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ADMINISTRATIVE MINUTES
DARTMOUTH TOWN CLERK

DATE OF HEARING: JUNE 11, 2014

6:30 P.M. Chairman Figueiredo opened the meeting, Pledged the Flag and Moment of Silence

ATTENDANCE

PRESENT: The Board, Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Member, Michael Medeiros, and Principal Clerk Assistant, Tina Cabral

ABSENT: Associate Member, David Dore

ADMINISTRATIVE

The Board unanimously voted and approved the following:

- Administrative Minutes of May 20, 2014 Meeting
- Minutes for Special Permit Case 2014-9 (89 William St) for May 20, 2014
- Minutes for Variance Case 2014-12 (28 Ventura Dr) for May 20, 2014
- Minutes for Special Permit Case 2014-13 (9 Suffolk Ave) for May 20, 2014
- Minutes for Special Permit Case 2014-14 (401 State Rd) for May 20, 2014

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

Chairman Figueiredo announced that an associate member is needed to fill the vacancy on the Board. She stated that anyone interested should submit a letter to the Select Board's office.

Chairman Figueiredo stated that changes to some of the by-laws were approved by Town Meeting Members on June 3, 2014, and she would provide copies of the warrants for those changes to Board members at the next meeting.

6:45 P.M. Adjournment

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals

Date of Approval: 6/25/14



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

MINUTES

DATE OF HEARING: JUNE 11, 2014
CASE: VARIANCE
CASE NO: 2014-14
Petitioner/Applicant: SITEC, INC.
Property Owner: Ivelia Frias
Representative: SITEC, INC.
Subject Property: 122 Potter Street
District: General Residence MAP: 138, LOT: 122
Registry of Deeds BOOK: 8630, PAGE: 89

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6:40 P.M. Chairman Figueiredo opened the hearing

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Board Member, Michael Medeiros, and Principal Clerk Assistant, Tina Cabral
ABSENT: Associate Member, David Dore
ALSO PRESENT: Other Interested Parties

LEGAL AD: Notice is hereby given of a public hearing to be held on **Wednesday, June 11, 2014 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Ivelia Frias who is seeking Variances to allow the division of an existing 12,000 s.f. lot with residence into two lots of 6,000 s.f. Applicant seeks (2) – 6,000 s.f. lots with 60 feet of frontage. Lots in this district require 15,000 s.f. and 100 feet of frontage. The property is located at 122 Potter Street, Dartmouth, MA in the General Residence District and identified on Assessor's Map 138 as Lot 122. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 36-Variances; Section 5.401-Lot Area; Section 5.403-Frontage)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, May 21, 2014 and Wednesday, May 28, 2014.

Chairman Figueiredo read into the record a letter from Steven D. Gioiosa of SITEC, Inc. requesting a continuance of this case to the Board's July 22nd meeting. The continuance will allow him time to file a new Variance application to include setbacks.

Halim Choubah made a motion to continue this case to Tuesday, July 22, 2014. Motion was seconded by Robert Gardner and motion passed unanimously.

6:45 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk
Zoning Board of Appeals

Date of approval: 6/25/14



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MINUTES

DATE OF HEARING: JUNE 11, 2014
CASE: VARIANCE
CASE NO: 2014-16
Petitioner/Applicant: Long Built Homes, Inc.
Property Owner(s): Paul A. and Patricia L.D. Lavallee, Trustees of the Lavallee Real Estate Holding Trust
Representative: Lee Castignetti, Esq.
Subject Property: Prospect Hill Preserve OSRD/Subdivision off Old Fall River Road
MAP: 65, LOT(S): 26 and 27 in the Single Residence B and Aquifer Protection Districts
Registry of Deeds Book: 8563, Page: 33

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Board Member, Michael Medeiros and Principal Clerk Assistant, Tina Cabral
ALSO PRESENT: Lee Castignetti, Esq., and Other Interested Parties

6:50 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Wednesday, June 11, 2014 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Long Built Homes, Inc. who is seeking a Variance to allow Open Space Residential Design (OSRD) lots that are less than one acre in size to have individual on-site sewage disposal systems that are designed to accommodate up to 660 gallons of wastewater per day. The subject property is described as two contiguous vacant parcels of land containing 24 acres located off Old Fall River Road, and identified on Town Assessor's Map 65 as Lots 26 and 27. The subject property is currently owned by Paul A. and Patricia L.D. Lavallee, Trustees of the Lavallee Real Estate Holding Trust. This approved subdivision is entitled "Prospect Hill Preserve OSRD" and is located in the Single Residence B and Aquifer Protection Districts. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 36-Variances; Subsection 20.505 of Section 20.500-Prohibited Uses in the Aquifer Protection District)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, May 21, 2014 and Wednesday, May 28, 2014.

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 4/30/14 with Memorandum
- Schedule of Departmental Payment of Fees to Town Collector

- Legal Ad
- Certified Abutter's List
- Vision Appraisal Cards
- Letter from the Board of Health, dated 3/27/14
- Memorandum from the Planning Board, dated 5/7/14
- Letter from Planning Director, Donald Perry, dated 6/5/14
- Property photos
- Subdivision Plan of Prospect Hill Preserve (OSRD), approved on 3/10/14 and endorsed on 5/5/14

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated 6/5/14, as well as a letter from Director of Board of Health, Wendy Henderson, dated 3/27/14.

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

LEE CASTIGNETTI, ESQ.: The subject property, which consists of two contiguous vacant parcels of land containing a total of approx. 24 acres, is being subdivided pursuant to Section 6 (An Open Space Residential Design-OSRD) and is entitled "Prospect Hill Preserve". Each of 6 buildable lots is intended to accommodate the construction of a single-family home. The Petitioner is seeking a Variance to allow individual on-site sewage disposal systems that are designed to accommodate up to 660 gallons of wastewater per day. The Board of Health has approved a Nitrogen Loading and Aggregation Plan. Most necessary permits/approvals have been obtained from various town departments/agencies.

CHAIRMAN FIGUEIREDO: Asked if the Restriction and Easement had been recorded at the Registry of Deeds as mentioned in the Board of Health's letter dated March 27, 2014.

LEE CASTIGNETTI, ESQ.: Answered yes the Restriction and Easement has been recorded.

CHAIRMAN FIGUEIREDO: Asked the Attorney Castignetti to provide the office of the Board of Appeals with a copy of the recorded Restriction and Easement.

Chairman Figueiredo invited any Board Members to ask questions.

ROBERT GARDNER: Questioned why the Petitioner took this long to obtain this Variance.

LEE CASTIGNETTI, ESQ.: Answered that he decided to obtain permits/approvals from the Building Dept. (for the lots that met zoning requirements) and from the Board of Health prior to requesting relief from the Board of Appeals.

CHAIRMAN FIGUEIREDO: Explained that although the Variance application was received on April 29th, the hearing was delayed because of the tight schedule of meetings and the medical leave absence of the Board's Clerk.

No further questions by Board Members.

Chairman Figueiredo invited public comments regarding this project.

INTERESTED PARTIES PRESENT: George Maltais, Richard Ratner, and Glenys Wolcott.

A lengthy discussion ensued from the abutters who were present expressing their concerns about this new development, especially the expectation that there would be major water drainage onto their properties and into the street. Other concerns that were expressed included the closeness of the development to their properties, the development of too many homes for that parcel of land, and the proximity of new homes near wetlands.

LEE CASTIGNETTI, ESQ.: Further stated that a drainage analysis was completed and paid for on the subject property as well as a review performed by the town's engineer. The resulting proposed drainage plan was deemed to be acceptable. The run off is expected to be no more extensive than in the past.

CHAIRMAN FIGUEIREDO: Commented that any future complaints or concerns relative to drainage issues should be addressed to the Department of Public Works and explained that the OSRD is a specific by-law which allows clusters of smaller developments to be built. Chairman Figueiredo further commented that this Variance is in regards to the allowance of a septic system and not drainage.

No further public comments.

The Board made findings:

- Locus property entitled Prospect Hill Preserve-OSRD off Old Fall River Road is identified as Map 65 Lots 26 & 27 and located in the Single Residence B and Aquifer Protection Districts
- The subject property consists of two contiguous vacant parcels or lots containing 24 +/- acres and are part of the subdivision entitled "Prospect Hill Preserve-OSRD"
- The subdivision was approved by the Planning Board on March 10, 2014 as an OSRD subdivision of six single family house lots
- The subject property is owned by Paul A. and Patricia L.D. Lavallee, Trustees of the Lavallee Real Estate Holding Trust
- Subject property contains wetlands
- Petitioner, Long Built Homes, Inc., is seeking a Variance to allow Open Space Residential Design lots that are less than one acre in size to have individual on-site sewage disposal systems that are designed to accommodate up to 660 gallons of wastewater per day
- In an OSRD development process, the building lots are clustered together with reduced lot coverage, frontage and setbacks with land not included in building lots preserved as open space
- The Prospect Hill Preserve-OSRD will allow six lots to be newly created and contain only a total of 5.67 acres with the remaining 18.29 acres called Parcel A to be permanently protected open space
- The OSRD Special Permit granted by the Planning Board granted relief from lot coverage requirements of the Aquifer Protection by-law (Section 20), but the by-law does not presently allow a waiver on the septic system
- The Board of Health at its meeting of 3/26/14 unanimously approved the submitted Nitrogen Loading and Aggregation Plan with the stipulation of Board of Appeals approval and the need to record the Restriction and Easement at the Bristol County S.D. Registry of Deeds within the thirty days of the March 26, 2014 approval
- Section 20.505 of the Aquifer Protection District limits the size of the on-site sewage disposal system thereby limiting the number of bedrooms to be included in new homes
- With the proposal for the Nitrogen Loading and Aggregation Plan for septic systems that has been approved by the Board of Health, the plan adequately addresses the nitrogen loading concern under Section 20.505 of the Zoning By-laws is specifically intended to protect
- The Board found that the requested Variance does meet the statutory requirements for granting a Variance pursuant to Massachusetts General Laws Chapter 40A §10.

The Board reviewed statutory Variance requirements:

- Hardship in this case is related to a substantial portion of the subject property is wetlands and the shape of the subject property as it correlates to the manner of the subject property which each lot is proposed to be shaped in order to meet the requirements of OSRD, Section 6 of the zoning by-laws
- Petitioner cannot meet the OSRD lot size concepts without the relief requested for the proposed on-site sewage disposal systems that are designed to accommodate up to 660 gallons of wastewater per day. Without the Variance approval, substantial financial hardship would be involved to the Petitioner because limitations on septic system sizes would reduce the number of allowed bedrooms and the value of the lots
- A conventional subdivision would support nine lots and would have an impact on the wetlands which would not be beneficial to the surrounding environment. While these circumstances greatly affect the subject property they do not generally affect the zoning district. With the approval of the Nitrogen and Aggregation plan the specific area of concern Section 25.505 is intended to protect is fully protected
- This Variance will not derogate from the intent of the Aquifer Protection by-law because even though the lots are smaller, the OSRD subdivision's open space is permanently protected in an amount equal to or greater than the lot areas required to protect the aquifer

The Board made proposed conditions:

- Petitioner to secure all of the necessary permits and approvals from all applicable Boards and Agencies
- A copy of the recorded Restriction and Easement document must be provided to the office of the Board of Appeals

Chairman Figueiredo asked Board Members for further comments and/or questions.

No further comments or questions by Board Members.

Chairman Figueiredo invited further public comments regarding this project.

No further public comments.

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

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

7:45 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk

For the Zoning Board of Appeals

Date of Approval: 6/25/14



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

MINUTES

DATE OF HEARING: JUNE 11, 2014
CASE: VARIANCE
CASE NO: 2014-17
Petitioner/Applicant: NINA S. WHITE, ESQ.
Property Owner: ANDREA W. WHITE
Representative: NINA S. WHITE, ESQ.
Subject Property: 31 Bayview Avenue and 39 Bayview Avenue
District: Single Residence B MAP: 105, LOTS: 32, 32-1 & 33

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ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Member, Michael Medeiros, and Principal Clerk Assistant, Tina Cabral

ABSENT: Associate Member, David Dore

ALSO PRESENT: Nina S. White, Esq., Andrea W. White and Other Interested Parties

7:50 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Wednesday, June 11, 2014 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Andrea W. White who is seeking to re-activate prior rights authorized by a Variance which were not exercised within the proper time frame. The subject properties are located at 31 Bayview Avenue and 39 Bayview Avenue in the Single Residence B District. The Petitioner owns property located at 31 Bayview Avenue, which is described on Town Assessor's Map 105 as Lot 33. The Petitioner would like to convey a 1,958 s.f. parcel of land shown as Lot 32-1 on Map 105 to property located at 39 Bayview Avenue (Lot 32 on Map 105) as previously granted in 2007. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 36-Variences)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, May 21, 2014 and Wednesday, May 28, 2014.

ABUTTER'S LIST: Michael Medeiros motioned to waive the reading of the abutter's list into the record, which was seconded by Robert Gardner. 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 with brief and time-stamped with the Town Clerk on 4/29/14
- Schedule of Departmental Payment of Fees To Collector's Office
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Cards for Lots 32, 32-1 & 33
- Photos of property
- Approval Not Required Plan of Land dated 1/14/98
- Copy of Quitclaim Deed dated 11/4/03

- Copy of Quitclaim Deed dated 6/23/09
- Letter from Planning Director, Donald Perry, dated 6/5/14
- Copy of Variance Decision Case: 1998-09
- Copy of Amendment of Variance Decision (#1998-09) Case: 2007-15

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated 6/5/14.

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

NINA S. WHITE, ESQ.: The Petitioner, Andrea White, was granted a Variance in 2007 to convey a 1,958 s.f. parcel of land from an undersized lot. The rights from that Variance were never exercised in the proper time frame. The subject property was conveyed by Quitclaim Deed in 2009 to Michael & Sandra Bell. It was during the recent process of trying to sell her property located at 31 Bayview Ave., that the Petitioner learned that the title for the land could not be cleared since the rights from the 2007 Variance had not been exercised within the appropriate one year time frame. The title insurance company has required the Petitioner to seek relief from a new Variance to rectify the problem of the 2007 Variance before the sale of the property can be completed.

CHAIRMAN FIGUEIREDO: Asked if the Variance of 1998 and the amendment of the Variance in 2007 were recorded.

NINA S. WHITE, ESQ.: Answered yes both Variances were recorded, but not exercised in the proper period of time.

Chairman Figueiredo invited any board members to ask questions.

MICHAEL MEDEIROS: Asked Attorney White if Petitioner is looking to rectify the title issue and if there is anything specific the title company is seeking in order to rectify this title issue.

NINA S. WHITE, ESQ.: Answered that yes the title issue needs to be rectified and the title insurance company's only request is to obtain a new Variance in order to proceed with the sale.

A discussion ensued relative to whether or not a new deed regarding this conveyance is required.

No further questions by board members.

Chairman Figueiredo invited public comments regarding this project.

No public comments.

The Board made findings:

- Locus property at 31 Bayview Avenue is identified on Map 105 as Lots 32-1 (also referred to as Parcel A) and 33 and is located in Single Residence B District.
- Petitioner owns Lot 33 at 31 Bayview Avenue, and in 2009 had conveyed lot 32-1 via Quitclaim Deed to Thomas M. Bell and Sandra A. Ryack –Bell who own lot 32.
- Since that conveyance was completed after the time limit authorized by the 2007 Amendment to the Variance of 1998, the Petitioner needs to request a new Variance which needs approval in order to rectify a title issue.

- Presently, the Petitioner seeks to “re-convey” the 1,958 s.f. parcel which is identified as Lot 32-1 (Parcel A) on Map 105 to the abutting lot at 39 Bayview Avenue which is identified as Lot 32 on Map 105.
- In 1998, Dennis Beck owned the 3 lots that were then identified as lot 32, 32-1, and 33 on Map 105.
- Also in 1998, an ANR Plan to reconfigure the interior lot lines was approved by the Planning Board to have the 1,958 s.f. unbuildable parcel Lot 32-1/Parcel A to be combined with Lot 33, making that lot’s area 15,708 s.f., while Lot 32 retained an area of 33,775 s.f.
- Also in 1998, a Variance was granted by the Board of Appeals Case #1998-09 to the former owner, Dennis Beck, to allow reduced frontage on the two existing structures on lot 32 and the new lot 33 .
- A Quitclaim Deed which was recorded at the Registry of Deeds on 11/7/03 shows that Parcel A, (Lot 32-1) was conveyed to the Petitioner along with Lot 33 by then owner Dennis Beck.
- In 2007, an Amendment to Case #1998-09 was filed by the Petitioner and approved by the Board of Appeals to allow the reconfiguration of lot lines to permit the conveyance of the 1,958 s.f. portion of Petitioner’s Lot 33 at 31 Bayview Avenue to the owners of Lot 32 at 39 Bayview Avenue. This portion of land had been identified as Lot 32-1/Parcel A in 1998 (see Assessor Card and ANR Plan of 1/14/98 drawn by Kenneth R. Ferreira Engineering, Inc.)
- The 2007 Variance Amendment was recorded at the Registry of Deeds but not acted upon within the appropriate time frame since on June 21, 2009, a new Quitclaim Deed was drawn conveying Lot 32-1/Parcel A to the current owners of Lot 32, Thomas M. Bell & Sandra A. Ryack-Bell. This inappropriate timing issue lead to a title issue, which required the Petitioner to file for a new Variance.
- The Board found that the requested Variance does meet the statutory requirements for granting a Variance pursuant to Massachusetts General Laws Chapter 40A §10.

The Board reviewed statutory Variance Requirements:

- The 1,958 s.f. parcel was originally an unbuildable lot, therefore, its conveyance to a non-conforming existing lot makes Lot 32 larger and less non-conforming.
- An ANR plan that had been previously approved by the Planning Board in 1998 had allowed the merger of that parcel with Lot 33.
- The authority granted by the 2007 Variance Amendment to the 1998 Variance to convey the parcel to the owners of lot 32 was not exercised in a timely fashion by the Petition and thereby creating a defect in title.
- The Planning Board had approved an ANR Plan to reconfigure lot lines thereby eliminating Parcel A/Lot 32-1, and that plan was not detrimental to the public good. The new proposal, that will result in the issuance of a confirmatory deed will show the conveyance of that 1,958 s.f. parcel to lot 32, is also not detrimental to the public good.
- This Variance will not nullify or derogate from the intent or purpose of the by-law as it will increase the size of a small lot making it less non-conforming.

The Board made proposed conditions:

- Petitioner to secure all of the necessary permits and approvals from all applicable Boards and Agencies
- Petitioner to prepare and record a Confirmatory Deed conveying Lot 32-1 (Parcel A) to Lot 32 owned by Thomas M. & Sandra A. Bell
- Petitioner to provide a copy of the recorded Confirmatory Deed to the office of the Board of Appeals

- Petitioner to provide a copy of the approved recorded Variance and the Confirmatory Deed to the title insurance company

Chairman Figueiredo asked Board Members for further comments and/or questions.

No further comments or questions by Board Members.

Chairman Figueiredo invited further public comments regarding this project.

No further public comments.

Robert Gardner makes a motion to close the public hearing. Motion was seconded by Michael Medeiros, and made unanimous by Chairman Figueiredo. Motion passed unanimously.

Robert Gardner makes the motion to approve the Variance in accordance with the Board's stated findings and conditions. Motion was seconded by Michael Medeiros, and made unanimous by Chairman Figueiredo. Motion passed unanimously.

8:25 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk,
Zoning Board of Appeals

Date approved: 6/25/14