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ADMINISTRATIVE MINUTES

Date of Meeting: **May 20, 2014**

Present:

The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner

Also Present:

Alternate Board Members David Dore and Michael Medeiros, Esq.

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

The following minutes were submitted for review and approval:

Dated April 29, 2014

- Administrative Minutes
- Case #2014-9 89 William Street
- Case #2014-10 73 Naushon Avenue
- Case #2014-11 365 Faunce Corner Road

A motion was made by Halim Choubah, seconded by Robert Gardner, and unanimously voted to approve the above-referenced minutes as amended.

Annual election results:

Jacqueline Figueiredo, Chairman  
Halim Choubah, Clerk  
Halim Choubah, Lincoln Park Plan Approval Authority  
Robert Gardner, Member  
David Dore, Alternate Member  
Michael Medeiros, Esq., Alternate Member

Chairman Figueiredo announced that an alternate member is needed to fill the vacancy left as a result of Kevin Melo's appointment to the Planning Board. She stated that anyone interested should submit a letter to the Select Board's office.

Respectfully submitted,

*Jane Kirby*

Jane Kirby, Temporary Clerk  
For the Zoning Board of Appeals

Date of approval: JUNE 11, 2014

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MINUTES

Date of Continued Hearing: May 20, 2014  
 Original Hearing Date: March 4, 2014 (cont. to April 29, 2014)

**SPECIAL PERMIT**

Case Number: 2014-9

Petitioner/Applicant: Emmanuel Correia  
 Property Owner: Jose L. Correia, et al  
 Representative: Manuel B. Garcia, P.E.  
 Subject Property: 89 William Street  
 Map 123 as Lot 212  
 Zoning District: General Residence District

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Present:

The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner

Also Present:

Alternate Board Members David Dore and Michael Medeiros, Esq.  
 Manuel Garcia, P.E.  
 Emmanuel Correia  
 Numerous abutters in opposition

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

The Petitioners are seeking a Special Permit to allow the construction of a second level on the existing two-family, single-level duplex structure. (Section 3B.202 – Expansion of Non-Conforming One or Two-Family Structures)

Chairman Figueiredo stated that this hearing was continued to allow the reconfiguration of the floor plan to show only 2 bedrooms in each residential unit.

Chairman Figueiredo noted that the revised plan submitted for this hearing date is referenced as:

Drawn by: JC Clocks Co. Inc.  
 9 Ventura Drive  
 Dartmouth, MA  
  
 Project: Correia Residence  
 89 William Street  
 Dartmouth, MA  
  
 Dated: 4/30/14

Chairman Figueiredo also explained that the deadline for the vote and filing of this decision was extended to June 17, 2014.

Chairman Figueiredo invited the petitioner or representative to speak.

Manuel Garcia, P.E.

Reviewed the plan revisions for the Board:

- Duplex constructed in the 1950s
- Exterior changes include 2 new decks
- Increase in lot coverage
- Floor plans (4 bedroom duplex)
- Renderings
- Cape Cod style
- Additional parking with east side driveway

Reminded the Board that the Building Commissioner submitted a letter dated September 18, 2013, which stated that the structure is a legal two-family dwelling. Stated that the proposed expansion is not more detrimental than the existing non-conforming 5 bedroom duplex.

Chairman Figueiredo invited public comment at this time.

Signatures in opposition were revised to show a total of 50+/- signatures (including the original 33).

Halim Choubah motioned to accept the revised signatures in opposition, which was seconded by Robert Gardner, and made unanimous by Chairman Figueiredo. Motion passed. Revised signature sheets part filed as part of the record.

Abutter concerns expressed:

- Bedrooms as defined by Dartmouth bylaws require 95 s.f.
  - Existing structure's "bedroom" only contains 72 s.f.
  - Existing structure only 4 bedrooms, not 5 (Assessor's records correct)
- The only way to remain a 4 bedroom structure is to not allow the 2<sup>nd</sup> floor expansion
- Expansion detrimental to the neighborhood
  - Increased traffic
  - Increased parking on street due to lack of off-street parking
- Proposed additional driveway not allowed
  - Bylaw only allows one curb cut per 100 feet of frontage
- Existing non-conforming house is more compliant than proposed expansion
  - Proposed expansion increases the non-conformity and is detrimental to the neighborhood
- Concerned with UMass students renting this duplex

Board discussion ensued regarding the proposed second driveway.

Manuel Garcia stated that the additional curb cut was pre-existing. The Board noted that the Zoning Enforcement Officer would make the determination as to whether a Variance for the extra curb cut would be required. Chairman Figueiredo also noted that there is a proposed article that will go before Town Meeting on June 3, 2014 to allow additional curb cuts on properties with less frontage.

Lengthy discussion regarding the proposed expansion occurred, with numerous abutters expressing the above-reference concerns and reasons they believed the proposal was detrimental to the neighborhood.

The Board addressed each comment and offered opinions and explanations. Chairman Figueiredo invited more public comment that had not been addressed at this meeting. No more comments were received.

At this time, Chairman Figueiredo reviewed some findings for discussion:

- General locus/zoning district
- Jose L. Correia has owned the property since Oct. 2013
- Legally protected single-family duplex with 5,000 +/- s.f. area/frontage 50 feet
- Duplex allowed use in General Residence District
- Existing 5 bedroom duplex
- Assessor's records shows only 4 bedrooms
- Building Dept. letter dated Sept. 18, 2013 determined legal 2-family dwelling after inspection
- Subject property's existing condition shown in Certified Plot Plan by Romanelli Associates, Inc. dated 11/19/13
- Special Permit to allow the reconstruction of the existing dwelling by adding a second floor with a full dormer and redesigning the interior of the dwelling
  - Proposed expansion to include two small additions to the building; addition of 3 wooden decks; addition of a second curb cut and paved driveway; replace the existing concrete patio with new stairs, porch and walkway
  - Removal of existing shed and reduction in concrete pad for future shed
  - Filling existing 4 foot crawl space and replacing with concrete slab
  - Additional two bathrooms on second floor
- Proposed height meets development standards
- Most of side setbacks to be reduced by .2' to .3'
- Abutting properties include a vacant lot and seven surrounding lots, four of which have larger lot area and all are single family homes
- Additional curb cut on the east side will reduce a setback from 10.7 feet to zero since the driveway would abut the existing retaining wall
- Rear setback to be reduced from 35.6' to 27.6' which meets standard condition for General Residence
- Front setback to be reduced by .2'
- Increase in lot coverage from 2,284 s.f. to 2,450 s.f.
- Proposed duplex – each residential unit to contain 2 bedrooms (existing 5 bedroom duplex will now have a maximum of 4 bedrooms)

Proposed Conditions:

- Owner will secure all of the necessary permits and approvals from all applicable Boards and Agencies prior to the issuance of a building permit
- Compliance with state housing codes per Director of Public Health
- Subject to yearly inspection to determine no increase to number of bedrooms
- Plan of record
- Variance, if required, for additional curb cut

Board discussion ensued as to whether or not the proposed expansion was more detrimental to the neighborhood than the existing, non-conforming structure.

Board comments:

- Residents expressed traffic and safety concerns
  - If the existing structure is rented out as is, all the issues and concerns expressed at this hearing still exist even without the proposed expansion
  - The existing property creates the same on-street parking concerns and could potentially generate more traffic (5 bedrooms reduced to 4 bedrooms)
  - If rented out as is, parking and traffic issues could occur even if the Special Permit is denied
- Aesthetically pleasing architectural design
- Proposed size appropriate to surrounding properties
  
- Main issue expressed was the number of bedrooms
  - Reduced bedroom count from 5 to 4
- Neighborhood cannot control who resides in the neighborhood
  - Cannot control whether UMass students rent in existing dwelling or proposed
- No increase in density proposed
- Potentially providing additional off-street parking space

Chairman Figueiredo asked for final comments from the general public. No further comment was received.

Robert Gardner motioned to close the public portion of the hearing, which was seconded by Halim Choubah, and made unanimous by Chairman Figueiredo. Motion passed.

Halim Choubah summarized his opinion:

- Reasonable proposal
- Architecturally pleasing
- No increase in density (5 bedrooms reduced to 4 bedrooms)
- Potential for additional off-street parking space
- Not more detrimental to the neighborhood than the existing non-conforming duplex

Halim Choubah motioned to approve the Special Permit with the Board's stated findings and conditions. This motion was seconded by Chairman Figueiredo. Robert Gardner voted to deny this Special Permit citing the same concerns expressed by those opposed to this proposal.

Unanimous vote required. Special Permit denied.

8:05 P.M. Hearing adjourned.

Respectfully submitted,

*Jane Kirby*

Jane Kirby, Temporary Clerk  
For the Zoning Board of Appeals

Date of approval: JUNE 11, 2014



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

MINUTES

Date of Hearing: **May 20, 2014**

**VARIANCE**

Case Number: 2014-12

Petitioner/Applicant: Andrew Garcia, Esq.  
 Property Owner: Alvaro P. Correia

Subject Property: 28 Ventura Drive, Dartmouth, MA  
 Map 63 Lots 11-9 and 11-17  
 Book 3889 Page 70

Zoning District: Limited Industrial

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Present

The Board: Chairman Jacqueline Figueiredo, Robert Gardner, and Alternate Board Member David Dore

Also Present

Halim Choubah, Clerk  
 Alternate Board Member Michael Medeiros, Esq.  
 Alvaro Correia  
 Andrew Garcia, Esq.  
 Christopher Garcia, P.E.

9:15 P.M. Chairman Figueiredo opened the hearing

Application

Petitioner is seeking a Variance to allow the construction of a building addition to the existing APC Auto Body shop. (Section 36 – Board of Appeals; Section 36.200 – Variances; Section 14 – Limited Industrial District)

This hearing was duly advertised in the Chronicle on Wednesday, April 30, 2014 and May 7, 2014.

A certified abutter’s list is available for review.

David Dore motioned to waive reading the abutter’s list into the record, which was seconded by Robert Gardner, and made unanimous by Chairman Figueiredo. Unanimous vote. Motion passed.

Correspondence on file:

- Application time-stamped with the Town Clerk on March 20, 2014 with attached brief by Attorney Andrew J. Garcia
- Site layout plan dated July 11, 2011 with revisions through 8/08/11

- Addition plan dated April 11, 2012
- Letter dated February 13, 1998 from John A. Birknes, Jr., Esq. to the Building Commissioner at that time (David Silveira)
- Original 1998 Special Permit granted by the Select Board
- Variance Case #2009-01 for subject property. Variance granted to allow four used vehicles on its premises at any given time for loan, rental or possibly sale
- Email to Jane Kirby from Fire Chief Arruda dated March 25, 2014
- Memorandum from David Hickox, DPW to Jane Kirby dated March 25, 2014
- Planning Director's review letter dated May 14, 2014

Chairman Figueiredo read into the record:

- Email to Jane Kirby from Fire Chief Arruda dated march 25, 2014
- Memorandum from David Hickox, DPW to Jane Kirby dated March 25, 2014
- Board of Health application comment
- Planning Director's review letter dated May 14, 2014

Chairman Figueiredo invited the petitioner or representative to speak.

Attorney Andrew Garcia

Reviewed the history and background of the subject property.

- 1998 Town Counsel opinion that the auto body use was allowed in the Limited Industrial District
  - 1998 Special Permit granted by the Select Board allowed the operation of an auto body shop with incidental warehousing
- Current interpretation of bylaw does not allow an auto body use in the Limited Industrial District
  - Seeking variance to continue using the premises as an auto body shop with incidental warehousing
  - Requesting variance to allow the auto body use in order to construct a 4,380 square foot addition to the existing auto body shop

Stated that APC Auto Body shop is a successful, growing business that relied on the Town's interpretation of the bylaw in 1998 for the auto body use, and noted that the business is compatible with Limited Industrial uses surrounding the subject property.

Discussion ensued in terms of drainage, wetlands, oil water separators, drainage systems, etc. It was suggested that a yearly inspection report for all site systems be required as a condition if the variance was granted.

Chairman Figueiredo invited public comment. No public comment was received.

Chairman Figueiredo listed Board findings:

- Subject property locus/ownership
- Limited Industrial Zoning District
- 1998 Special Permit granted by Select Board
- 2009 Variance granted by ZBA
- Proposed 4,380 s.f. addition to existing auto body shop building
- Fire protection system for entire facility will be added (approved by Fire Chief 9/26/2012)
- Some demolition required
- Redesigned interior

- Parking plan approved by the Planning Board
- Expanded building and parking plan meet current development standards
- Drainage improvements as shown on plan
- Current bylaw does not allow an Auto Body use in the Limited Industrial District
- Use allowed in 1998 by Special Permit
- Bylaw language has not changed substantially since that time
- Use has not changed and the proposed expansion will not derogate from the intent of the bylaw
- APC has relied on the interpretations of the Town to invest substantial revenues to grow and operate a successful business
- The proposed expanded use not more detrimental to this Limited Industrial District
- Public better served by proposed expansion
- Fire protection system a welcome safety feature
- Low traffic area, low traffic use
- No negative impact on the environment
- Business located in Industrial Park with no neighboring residential areas
- Improved drainage
- Depriving the expansion based on different interpretation of the bylaw is unjust and creates substantial hardship by not allowing the construction of an addition so that APC can remain competitive
- Petitioner meets the statutory requirements for granting a Variance

Conditions:

- The Petitioner and/or any subsequent owner will secure all of the necessary permits and approvals from all applicable Boards and Agencies prior to the issuance of a building permit.
  - DPW, Fire Chief, Board of Health
- Plan of Record (Planning Board approved parking plan)
- Standard yearly inspection report conditions
- Per recommendation of Director of Public Health, renovated facility must comply with air quality and waste handling regulations

David Dore motioned to close the public portion of the hearing, which was seconded by Robert Gardner, and made unanimous by Chairman Figueiredo. Unanimous vote. Motion passed.

Robert Gardner motioned to approve the variance application with the Board's stated findings and conditions, which was seconded by David Dore, and made unanimous by Chairman Figueiredo. Unanimous vote. Motion passed.

9:50 P.M. Hearing adjourned

*Jane Kirby*

Jane Kirby, Temporary Clerk  
For the Zoning Board of Appeals

Date of approval: JUNE 11, 2014





MINUTES

Date of Hearing: **March 20, 2014**

**SPECIAL PERMIT**

Case Number: 2014-13

Petitioner/Applicant: Katrina Carmo

Subject Property: 9 Suffolk Avenue, Dartmouth, MA  
Map 169 Lot 161  
Book 9117 Page 218

Zoning District: General Business District

Present:

The Board:

Chairman Jacqueline Figueiredo, Robert Gardner, and Alternate Member Michael Medeiros, Esq.

Also Present:

Halim Choubah, Clerk

Alternate Board Member David Dore

Katrina and Michael Carmo

8:10 P.M. Chairman Figueiredo opened the public hearing

The Petitioner was seeking a Special Permit to allow the enclosure of an existing deck located closer to the property line than allowed by zoning. (Section 3B.200-Non-Conforming Structures; Section 3B.202-Expansion of Non-Conforming One or Two Family Structures.

This hearing was duly advertised on Wednesday, April 30, 2014 and May 7, 2014.

A certified abutter's list is available for review.

Robert Gardner motioned to waive reading the abutter's list into the record, which was seconded by Michael Medeiros, and made unanimous by Chairman Figueiredo. Motion passed.

Chairman Figueiredo listed the correspondence on file:

- Application time-stamped with the Town Clerk on April 4, 2014
- Plan of Survey dated March 5, 2014
- Conceptual drawing of the proposed sun porch
- Letter from the Planning Director dated May 14, 2014

Chairman Figueiredo read the letter from the Planning Director into the record.

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Chairman Figueiredo clarified that the zoning district the subject property is located in is the General Business District as determined by the Zoning Enforcement Officer, noting the Town's Assessor's records lists the property in the Single Residence A District.

Chairman Figueiredo invited the Petitioner to speak.

Katrina Carmo

Stated that she would like to enclose the existing deck to create a sunroom, and that no further encroachment is proposed. She noted that there are mature trees and a driveway dividing the abutting property home closest to the deck. She then stated that the enclosure would not impact the neighbor in any way.

Discussion ensued in terms of whether the sunroom would be constructed or a modular unit. At this time, it is undetermined because the Petitioner is still in the process of deciding what would be best based on quality and pricing.

Chairman Figueiredo invited public comment. None was received.

Board findings:

- Property locus/current ownership
- Zoned General Business District
- Protected non-conforming structure
- Existing deck located 2.6 feet to 2.7 feet from the south side property line where 20 feet is required by zoning
- Proposing to enclose the existing deck to create sunroom
- Abutting property has existing driveway dividing the dwelling from the subject property line
- Dwelling sufficiently spaced where the enclosure will not be more detrimental than the existing open deck
- Petitioner meets the statutory requirements for granting a Special Permit

Conditions:

- The Petitioner and/or any subsequent owner will secure all of the necessary permits and approvals from all applicable Boards and Agencies prior to the issuance of a building permit.
- Enclosed sunroom will not exceed the roofline of the existing dwelling
- Plan of Record – survey plan dated March 5, 2014

Robert Gardner motioned to close the public portion of the hearing, which was seconded by Michael Medeiros, and made unanimous by Chairman Figueiredo. Motion passed.

Robert Gardner motioned to approve the Special Permit with the Board's stated findings and conditions, which was seconded by Michael Medeiros, and made unanimous by Chairman Figueiredo. Motion passed.

8:30 P.M. Hearing adjourned.

Respectfully submitted,

*Jane Kirby*

Jane Kirby, Temporary Clerk  
For the Zoning Board of Appeals

Date of approval: \_\_\_\_\_



MINUTES

Date of Hearing: **March 20, 2014**

**SPECIAL PERMIT**

Case Number: 2014-14

Petitioner/Applicant: Tom's Auto Repair

Owner: Toufic E. & Lynne S. Raad  
 Representative: Steven Gioiosa, P.E. – SITEC, Inc.

Subject Property: 401 State Road, Dartmouth, MA  
 Map 166 Lots 99, 122, 123, 132

Zoning District: General Business District

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Present

The Board: Chairman Jacqueline Figueiredo, Robert Gardner, and Halim Choubah

Also Present

Alternate Board Members Michael Medeiros, Esq. and David Dore  
 Toufic Raad  
 Steven Gioiosa, P.E.

8:30 P.M. Chairman Figueiredo opened the public hearing

Application

The petitioner is seeking a Special Permit in order to construct a 4,762 square foot building addition with proposed lot coverage of 69%, where 65% is the maximum lot coverage allowed by zoning.  
 [Section 3B – Non-Conforming Uses, Structures, and Lots; 3B.105 – Expansion or Change in Non-Conforming Uses other than One or Two Family Residential Uses (lot coverage)]

This hearing was duly advertised in the Chronicle on Wednesday, April 30, 2014 and May 7, 2014.

A certified abutter's list is available for review.

Robert Gardner motioned to waive reading the list into the record, which was seconded by Halim Choubah, and made unanimous by Chairman Figueiredo. Unanimous vote. Motion passed.

Correspondence on file:

- Application time-stamped with the Town Clerk on April 4, 2014 with attached brief from SITEC, Inc.
- Stormwater Management Report dated March 24, 2014

- Originally submitted Site Layout plans dated February 5, 2014
- Floor plans and elevations plan dated October 28, 2013
- Revised Site Layout plans dated February 5, 2014 with revise date of 5/15/14 – Certificate of Action
- Planning Board’s Certificate of Action dated May 6, 2014
- Memo from Planning Director to Director of Inspectional Services dated May 20, 2014 identifying plan revised to meet the Planning Board’s Certificate of Action dated May 6, 2014
- Site modification plan dated 6-25-05 for Tom’s Auto Repair and Sales
- Planning Director Review letter dated May 14, 2014

Chairman Figueiredo read into the record:

- Planning Director Review letter dated May 14, 2014
- Memo from Planning Director to Director of Inspectional Services dated May 20, 2014 identifying plan revised to meet the Planning Board’s Certificate of Action dated May 6, 2014

Chairman Figueiredo invited the petitioner to speak.

Steven Gioiosa, P.E., SITEC, Inc. (Representing Tom’s Auto Repair)

Stated that the subject property has been owned by Toufic Raad since 1999 and reviewed the proposal for the Board:

- Existing automobile shop in 4,336 s.f. building, paved parking lot, landscaping, and a gravel storage area
- Provides automobile repair service and also has a retail component to sell vehicles
- Current lot coverage of 72%, maximum allowed is 65% (existing non-conforming site)
- Gravel storage area will be eliminated
- Roof runoff will be directed to underground infiltration system
- Catch basins and recharge systems added
- New addition footprint to be positioned within existing impervious gravel area
- New building will be equipped with floor drains connected to an oil and water separator
- Existing non-conforming use (lot coverage) will be reduced and in greater compliance with zoning
- Sufficient on-site parking, off premise parking never an issue
- Adding buffer plantings on residential side (south side)

Chairman Figueiredo pointed out a parking count inconsistency with the Planning Board’s approved parking layout plan. Plan shows 36 provided parking spaces drawn out but the “Total Parking Provided” count on the plan equals 35 spaces.

Board discussion ensued regarding the display area for cars. A total of 17 cars may be displayed, and the site plan shows a designated display area. The gravel storage area was also discussed, and the existing trailer at this location will be removed. Gravel is also considered impervious area.

A Board member questioned whether the subject property was located in the Aquifer Protection District, and Mr. Gioiosa responded that it is not located in the Aquifer Protection District.

Chairman Figueiredo invited public comment at this time. No public comment was received.

Chairman Figueiredo listed the Board's findings:

- Property locus/ownership/zoning district
- Non-conforming lot (41,038 s.f)
- No prior Board of Appeals action for the subject property
- A 2005 Plan in Building Dept. that was approved by Planning Board showing lot coverage in compliance with zoning by-laws at that time
- Existing lot coverage of 72%
- Proposed lot coverage of 69%, where max. allowed is 65%
- Lot coverage mitigated with underground infiltration systems
- Addition meets development standards for frontage, setbacks, building height and lighting
- Parking Plan approved by Planning Board
- Increase in number of off-street parking spaces in accordance with by-laws Section 16
- Landscaped buffer
- Improved on-site drainage system
- Additional catch basins
- Removal of gravel parking storage area
- Cars may be parked inside with new addition
- Vehicle display area for 17 cars
- Proposed addition, parking layout and decrease in lot coverage not more detrimental to neighborhood than existing conditions
- Proposed concrete walkway and new parking layout provide for safer conditions for pedestrian street aisle
- Petitioner meets the statutory requirements for granting a Special Permit

Proposed Conditions:

- The Petitioner and/or any subsequent owner will secure all of the necessary permits and approvals from all applicable Boards and Agencies prior to the issuance of a building permit.
- Plan of Record = Planning Board's approved parking plan (notation correcting parking spaces provided to equal 36 parking spaces)
- Yearly inspection report conditions for drainage systems, oil/water separator, MBC traps

Robert Gardner motioned to close the public portion of the hearing, which was seconded by Halim Choubah, and made unanimous by Chairman Figueiredo. Unanimous vote. Motion passed.

Halim Choubah motioned to approve the Special Permit in accordance with the Board's stated findings and conditions, which was seconded by Robert Gardner, and made unanimous by Chairman Figueiredo.

Unanimous vote. Motion passed.

9:15 P.M. Hearing adjourned.

Respectfully submitted,

*Jane Kirby*

Jane Kirby, Temporary Clerk

For the Zoning Board of Appeals

Date of approval: JUNE 11, 2014