



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

## ADMINISTRATIVE MINUTES

DATE OF HEARING: NOVEMBER 18, 2014

*6:15 P.M. Chairman Figueiredo opened the meeting, Pledge the Flag, Moment of Silence*

### ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Members: Michael Medeiros, David Dore and Rahim Aghai, Director of Development Deborah Melino-Wender and Principal Clerk, Michelle Vieira  
Chairman Figueiredo welcomed the new Clerk, Michelle Vieira

### ADMINISTRATIVE

The Board unanimously voted and approved the following Minutes as amended:

- Administrative Minutes of November 5, 2014 Meeting
- Minutes for Amendment to Use Variance Case 2014-34 (24 Slocum Road)
- Minutes for Special Permit & Variance Case 2014-22 (300 Gulf Road)

A motion was made by Robert Gardner to accept the Minutes as amended, seconded by Halim Choubah, and unanimously voted.

Chairman Figueiredo announced next meeting date for the Zoning Board of Appeals will be December 2, 2014 @ 6:15 in room 304 at Town Hall.

6:35 P.M. Adjournment

*Michelle Vieira*

Michelle Vieira, Principal Clerk  
For the Zoning Board of Appeals  
Date of Approval:

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DARTMOUTH TOWN CLERK



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## MINUTES

DATE OF HEARING: November 18, 2014  
CASE: VARIANCE  
CASE NO: 2014-36  
Petitioner/Applicant: Michael R. Bachstein  
Property Owner: Michael R. Bachstein  
Representative: Christopher T. Saunders, Attorney  
Subject Property: 44 Middle Street, Dartmouth MA  
MAP/LOT MAP: 117 LOT: 90  
District: Single Residence B  
Registry of Deeds: BOOK: 11114 PAGE: 283

**PRESENT:** The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Board Members, Attorney Michael Medeiros, David Dore, Dr. Rahim Aghai, Director of Development Deborah Melino-Wender and Principal Clerk Assistant, Michelle Vieira  
Also Present: Michael R. Bachstein, Attorney Christopher T. Saunders 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 **Tuesday, November 18, 2014 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Michael R. Bachstein who is seeking a **VARIANCE** in order to covert an existing detached garage to an accessory apartment, where the existing detached structure was expanded in 2012 and the lot is less than the required minimum lot size, under the by-laws (Section 4B.204 (D) and Section 4B204 (L). The property is located at 44 Middle Street in the Single Residence B District and identified on Assessor's Map 117 as Lot 90. Information is on file in the office of the Board of Appeals and may be seen upon request.

**ADVERTISED:** The Notice for public hearing was published in The Dartmouth Chronicle on **Wednesday, October 29, 2014 and Wednesday, November 5, 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/Change of Use Variance application time-stamped with the Town Clerk on October 10, 2014
- Schedule of Departmental Payment of Fees To Collector's Office
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Card

- Letter from Planning Director, Donald Perry, dated November 13, 2014
- Site Plan 44 Middle Street, Dartmouth MA prepared by SITEC, dated as received October 10, 2014
- Certified Plot Plan prepared by Douglas L. Aaberg dated 9/17/2003
- Structure Layout Plan entitled "44 Middle Street, Detached Structure, Existing Conditions prepared by Michael R. Bachstein, dated as received October 10, 2014
- Plan of Hillside, Frank M. Metcalf Chief Engineer and Surveyor dated October 14, 1915

*Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated November 13, 2014. Also a comment from the Director of Public Health was noted on the application.*

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

Christopher T. Saunders, Attorney for Mr. Bachstein reported to the Board that when Mr. Bachstein purchased the property the previous owner had what appeared to be an art studio. Mr. Bachstein would like to use this existing structure as an accessory apartment. It had a bathroom, heat and utilities. Mr. Bachstein has no intentions of remodeling, just some cosmetic work. When purchasing this property, Mr. Bachstein had intentions that his son, when attending college would move in; subsequently when his son moved out his father would move in. Both son and parent do not have the financial resources to own a single family home.

*Chairman Figueiredo raised several concerns. She noted that page 2 of the application indicates Zoning District as Single Residence B/GR, yet the by-laws that were cited in the request were for Single Residence B. She stated that the GIS, and also the assessor's card show the applicable zoning district as General Residence, not SRB. After further discussion, it was agreed by Mr. Saunders and the Board to continue this case until December 2, 2014 to verify with the various departments the accurate zoning district.*

*Chairman Figueiredo invited public comments regarding this project.*

Ron Winegardner of 55 Middle St. stated that he had received the notice and wanted the Board to know that he has no objection.

*Robert Gardner made the motion to continue the public hearing to December 2, 2014. The motion was seconded by Halim Choubah. The motion passed unanimously.*

8:15 P.M. Hearing adjourned

*Michelle Vieira*

Michelle Vieira, Principal Clerk  
 For the Zoning Board of Appeals  
 Date of Approval: \_\_\_\_\_



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**MINUTES OF THE JOINT MEETING BETWEEN THE BOARD OF APPEALS AND THE SELECT BOARD**

DATE OF HEARING: November 17, 2014  
CASE: AMENDMENT TO VARIANCE  
CASE NO: 2014-33  
Petitioner/Applicant: Dartmouth Power Associates Limited Partnership  
Property Owner(s): SAME  
Representative: Brent McDonald  
Subject Property: 1 Energy Road and 387 Old Fall River Road  
MAP: LOT(S): Districts Map 67 Lot 9 & Map 72 Lot 28-1  
Registry of Deeds Book: Book 4633 Page 277

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**ATTENDANCE**

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

Associate Board Members: Michael Medeiros, and Rahim Aghai and Director of Development Deborah Melino-Wender

Absent: Associate Member David Dore

Others Present: Brent McDonald, Esq. of Nutter McClennen & Fish LLP, Dale Lebsack, Asset Manager for Dartmouth Power Associates Limited Partnership, (*Members of the Dartmouth Select Board: Michael Watson, Chair, Lara Stone, Shawn McDonald, John George, and Stanley Mickelson, Town Administrator David Cressman, Town Treasurer Greg Barnes.*)

*6:45 P.M. Michael Watson, Chairman Board of Selectmen opened the joint meeting with Board of Appeals*

**LEGAL AD:** Notice is hereby given of a joint public hearing of the Select Board and the Zoning Board of Appeals to be held on **Monday, November 17, 2014 at 6:45 p.m.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Dartmouth Power Associates Limited Partnership, who is seeking approval of the Zoning Board of Appeals to amend the Variance to amend a covenant given by the Applicant to the Town which was incorporated by reference into the variance and to amend the Term of the Variance. The Applicant is seeking approval of the Select Board to amend the Special Permit to amend a covenant given by the Applicant to the Town and to amend the Term of the Special Permit. No new construction and no changes in operations are proposed. The property is located at 1 Energy Road in the Limited Industrial District and identified on Assessor's Map 67, Lot 9 and Assessor's Map 72, Lot 28-1. Information is on file in the office of the Board of Appeals and the Select Board Office and may be seen upon request.

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday October 29, 2014 and Wednesday, November 5, 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. The motion passed unanimously.

DOCUMENTS ON FILE

- Application received September 18, 2014
- Special bound booklet of supportive information for amendment request to the Special Permit from the Select Board and the Variance from the Board of Appeals

*Chairman Figueiredo began the Zoning Board of Appeals portion of the meeting by announcing that Dr. Aghai is recusing himself from this case and also introduced the new Principal Clerk, Michelle Vieira.*

*She stated that the petitioner Dartmouth Power Associates Limited Partnership is seeking an amendment to Variance Case # 1990-33. The property is located at 1 Energy Road and 387 Old Fall River Road in the Limited Industrial District and identified on Assessors map 67 Lot 9 and map 72 lot 28-1.*

*Mr. Gardner made a motion, seconded by Mr. Choubah to waive the reading of the abutters list. The motion carried unanimously.*

*Mr. Watson stated that joint meeting was requested because the Select Board had originally granted the special permit and the Zoning Board of Appeals had granted certain variances.*

*Chairman Figueiredo stated that the Dartmouth Power Associates Limited Partnership has owned subject property since March of 2000. On October 2, 1990 the Zoning Board of Appeals granted a Variance Case #1990-33 for height excess and use of land. On the same date, the Select Board granted the Special Permit to the petitioner to build and operate a 68 megawatt power plant (Special Permit File No. 90-1).*

*The Petitioner is proposing to amend the Covenant to defer the timing of a portion of gift payments to the Town of Dartmouth and to extend the term of the Covenant from thirty-five to forty years to ensure that the town receives the same amount of money under the proposed amendment as it would under the existing Covenant. The Petitioner is proposing a level payment structure, and as a result of the term extension, deletion of subsection 5.2.13 of the Special Permit (Select Board File No. 90-1) is requested. Since the Covenant and its term is referenced in the Use Variance that was granted by the Zoning Board of Appeals (Case #1990-33), an Amendment to that Use Variance is also sought (Case 2014-33).*

Brent McDonald Esq. of Nutter McClennen & Fish LLP representing Dartmouth Power Associates Limited Partnership then made a brief presentation. Mr. McDonald stated that the applicant is seeking essentially an administrative change to both the Special Permit from the Select Board and the Variance from the Board of Appeals. On August 4, 2014, colleague

Michael Leon appeared before the Select Board which approved financial modifications to the covenant, including the extension of the term from 35-40 years and the leveling the payments over that term. He stated that the applicant is seeking administrative changes to the Special Permit and Variance to allow these modifications to take place. Mr. McDonald stated that there is no new construction, no modifications, no change in noise, and no change in water or waste water. Mr. McDonald also stated that, per Town Counsel, if modifications to the covenant take place, they can be made without modifying the Special Permit and Variance.

Mr. Watson asked if any member of the public had any comment. There was none.

At 7:10 PM Mr. Watson closed the public hearing.

Lara Stone moved to approve the amendment to the Special Permit and Mr. Michelson seconded the motion which carried unanimously.

*Chairwoman Figueiredo asked if her board had any questions. Mr. Gardner questioned new construction; he stated that he saw a crane on site. It was verified that no new construction was taking place and that the crane was related to maintenance that was taking place.*

The Board proposed the following findings:

1. Locus property at 1 Energy Road and 387 Old Fall River Road is identified on maps 67 and 72, lots 9 and 28-1, and is located in the Limited Industrial District and Flood Zone C.
2. Dartmouth Power Associates Limited Partnership has owned the subject property since March, 2000.
3. The Petitioner had previously been granted 3 amendments to the Special Permit (Select Board File No. 90-1) and to the Use Variance (Zoning Board of Appeals Case #1990-33) on September 16, 1991 (Use Variance Amendment Case #1991-10), September 25, 1995 (Use Variance Amendment Case #1995-35) and November 25, 2008 (Use Variance Amendment Case #2008-33).
4. The Petitioner is proposing to amend the Covenant to defer the timing of a portion of gift payments to the Town of Dartmouth and to extend the term of the Covenant from thirty-five to forty years to ensure that the town receives the same amount of money under the proposed amendment as it would under the existing Covenant. The Petitioner is proposing a level payment structure, and as a result of the term extension, deletion of subsection 5.2.13 of the Special Permit (Select Board File No. 90-1) is requested. Since the Covenant and its term is referenced in the Use Variance that was granted by the Zoning Board of Appeals (Case #1990-33), an Amendment to that Use Variance is also sought (Case 2014-33).

5. Approval of the Amendment to Use Variance (Case #2014-33) will not increase, alter, extend, or modify the physical size, or the intensity of operations of the existing 68 megawatt electrical power plant ("Existing Facility") or 25 megawatt peaking unit ("Peaking Unit") that are operating on the site pursuant to Use Variance Case #1990-33 and the amendments thereto.
6. Approval of the Amendment (Case #2014-33) will not undermine or contradict the factual findings and legal conclusions that were made by the Board in Use Variance Case #1990-33 and the amendments thereto.
7. Approval of the Amendment (Case #2014-33) will ensure that certain conditions that were imposed by the Board in Use Variance Case #1990-33 will continue to track with the conditions that are imposed by the Select Board through Special Permit No.90-1 and the amendments thereto.
8. Approval of the Amendment (Case #2014-33) will effectuate the original intent of the Board that certain conditions of Special Permit (Select Board File No. 90-1) be incorporated by reference into Use Variance Case #1990-33.
9. The findings and conditions of the original Use Variance, except as previously amended or amended herein, remain in full force and effect.

Chairman Figueiredo proposed the following decision:

The Board, based upon the findings presented above, hereby grants the following amendments to Variance Case No. 1990-33 ("Amendment"): (i) the Covenant, the existence of which is a condition of said Variance, may be modified by the parties thereto from time to time as they may determine is necessary in order to ensure the continued financial viability and solvency of the Existing Facility and Peaking Unit, without such modification constituting an amendment to said Variance that requires further approval under Chapter 40A;- and (ii) the term of said Variance shall be coterminous with the term of the Covenant as it may be modified from time to time by the parties thereto.

The Board proposed the following conditions:

1. The Existing Facility and Peaking Unit shall continue to comply with the requirements, standards, limitations and conditions contained in the approvals from MassDEP.
2. Variance Case No. 1990-33, as amended to date, including all conditions and covenants, shall, except as expressly amended herein, continue in full force and effect.

*The motion was made by Robert Gardner to GRANT the AMENDMENT TO VARIANCE based upon the findings as stated and the conditions as proposed. The motion was seconded by Halim Choubah. The motion passed unanimously.*

For the Select Board, Mr. Watson proposed the findings and conditions.

The motion was made by Lara Stone and seconded by Stanley Mickelson to grant the Special Permit based upon the findings as stated and the conditions as proposed. The motion passed unanimously.

The meeting was adjourned at 7:20 PM.

*Deborah Melino-Wender*

Director of Development  
For the Zoning Board of Appeals  
Date of Approval: