

MINUTES



TOWN OF DARTMOUTH
Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, Massachusetts 02747
(508) 910-1868

RECEIVED
1/8/2014 @ 10:53am
DARTMOUTH TOWN CLERK

Board Members

Jacqueline Figueiredo, Chairman
Halim Choubah, Clerk
Robert Gardner

MINUTES

DATE OF HEARING: December 3, 2013

APPOINTMENT: SIX-MONTH EXTENSION
CASE NO: VARIANCE CASE: 2012-33
Petitioner/Applicant: Antonio Farias and Paula Farias
Representative: SITEC, INC.
Property Owners: Antonio Farias and Paula Farias
Subject Property: 9 Kennedy St, Dartmouth, MA
District: Single Residence A
MAP: 184 LOTS: 10 and 12 BOOK: 10637 PAGE: 172

PRESENT: Chairman Jacqueline Figueiredo, Halim Choubah, Robert Gardner, Kevin Melo, David Dore and Principal Clerk Assistant Tina Cabral

ABSENT: Jay Peabody Also Present: Steve Gioiosa/SITEC, INC.

6:25 P.M. Chairman Figueiredo opened the hearing

DOCUMENTS ON FILE

- Six Month Extension application time-stamped with the Town Clerk on 11/11/13
- Variance Decision Case: 2012-33

Chairman Figueiredo read into the record Petitioner's request for the Six Month Extension.

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

Steve Gioiosa/SITEC, INC: Commented that due to the Petitioner's financial hardship the project is taking longer than expected to be completed.

No questions by board members.

The Board made the following findings:

- Property locus
- Description of Case: 2012-33 Variance heard on 12/04/12
- Extension request due to economic and weather conditions
- Extension request filed prior to Variance decision expiration date of 12/12/13

MINUTES

Halim Choubah motioned to GRANT the SIX-MONTH EXTENSION. Motion was seconded by Robert Gardner. Motion passed unanimously.

6:30 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals

Date of Approval: 1-7-14

APPROVED

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Board of Appeals Members
Jacqueline Figueiredo, Chairman
Halim Choubah, Clerk
Robert Gardner

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11/8/2014 @ 10:53 AM
DARTMOUTH TOWN CLERK

MINUTES

DATE OF HEARING: December 3, 2013

CASE: VARIANCE
CASE NO: 2013-39
Petitioner/Applicant: Schwartz Center for Children
Property Owner: The Cerebral Palsy Council of Greater New Bedford, Inc.
Representative: SITEC, INC.
Subject Property: 1 Posa Place, Dartmouth MA 02747
District: Single Residence B/Aquifer Protection District
MAP: 158 LOT: 54-1 BOOK: 7415 PAGE: 82

PRESENT: The Board: Chairman Jacqueline Figueiredo, Halim Choubah, Robert Gardner, Kevin Melo, David Dore and Principal Clerk Assistant, Tina Cabral

ABSENT: Jay Peabody

ALSO PRESENT: Steve Gioiosa/SITEC, INC. and Jim Knox

6:30 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, December 3, 2013 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of The Schwartz Center for Children who is seeking a **VARIANCE** for approval to reconfigure and expand their parking facility to allow parking within the required setback from a right-of-way and within the layout of a private right-of-way. The property is located at 1 Posa Place, Dartmouth, MA and identified on Assessor's Map 158 as Lot 54-1. (Section 16-Off Street Parking Plan Regulations)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, November 13, 2013 and Wednesday, November 20, 2013.

ABUTTER'S LIST: Robert Gardner motioned to waive the reading of the abutter's list into the record, which was seconded by Halim Choubah. Motion passed unanimously. A certified abutter's list is available for review in the office of the Zoning Board of Appeals.

DOCUMENTS ON FILE

- Variance application time-stamped with the Town Clerk on 11-5-13 with brief
- Legal Ad
- Certified Abutter's List

MINUTES

- Vision Appraisal Card
- Letter from Planning Director, Donald Perry, dated 11/25/13
- Property photos
- Site Layout Plan/Existing Conditions, dated 10-13-04
- Modified Site Layout Plan, dated 10-18-13

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated 11-25-13.

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

Steve Gioiosa/SITEC, INC.: Petitioner is seeking a proposed parking layout as the facility has moved forward and as a result additional parking is required to assist parents and staff with safe options for maneuvering and parking. Petitioner is proposing an improved turning radius at the east end of the main entrance drive to facilitate larger vehicles. With the modified radius, parking that is currently situated on the north side of the exit drive will be relocated to the east side. The relocated parking spaces will be set on a 60 degree angle to promote a one way circulation for traffic safety. Eleven parking spaces are proposed within the setback and/or right-of-way for Posa Place. A new concrete sidewalk and post and rail fence is proposed along the new parking spaces for pedestrian access and to prevent pedestrian cut thru across the landscaping and access drive.

Chairman Figueiredo: Commented that on the application it stated a portion of this site is in a flood zone and asked if the flood zone would be a problem for this project.

Steve Gioiosa/SITEC, INC.: Responded that on the east side of the site, the topography drops significantly to a wetland area that borders the Paskamansett River. These wetlands (flood zone area) are the result of soil conditions in this area and this topography does not impact or extend to the proposed project area.

Chairman Figueiredo: Questioned what the correct number of proposed parking spaces will be. On the proposed plan it listed 82. On the existing plan it stated 72. Asked if there should be two less parking spaces listed on the proposed plan and should it state 80 proposed parking spaces.

Steve Gioiosa/SITEC, INC.: Answered yes it should be 80 proposed parking spaces.

Chairman Figueiredo: Requested that Mr. Gioiosa submit a corrected plan showing the 80 proposed parking spaces for the Board of Appeals file.

Chairman Figueiredo: Questioned if the lot coverage will remain at 30%.

Steve Gioiosa/SITEC, INC.: Answered that yes lot coverage will remain at 30%.

Chairman Figueiredo invited any board members to ask questions.

No further questions by board members.

Chairman Figueiredo invited public comments regarding this project.

MINUTES

No public comments.

The Board made findings:

- Locus property
- Size and ownership of property
- Planning Board approval for school/rehab center in 2004
- Portion of the property in vegetated wetland
- Site development outside flood plain area
- Schwartz Children Center built in 2005 with parking area, utilities, drainage system and playground area.
- Conservation Commission allowed work within the buffer zone of vegetated wetlands.
- Description of Variance
- Proposed project area to be used by Schwartz Center only.
- No encroachment to North abutter
- There's to be an improvement in traffic flow.
- Existing and proposed parking in compliance with Section 16
- New concrete sidewalk and split rail fence along the new parking spaces to provide additional safety for pedestrians
- Requested Variance meets the statutory requirements for granting a Variance pursuant to Massachusetts General Laws Chapter 40A §10.

The Board made the following conditions:

- Subject to standard Town Board/Agencies' approvals and conditions
- Submitted Plans to become Plans of Record

Halim Choubah motioned to close the public hearing which motion was seconded by Robert Gardner. Motion passed unanimously.

Halim Choubah makes the motion to GRANT the VARIANCE based upon the findings and conditions as stated. Motion was seconded by Robert Gardner and motion passed unanimously.

7:02 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals

Date of Approval: 1-7-14

APPROVED

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Office of the Zoning Board of Appeals
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(508) 910-1868

Board Members

Jacqueline Figueiredo, Chairman
Halim Choubah, Clerk
Robert Gardner

MINUTES

DATE OF HEARING: December 3, 2013

CASE: AMENDMENT TO DECISION CASE: 1991-30
CASE NO: 2013-42
Representative: Thomas J. Mathieu, Esq.
Petitioner/Applicant: Mills and Ghenta, DDS, PC
Property Owners: Shalom Realty, L.L.C.
Subject Property: 570 Hawthorn St, Dartmouth, MA 02747
District: Single Residence A MAP: 154 LOT: 61 BOOK: 4021 PAGE: 83

DARTMOUTH TOWN CLERK

1/8/2014 @ 10:54 am

RECEIVED

PRESENT: The Board: Chairman, Jacqueline Figueiredo, Halim Choubah, Kevin Melo, David Dore and Principal Clerk Assistant, Tina Cabral

Also Present: Thomas J. Mathieu, Esq., and Other Interested Parties

Recused: Robert Gardner

8:15 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, December 3, 2013 at 7:30 P.M.** in Meeting Room #304, Town Hall, 400 Slocum Rd, Dartmouth, MA on the petition of Mills and Ghenta, DDS, PC who are seeking an Amendment to Special Permit and Variance Case#1991-30 to allow Petitioner the utilization of the upper level of existing building as a dental office; to lease lower level to future professional services, and to install a sign. The property is located at 570 Hawthorn St, Dartmouth, MA as identified on Assessor's Map 154 as Lot 61 in the Single Residence A District.

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, November 20, 2013 and Wednesday, November 27, 2013.

ABUTTER'S LIST: David Dore motioned to waive the reading of the abutter's list into the record, which was seconded by Halim Choubah. Motion passed unanimously. A certified abutter's list is available for review in the office of the Zoning Board of Appeals.

DOCUMENTS ON FILE

- Amendment application time-stamped with the Town Clerk on 11/15/13 with attached brief
- Assessor's parcel card for Map 154 Lot 61
- Certified Abutter's List dated 11/18/13

MINUTES

- Letter from Planning Director, Donald Perry, dated 11/22/13
- A-1 Preliminary Floor Plan, dated 9/19/13
- S-1 Preliminary Parking Plan, dated 9/19/13
- 1991 Special Permit and Variance Decision Case: 1991-30
- 1991 Extension hearing Decision Case: 1991-30E
- Quitclaim Deed for subject property dated 12/29/97
- Storm Water Management Agreement dated 3/9/92
- Correspondence from Paula Faria, Interested Party, dated 12/3/13

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated 11/22/13.

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

Thomas J. Mathieu, Esq.

Mills and Ghenta have a dental office at 516 Hawthorn Street and have outgrown their current office space. Their employee staff currently consists of 20 employees and they are interested in purchasing the subject property located at 570 Hawthorn Street in order to utilize the upper floor of the building as a dental office with approximately 1 million dollars of investment into renovations and dental equipment in order to accommodate the rapidly growing dental business. Petitioner is seeking to amend the variance and special permit decision case: 1991-30 to allow the following:

- to utilize the upper level of the building for a dental practice
- to lease the lower level of the building to future professional services
- to allow the facility open until 9:00 p.m. two nights per week with a maximum of three physicians present on one (1) night per week for patient care
- to allow surgical procedures to be performed at said site
- to allow leasing of the lower level of the building for professional uses

Chairman Figueiredo: Questioned if the submitted parking plan is identical to the existing parking on the property and also commented that this property has a large history of Variances and Special Permits.

Thomas J. Mathieu, Esq.: Answered that it is the identical parking layout with approximately 153 parking spaces.

Chairman Figueiredo invited any board members to ask questions.

No further questions by board members.

Chairman Figueiredo invited public comments regarding this project.

Mark Carney: Resides at 566 Hawthorn St., which was the “The Dow House” that was temporarily used as office space for the medical practice at 570 Hawthorn St and reverted back to residential use in 2009. He expressed concern regarding the non-maintenance of landscaping on the subject property and the stone wall on the property line. He explained that he shares a drainage easement with the

MINUTES

subject property, and requested that he be allowed to move his boat off and onto his property via the driveway on the subject property.

Chairman Figueiredo: Responded that the request for moving his boat via the subject property would need to be made directly with the Petitioners since the Board had no jurisdiction over this matter. She stated that the landscaping refurbishment and upkeep would be part of the decision should the Board vote positively on the proposed Amendment.

Paula Faria: Resides at 41 Oliver St. Ms. Faria voiced her opinion in opposition of the proposed project due to a storm water drainage issue that runs onto her property. Ms. Faria is not an abutter of the subject property, but has been before the Board of Appeals going back to the 1980s when she first purchased her property relative to water drainage issues which she believes comes from the properties situated on Hawthorn Street.

A lengthy discussion ensued relative to Ms. Faria's concerns.

Thomas J. Mathieu, Esq.: Commented that as part of the prior Variance on the property an Order of Conditions was issued by the Conversation Commission.

Halim Choubah: Mentioned that a similar issue (Ms. Faria's concern about water drainage onto her property) arose before Board of Appeals regarding the property situated at 536 Hawthorn St. in 2012. The Department of Public Works had gone out to inspect the storm water system and reported that it was functioning properly.

No further comments.

The Board made findings:

- Locus property
- Identification of property owner and Petitioners
- Description of Amendment Proposal
- Cited history of Special Permit/Variance/Extension hearings
- Cited Case #2009-23 for "Dow House"
- Cited modifications to amended Conditions requested and approved
- Proposal will not increase parking or lot coverage
- Proposal will not change footprint of existing building
- Proposed uses will not be more detrimental than previous use
- Proposal will not affect neighboring wetlands
- Proposal meets the requirements of an Amendment

The Board made conditions:

- All prior conditions and/or restrictions not modified or amended from Case #1991-30 remain in full force and effect
- Permits subject to standard Town Board/Agencies' approvals and conditions needed
- All future professional uses must meet off-street parking requirements
- Site landscaping renovation plan and signage proposal to be approved by Planning Director prior to issuance of building permit

MINUTES

- Existing fence/stone wall on subject property to be maintained by Petitioner/subsequent owner
- Petitioner to hire consultant services to complete inspection/review of the Storm Water Management System and provide Zoning Enforcement Officer with a report for the completion of needed repairs or replacement of the system before issuance of building permit
- Should Storm Water Management System be found to be repaired or replaced, Petitioner is responsible for cost of said repair or replacement
- Petitioner/subsequent owner to pay fees associated with hiring professional engineer to complete said inspection and obtain required report
- Facility to remain for use by private doctors for dental practice on upper level, and other possible professional services on the lower level, specifically (medical, dental, legal, accounting, engineering or real estate practice(s)). Any other type of service not listed requires approval of the Board of Appeals
- Dental practice allowed to perform/provide usual and necessary procedures, surgery and laboratory services
- Dental facility allowed to be open until 9:00 p.m. two nights per week Monday through Friday, but prohibited on Saturdays and Sundays
- Submitted Plans "A-1 and S-1" dated 9/9/13 to be plans of record with additional landscaping and signage plans as approved by the Planning Director.

David Dore motioned to close the public hearing which motion was seconded by Halim Choubah. Motion passed unanimously.

*Halim Choubah motioned to **GRANT** the **AMENDMENT** based upon the findings and conditions as stated. Motion was seconded by David Dore and motion passed unanimously.*

9:30 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals

Date of Approval: 1-7-14

APPROVED

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Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, Massachusetts 02747
(508) 910-1868

Board of Appeals Members
Jacqueline Figueiredo, Chairman
Halim Choubah, Clerk
Robert Gardner

MINUTES

DATE OF HEARING: December 3, 2013

CASE: VARIANCE
CASE NO: 2013-40
Petitioner/Applicant: Debby McCarthy
Property Owner: Debby McCarthy
Representative: James W. Marsh, Esq.
Subject Property: 20 Elliot Street, Dartmouth, MA 02747
District: Single Residence A
MAP: 183 LOT: 7 BOOK: 76 PAGE: 39

DARTMOUTH TOWN CLERK

11/8/2014 @ 10:54 am

RECEIVED

PRESENT: The Board: Chairman Jacqueline Figueiredo, Halim Choubah, Robert Gardner, Associate Board Members, Kevin Melo, David Dore and Principal Clerk Assistant, Tina Cabral

ABSENT: Jay Peabody

Also Present: James W. Marsh, Esq. and Other Interested Parties

7:10 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, December 3, 2013 at 6:45 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Debby McCarthy who is seeking a VARIANCE to allow to evenly divide by Form A the 40,000 s.f. subject property to construct a single-family home on the newly created 20,000 s.f. vacant lot on the property wherein the proposed home will be 41' from the street and 9' feet short of the 50' front yard setback required by Zoning. The property is located at 20 Elliot Street and identified on Assessor's Map 183, Lot 7 in the Single Residence A. District. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 4A.401-Lot Area and Section 4A.404-Setbacks)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, November 20, 2013 and Wednesday, November 27, 2013.

ABUTTER'S LIST: Robert Gardner motioned to waive the reading of the abutter's list into the record, which was seconded by Halim Choubah. Motion passed unanimously. A certified abutter's list is available for review in the office of the Zoning Board of Appeals.

DOCUMENTS ON FILE

- Variance application time-stamped with the Town Clerk on 11/12/13 with brief
- Legal Ad

MINUTES

- Certified Abutter's List
- Vision Appraisal Card
- Letter from Planning Director, Donald Perry, dated 11/22/13
- Photos and Variance Plan of Land dated 11/1/13
- GIS Map
- Photos of proposed home dated 12/3/13
- Prior Variance decisions: 4/11/79, 6/10/91 (Case#1991-20), 8/5/91 (Case#1991-37)
- Document signed by 11 neighboring abutters in support of the Variance application

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated 11/22/13 and read comments from the Director of Health and the Department of Public Works.

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

James W. Marsh, Esq.: The Petitioner is proposing to evenly divide by Form A the 40,000 s.f. property to enable construction of a new single-family residence for the Petitioners to reside in. Each lot would be 20,000 s.f. The proposed residence will have a total of 1,344 s.f. of gross floor area. The existing residence on the lot will remain for the family of Mrs. McCarthy's daughter. There will be no septic system or private well concerns as the new residence would be tied into the existing sewer line located on Elliot Street. The proposed construction will be of a size that will match the majority of the existing homes in the subdivision. The proposed construction would comply with side and rear setbacks, frontage, lot coverage and all other requirements applicable to a Residence A District other than front yard setback.

Chairman Figueiredo invited public comments regarding this project.

Debby McCarthy: She has resided at the subject property for 30 years and recently had a knee replacement and due to the house having a steep driveway there is difficulty for her to walk up to the residence. She is looking to downsize the home and is interested in staying in the current neighborhood. She cannot use the upstairs of her home due to not being able to climb the stairs. The lot is a 40,000 s.f. lot and is narrow and long and is uniquely shaped. The area where the proposed construction would be is a wooded area where people currently dump trash, etc.

Jill Carroll: She is the daughter of the Petitioner and is interested in residing in her mother's current residence so that she is closer to her mother to help care for her, to be closer to her children's school and having her parents nearby is a convenience for the family as she and her husband leave for work before her children begin school.

Bob Michaud: Resides in the neighborhood and believes that this proposed project will improve the neighborhood as the lot is being used to dump trash on it.

Acting Chairman Choubah invited any board members to ask questions.

Chairman Figueiredo: Questioned whether the existing dwelling is already tied into water and sewer.

James W. Marsh, Esq.: Answered that the dwelling is tied into water, but not sewer.

Halim Choubah: Asked what size would the proposed dwelling be.

MINUTES

James W. Marsh, Esq.: Answered it would be a one-level ranch style home with 1,100 s.f.

Halim Choubah: Commented if Petitioner was aware or interested in having an accessory apartment on her property instead of a new construction.

Debby McCarthy: Answered that she has looked into accessory apartments and it would not fit into the look of the neighborhood and she is not interested in that option of living.

A lengthy discussion ensued relative to this Variance meeting the statutory hardship.

No further questions by board members.

No further public comments.

The Board made findings:

- Locus property
- Petitioner has owned property since 1983
- Prior Variances for this property include the following:
 - 4/11/79 Variance denied to subdivide the property into 3 buildable lots and property was owned by Manuel and Teresa Trahan
 - 6/10/91 Variance denied without prejudice to create 2 non-conforming buildable lots and property was owned at that time by Debby McCarthy. Petitioner was unable to attend hearing and Board denied without prejudice allowing Petitioner to reapply.
 - 8/5/91 Variance denied to create 2 non-conforming buildable lots
- The Petitioner is seeking a Variance to allow to evenly divide the 40,000 s.f. lot by Form A and to allow relief for front yard setback
- Section 4A.401-Lot Area
- Section 4A.404-Setbacks
- Petitioner's proposal would result in two 20,000 s.f. lots
- Existing dwelling would occupy one lot and the second lot would be used to construct a single family residence
- Front setback relief for the new home would be required since it would be setback 41 ft from the street
- New residence would conform to Zoning By-Laws other than the two Sections for which relief is being sought
- There has not been a substantial change with this lot since 1991
- The subject property is a wooded flat lot with a rectangular shape with no presence of any wetlands or other soil conditions
- Hardship is primarily personal and not related to specifics of the lot
- Variance does not meet the statutory requirements for granting a Variance pursuant to Massachusetts General Laws Chapter 40A §10.

Halim Choubah motioned to close the public hearing which motion was seconded by Robert Gardner. Motion passed unanimously.

MINUTES

Halim Choubah makes the motion to DENY the VARIANCE based upon the findings and conditions as stated. Motion was seconded by Robert Gardner and motion passed unanimously.

8:05 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals

Date of Approval: 1-7-14

APPROVED

ADMINISTRATIVE MINUTES



TOWN OF DARTMOUTH
Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, Massachusetts 02747
(508) 910-1868

Board Members

Jacqueline Figueiredo, Chairman
Halim Choubah, Clerk
Robert Gardner

ADMINISTRATIVE MINUTES
FOR DATE OF HEARING: DECEMBER 3, 2013

PRESENT: The Board, Chairman Jacqueline Figueiredo, Halim Choubah, Robert Gardner, Associate Members David Dore and Kevin Melo, and Principal Clerk Assistant, Tina Cabral

ABSENT: Jay Peabody

6:00 P.M. Chairman Figueiredo opened the meeting

ADMINISTRATIVE

The Board unanimously voted and approved the following Minutes:

- Administrative Minutes of 11/19/13 Meeting
- Special Permit Case: 2013-35 (90 Allen's Neck Road)
- Special Permit Case: 2013-38 (23 Clark's Cove Drive)

DISCUSSION

- The Board reviewed further revisions to the Rules and Regulations of the Board of Appeals and made the following changes:
 - Under Section, 1.4 Site Visits:
 - in first sentence change the word "the" to "a";
 - add at end of first sentence: "so long as the members do not deliberate at subject property."
 - remove last sentence
 - add a new sentence: "Board Member(s) will wear their town name badges when possible and will identify themselves to the property owner. Should a quorum of Members visit a site as a group then such date and time of visit shall be posted. However, Applicant/Petitioner(s) may still deny public admission to the site."
 - add new paragraph: "There shall be no deliberation by visiting members at the on-site inspection or outside of the public hearing."
 - Under Section, 1.6 Hearing Procedure:
 - add a checklist of Hearing Process Procedures prepared by Chairman

RECEIVED
1/8/2014 @
10:55am
DARTMOUTH TOWN CLERK

ADMINISTRATIVE MINUTES

The Board unanimously voted to continue the discussion and review of the Rules and Regulations Governing the Procedures of the Board of Appeals to January 7, 2014.

6:25 P.M. Adjournment

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals

Date of Approval: 1-7-14

APPROVED