to add 2 offices, 1 conference room, office supply closet and hallway
- Adding one additional employee to staff
- Exterior changes limited to removal of existing overhead garage door to be replaced with single entrance door and exterior window addition
- 4 additional parking spaces required by zoning
 - Established drywall business
 - Not a retail business
 - Adequate parking for office staff and an occasional visitor
 - Additional office space will not create need for more parking
- Seeking variance from parking requirement
 - Stated reasons in "Variance request letter dated 11/12/99" prepared by Kenneth R. Ferreira, R.L.S., P.E. still apply

The Board discussed the site inspection. The Board noted that Cove Road has on-street parking available which could easily accommodate four vehicles. The existing parking layout was discussed (6 spaces total/1 handicap accessible). The business was discussed, and the Board agreed that the drywall business does not require the same type of parking as a retail business.

Chairman Travers invited public comment. None was received.

Jacqueline Figueiredo motioned to close the public portion of the hearing, which was seconded by Peter Smola, and made unanimous by Chairman Travers.
Unanimous vote. Motion passed.

Findings:

- General findings (locus, zone, etc.)
- Not located within a flood hazard zone
- Parking provided = 6 spaces with one being handicap accessible
- Present parking adequate for additional office space for drywall business
- Hardship:
 - Stated hardship of original variance still applies
 - No additional land to add parking spaces without destroying existing landscaping
 - Size and location of existing structure
 - Cannot provide more parking spaces without removing a portion of building
- No detriment to the public good
- Does not derogate from the intent or purpose of by-law
- On street parking available

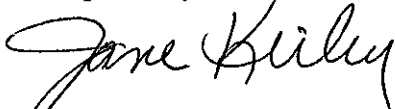
Conditions:

- Standard conditions
- Plans of record
- No sub-leasing
- Subject to further Board approval, modifications and/or other conditions if Z.E.O.determines parking inadequate at any time in the future

Jacqueline Figueiredo motioned to approve the variance with conditions, which was seconded by Peter Smola, and made unanimous by Chairman Travers.
Unanimous vote. Motion passed.

7:25 P.M. Hearing adjourned

Respectfully submitted,



Jane Kirby, Principal Clerk
For the Zoning Board of Appeals

APPROVED

4-23-13



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MINUTES – April 9, 2013

Case #2013-09

Not Your Average Joe's, Inc.
61 State Road

MAP: 169 LOTS: 245 and 246

PRESENT

The Board: Chairman Michael Travers, Jacqueline Figueiredo, and Peter Smola

Also Present

Alternate Board Member Halim Choubah

Daniel C. Perry, Esq. – Representing Not Your Average Joe's, Inc.

Steve Silverstein, President – Not Your Average Joe's, Inc.

7:30 P.M. Chairman opened the hearing

LEGAL AD

Notice is hereby given of a public hearing to be held on Tuesday, April 9, 2013 at 7:30 P.M. in Meeting Room #304, Town Office Building, 400 Slocum Road, Dartmouth, MA on the petition of Not Your Average Joe's, Inc. who is seeking permission to construct parking spaces within the layout of a "paper street". The subject property is located at 61 State Road, Dartmouth, MA in the General Business District and identified on Assessor's Map 169 as Lots 245 and 246. The Petitioner is seeking an Administrative Appeal from the denial of a building permit to construct an expansion of its existing parking lot in accordance with submitted plans showing some parking spaces within a paper street. If the appeal is denied, the Petitioner is seeking a Variance from Section 16.202B of the Town's Zoning By-laws to authorize the proposed parking lot expansion. Information and plans are on file in the office of the Zoning Board of Appeals and may be seen upon request during regular business hours. (Section 27.501-Zoning Enforcement; Section 36.200-Variations; Section 16-Off Street Parking Plan Regulations; Section 16.202B-Parking in Required Setbacks)

ADVERTISED

This hearing was advertised in the Chronicle on March 20, 2013 & March 27, 2013

ABUTTER'S LIST

A certified abutter's list is available for review.

Jacqueline Figueiredo motioned to waive reading the list into the record, which was seconded by Peter Smola, and made unanimous by Chairman Travers.

Unanimous vote. Motion passed.

DARTMOUTH TOWN CLERK

2013 JUN 12 A 11:37

RECEIVED

CORRESPONDENCE RECEIVED

- Application time-stamped with the Town Clerk on February 19, 2013 with attached brief and exhibits A through I
- Variance Layout Plan referenced as:
 - Layout Plan prepared for Not Your Average Joe's by Boucher & Heureux, Inc. dated July 3, 2012 revised through July 17, 2012
- Letter from DPW to Planning Director dated July 13, 2012
- Letter from Town Counsel to Planning Director dated October 18, 2012
- Current Assessor's Map showing subject property lots
- Letter to the Board from Donald Perry, Planning Director, dated March 21, 2013

Chairman Travers read into the record:

- Letter to the Board from Donald Perry, Planning Director, dated March 21, 2013

Chairman Travers invited the Petitioner or representative to present the case.

Daniel C. Perry, Esq.

Seeking an Administrative Appeal or a Variance to obtain relief for parking plan approval. The Zoning Enforcement Officer enforced a decision of the Planning Board, which relied on the opinion of Town Counsel for the Petitioner's submitted parking plan.

Town Counsel recommended to the Planning Board that it proceed under the presumption that it must take the street into consideration in approving the proposed parking plan until such time a court order or recorded waiver of easement rights permits otherwise

Administrative Appeal

Seeking to have a parking plan approved for Not Your Average Joe's restaurant. Purchased the abutting property, formerly Baker Books, and intends to demolish building and expand the parking. Went before Planning Board.

As part of the process, the Planning Director ran into an old Town Assessor's Map which showed a street called Hickory Street on the subject property.

Planning Director determined the parking plan should comply with the design standards regarding a street in this parking area. (No parking within a street or within 10 feet of a street). Net impact is loss of approximately 30 parking spaces
Seeking reversal of decision that Hickory Street as shown on the Assessor's map needs to be treated as a street for zoning purposes.

Argument

Massachusetts decisions on similar cases effectively state: If there continue to be private rights in a paper street, it needs to be treated as a street for zoning purposes.

If the rights have been extinguished, the street can be ignored for zoning purposes.

- Conclusive evidence that the rights are gone
 - Abandonment
- Paper street (easement) = somebody's right to use the street or build the street
 - Important from a zoning perspective because if the street can be built, it interferes with the proposed use of the property
- Rights can be lost with evidence that the owners have forever given up the right by a clear action or physical circumstances that make it clear that it can't be used
 - Hickory Street created in 1901 as a residential subdivision (Plan of Land Belonging to Allan C. Snow"
 - On this plan the road was called Buttonwood Avenue not Hickory Street
 - No Planning Board back then
 - Surveyor prepared plan showing lots and street and put it on record
 - Three lots were sold, no one did anything with them
 - Over 30 years, became two lots
 - Poole and Langlois were owners
 - No street reference in any of the property transfers
 - No easement created by deed
 - Typically, the roads just go away
 - Assessor's kept this road on their map
 - The State widened Rte. 6 and showed this paper street in the layout of Rte. 6 -- believed this is why the street stayed on the Assessor's map
- Physical circumstances to prove abandonment
 - Remaining portion of Hickory Street/Buttonwood Avenue not owned by Not Your Average Joe's, Inc. is wetlands
 - Unbuildable road
 - Lots laid out in the original residential subdivision located in wetlands and unbuildable
- Deed to the Petitioner from Paul and Carolyn Langlois included all of the Langlios' interest in Hickory Street/Buttonwood Avenue
 - 50 foot way that divided Lot 246 from Lot 248 on Assessor's Map 169
- Only person with interest in Hickory Street/Buttonwood Avenue is Bishop of Fall River
 - No reason to build road to access wetlands
- No negative consequence from ignoring the paper street
- Currently used for parking spaces
- Seeking to add more spaces
- No detriment to the Town
- Not inconsistent with the intent or purposes of the by-law

Stated that there was no question the rights to the paper street had gone away, which is why they submitted the Title Insurance. Stated that the Town isn't achieving anything by forcing a Land Court decision because Land Court would make the Town prove that there are no rights there.

Jacqueline Figueiredo

Questioned the existing parking spaces in the paper street, noting that the plan shows travel aisle and old parking spaces to be removed. Noted 12 existing spaces abutting the paper street. Questioned parking setbacks pursuant to 16.202B and the zoning for Map 169 Lot 248, as it appeared to be residentially zoned on the map. Questioned the lot coverage.

Attorney Perry

Reviewed the parking plan, showing 7 existing parking spaces proposed to be removed in Hickory Street/Buttonwood Avenue and the 12 existing abutting spaces. Regarding lot coverage, explained that the Conservation Commission approved the plan this evening.

Steven Silverstein

Stated that there is a real estate office on the first floor of 75 State Rd. and an apartment on the second floor. Noted that Conservation approved the plan because there's a reduction in impervious lot coverage.

The Board discussed paper streets in general.

Attorney Perry

Stated that all the documents in the Registry of Deeds show that the street has gone away at this point, and that Not Your Average Joe's, Inc. owns it.

Peter Smola

Referencing Town Counsel's letter, questioned if there has been a Title examination and certification has been completed.

Attorney Perry

Stated that Town Counsel received the Title Insurance commitment made after the Title Examination. Explained that since the commitment, the Title Insurance Policy has actually been issued as his client has since bought the property.

Jacqueline Figueiredo

Found that the Mr. Langlois gave up any rights to the streets to Not Your Average Joe's, Inc. as part of the deed, and thought the only person with potential rights to the street would be the Bishop of Fall River.

Attorney Perry

Agreed, and noted that all the land not owned by Not Your Average Joe's, Inc. that could possibly be used for the purpose of a street is wetlands.

Halim Choubah

Stated that the driveway aisle of 24' going through the parking lot could be left open as an easement or public way as a solution to anyone claiming rights to the street.

Peter Smola

Felt the Board could take a practical and historical approach to this paper street issue. Reviewed the history of laying out streets in the past and how the streets disappeared over time. Felt the practical side to this case, aside from case law, was that the paper street has been abandoned and historically used as parking. Felt that the parking plan was an improvement.

Jacqueline Figueiredo

Found that leaving the access aisle of the paper street open and available for use by any abutting owner ensured that no potential rights to the street would be lost. Noted that the submitted parking plan shows more spaces than necessary for the business.

Mr. Silverstein

Clarified that there are more spaces than are required by the Town, but the reality is the spaces are necessary for the business.

The Board discussed the improved parking, reduction of impervious lot coverage, and improved ingress and egress with the submitted plan. The Board felt that it could rule on the Administrative Appeal and waive the variance application, noting that the Petitioner will need to go back to the Planning Board for plan approval.

Attorney Perry

Committed, for the record, to keep the passageway open for vehicular use for owners of abutting properties.

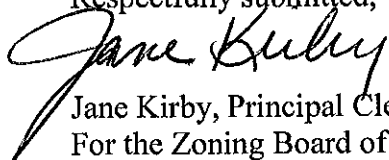
Jacqueline Figueiredo

Motioned to reverse the order of the Zoning Enforcement Officer's decision; noting the Petitioner will make available for any purpose for which a public way can be used, the aisle between the westernmost parking spaces for use of all abutting properties. Found the Petitioner has demonstrated to the satisfaction of the Board that for purposes of zoning, Hickory Street/Buttonwood Avenue has been abandoned.

Peter Smola seconded the motion, and Chairman Travers made the motion unanimous. Unanimous vote. Motion passed.

8:25 P.M. Hearing adjourned

Respectfully submitted,



Jane Kirby, Principal Clerk
For the Zoning Board of Appeals

APPROVED

6-11-13