



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

ADMINISTRATIVE MINUTES

DATE OF HEARING: January 6, 2015

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

PRESENT: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, and Rahim Aghai,
Director of Development Deborah Melino-Wender and Principal Clerk, Michelle Vieira

ABSENT: David Dore, Michael Medeiros and Robert Gardner

ADMINISTRATIVE

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

- Administrative Minutes of December 9, 2014 Meeting
- Minutes from Case #2014-38 60 Chestnut Street-Special Permit
- Minutes from Case #2014-41 2 Kirkat Way-Special Permit
- Minutes from Case #2014-22 New Cingular Wireless-Special Permit-Variance

A motion was made by Halim Choubah to accept the Minutes as amended, seconded by Dr. Rahim Aghai and unanimously voted.

Chairman Figueiredo announced next meeting date for the Zoning Board of Appeals will be January 20, 2015 @ 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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(508) 910-1868

ADMINISTRATIVE MINUTES

DATE OF HEARING: January 20, 2015

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

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

ADMINISTRATIVE

Deferred the reading of the minutes until February 3rd.

- Administrative Minutes of January 6, 2015 Meeting
- Minutes from Case #2014-43 166 Chase Road: Amendment to Special Permit #2014-14
- Minutes from Case #2014-44 279 State Road : Special Permit and Variance
- Minutes from Case #2014-45 321 Elm Street: Variance/Change of Use

Chairman Figueiredo stated that we received new inserts for our Zoning By-laws binders. There are a few things that need to be verified with our Town Clerk, Lynn Medeiros. There was a page missing (34-12), and in 2010 Town Meeting had amended some language in Sub-Section 33 related to Wind Turbines.

Chairman Figueiredo announced next meeting date for the Zoning Board of Appeals will be February 3, 2015 @ 6:15 in room 304 at Town Hall.

6:30 P.M. Adjournment

Michelle Vieira

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

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MINUTES

Board Members

Jacqueline Figueiredo, Chairman
Halim Choubah, Clerk
Robert Gardner

DATE OF HEARING: January 6, 2015
CASE: AMENDMENT/SPECIAL PERMIT
CASE NO: 2014-43
Petitioner/Applicant: 166 Chase Road Realty Trust, Leonard J. Boyce, Trustee
Representative: Daniel C. Perry, Esq. of Perry, Hicks, Deshaies, & Mello, LLP
Property Owners: 166 Chase Road Realty Trust, Leonard J. Boyce, Trust
Subject Property: 166 Chase Road
District: Single Residence B MAP: 45 LOT: 29
BOOK: 3498 PAGE(S): 280-284 BOOKS: 4042 PAGE(S) 270-272 BOOK: 10149 PAGES(S) 24-28

PRESENT: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, and Dr. Rahim Aghai
Board Members Absent: Robert Gardner, Michael Medeiros, David Dore
Director of Development Deborah Melino-Wender and Michelle Vieira Principal Clerk
Also Present: Attorney Daniel C. Perry, Leonard Boyce and Jeanne Pitcairn DVM, via speaker on cell phone

9:30 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, January 6, 2015 at 6:15 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of 166 Chase Road Realty Trust, who is seeking an Amendment to a **SPECIAL PERMIT** Case #2011-14 and **VARIANCE/SPECIAL PERMIT** Case #1995-2. The property is located at 166 Chase Road in the Single Resident B, Zone II Aquifer and identified on Assessor's Map 45 as Lot 29. 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, December 17, 2014 and Wednesday, December 24, 2014.

ABUTTER'S LIST: Halim Choubah motioned to waive the reading of the abutter's list, seconded by Dr. Rahim Aghai. 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 11/13/2014
- Schedule of Departmental Payment of Fees to Town Collector

- Certified Abutter's List
- Legal Ad
- Vision appraisal parcel card
- Letter from Planning Director, Donald Perry, dated 12/19/14
- Photos
- Prior decisions
- Original plan dated August 3, 1995
- Letter from Leonard Boyce and Jeanne Pitcairn, DVM dated October 7, 2014

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated December 19, 2014.

Chairman Figueiredo also read a letter from Leonard Boyce and Jean Pitcairn dated October 7, 2014. The petitioners were hoping to do this administratively to expedite the process, but an amendment to the Special Permit was needed.

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

Attorney Daniel C. Perry informed the Board that the applicants are seeking permission from the Board to allow Chase Road Animal Hospital to resume use of 166 Chase Road to open a satellite veterinary clinic. He stated that the staff and clients have been negatively impacted by the construction on Faunce Corner Road, and plan to shift some routine appointments from its facility at 35 Ventura Drive to 166 Chase Road. The Chase Road building is currently used for storage. He stated a chiropractic office allowed by the Board pursuant to a special permit granted in case 2011-14 ceased operations in June 2014. Mr. Perry stated the only change would be cosmetic, to re-convert the building into a pet friendly space. Mr. Perry also stated that there will only be two to three practitioners along with support staff and that the hours would be routine business hours. This satellite clinic would be a specialized facility having a treadmill, a swim pool, an oxygen chamber and hospice care. When the applicant applied for a Special Permit to allow a chiropractor to use a portion of the space, the Board allowed that request, stating as a condition, "Permission is granted to maintain veterinary hospital use at the subject property provided that prior to resuming that use, an Amendment to the original Variance/Special Permit Case #1995-2 is granted by the Zoning Board of Appeals and filed with the Registry of Deeds." This application is seeking that specified amendment. The applicant has been in harmony with the neighborhood and has had no adverse impact on the surrounding residential use, and that resumption of that use will have no negative effect on the neighborhood.

Chairman Figueiredo asked if the floor plan presented is the original plan. Mr. Perry stated that it is the same floor plan and no structural changes to the building are proposed. Chairman Figueiredo asked if the outside fenced in dog walking area was still there, Mr. Perry replied yes.

No comments by board members.

No public comments.

The Board made the following findings:

- Locus property at 166 Chase Road is identified on Map 45, Lot 29 and is located in the Single Residence B District and Zone II Aquifer Protection overlay district.
- Leonard Boyce has owned the property since July 1995.

- A Special Permit was granted in June 1995 (Case #1995-2) to Mr. Boyce and Dr. Jean Pitcairn to allow the expansion of the existing non-conforming structure and for that structure to be utilized as a Veterinary Hospital.
- Additionally a Variance (Case #1995-2) was granted to allow the entrance to the building to be closer to the street line than that which was allowed by zoning.
- In accordance with condition #18 of Case #1995-2 a review hearing was conducted in January 1998 (Case #1995-2R) for traffic, safety, noise, and odor impact from the Veterinary Hospital. It was determined that no additional conditions to those stated in the decision for Case #1995-2 were needed and no further reviews were required.
- In April, 2011 (Case #2011-14) a Special Permit was granted to allow Mr. Boyce to rent a portion of the existing building at 166 Chase Road to use as a Chiropractic office, while retaining the Veterinary Hospital use at the premises. As a result of the Special Permit, two-thirds of the building space was leased for Chiropractic services while the remaining space was used as storage space for the Veterinary Hospital that had moved to Ventura Drive.
- Presently, Mr. Boyce has filed an amendment to Cases #1995-2 and Case # 2011-14 as required by condition #2 of Case #2011-14 to resume Veterinary Hospital Services in the facility at 166 Chase Road.
- Chiropractic use at the facility has been discontinued as of June 1, 2014.
- Re-use of the existing facility as a satellite clinic to Chase Farm Veterinary Hospital will not require any change to the existing building's footprint, parking, layout, or septic system.
- Interior renovations will include cosmetic changes and the floor plan layout will be that of the original layout of the Veterinary Hospital designated in the Special Permit/Variance Case #1995-2.
- Some specialized services will be available at the Clinic, such as, physical therapy, respiratory assistance oxygen chamber, and hospice care.
- The first floor of the existing building is handicap accessible, and the second floor will not be open to the public.
- There will be one to three practitioners and support staff assigned to the proposed satellite clinic for a maximum total of 9 employees, and the clinic will not be open to the general public outside of regular business hours.
- In both the 1995 and 2011 cases, the parking layout was deemed to be in compliance with Dartmouth Zoning by-laws for up to three medical practitioners.
- No long term boarding at the facility.
- Signage, lighting for the facility will be in compliance with zoning by-laws.
- The resumption of the Veterinary Clinic will not be more detriment to the neighborhood than the previous non-conforming use.

The Board proposed the following conditions:

- Petitioner to secure all of the necessary permits and approvals from all applicable Boards and Agencies.
- Any use other than the Veterinary Satellite Clinic for Chase Farm Veterinary Hospital will require Zoning Board of Appeals approval through the Special Permit process pursuant to 3.B105 (Expansion or change of non-conforming uses other than one or two family residential uses)
- Said renovations of existing building for this amendment shall be in substantial compliance with the floor plan approved for the 1995 Special Permit/Variance plans.
 - "Proposed Renovations/Addition to existing building, Chase Road Animal Hospital, 166 Chase Road, North Dartmouth, Drawing Number A-1,
 - Proposed Renovations/Addition to existing building, Chase Road Animal Hospital, 166 Chase Road, North Dartmouth, Drawing Number A-2,

- Proposed Renovations/Addition to existing building, Chase Road Animal Hospital, 166 Chase Road, North Dartmouth, Drawing Number A-3,
- Proposed Renovations/Addition to existing building, Chase road Animal Hospital, 166 Chase Road, North Dartmouth, Drawing Number A-4” all of which have been hereby marked “B” and made part of the Board of Appeals File.
- The soundproofing in the proposed kennel for the Satellite Veterinary Hospital Clinic shall be in strict compliance with plan submitted and entitled: Kennel Wall Insulation which has been marked “C” in the Board of Appeals file for this Amendment Case #2014-43.
- The proposed second floor addition shall be used solely for storage and/or office use by the petitioner and/or subsequent owner and shall not be sub-let for other uses.
- Hours of operation for general business shall be as follows: Monday through Saturday from the hours 8:00AM until 6:00 PM. There shall be no business hours on Sunday with the exception of emergency care and maintenance of said animals.
- There shall be no more than nine employees at any time in the clinic.
- No outside kennels are allowed on the subject property.
- The walking of all animals shall be with an attendant within the existing fenced-in area on the subject property. The animals must be restrained by leash or harness at all times.
- There shall be no boarding of animals at the clinic, except in the case of animals needing emergency care and maintenance needs.
- No outside runs are allowed on the subject property.
- A maximum of thirty (30) animals are allowed in the clinic at any one time.
- All animal waste must be kept in a waste storage container as per Board of Health regulations and the waste is to be removed from site as often as needed to prevent odor on the premises.
- Delivery trucks shall not be larger than twenty-two (22) feet in length.
- Lighting is not to negatively impact any abutters.
- Security type lighting shall only be for non-business hours only.
- All other conditions of prior decisions not hereby modified or amended remain in full force and effect.

Halim Choubah made the motion to close the public hearing; motion was seconded by Dr. Aghai. Motion passed unanimously.

Halim Choubah made the motion to GRANT the AMENDMENT to a SPECIAL PERMIT based upon the findings and conditions as stated; motion was seconded by Dr. Aghai. Motion passed unanimously.

10:00 P.M. Hearing adjourned

Michelle Vieira

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



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 400 Slocum Road, Dartmouth, MA 02747
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MINUTES

DATE OF HEARING: January 6, 2015
 CASE: VARIANCE/SPECIAL PERMIT
 CASE NO: 2014-44
 Petitioner/Applicant: A&A JEWELERS
 Property Owner: TOP-DEB, INC.
 Representative: STEVEN D. GIOIOSA-SITEC, INC
 Subject Property: 279 STATE ROAD
 MAP: LOT(S) MAP 167 LOT 102
 District: GENERAL BUSINESS

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ATTENDANCE

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

ALSO PRESENT: Alex Nasrawy and Steven Gioiosa, Engineer

10:08P.M. Chairman Jacqueline Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, January 6th at 6:15pm** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of A&A Jewelers, who is seeking to expand the existing parking lot and is seeking a **SPECIAL PERMIT** pursuant to (1) Section 20.601 Aquifer Protection District: Special Permit Uses; and (2) Section 3B.105 Non-Conforming Uses, Structures and Lots: Expansion or Change of Non- Conforming Uses Other Than One or Two Family Residential Uses. The applicant is also seeking a **VARIANCE** pursuant to Section 16.0-Parking Regulations. The property is located at 279 State Road in the General Business District and identified on Assessor's Map 167 as Lot 103. 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, December 17, 2014 and Wednesday, December 24, 2014.

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

DOCUMENTS ON FILE

- Special Permit application time stamped with the Town Clerk on November 4, 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 December 30, 2014
- Memorandum from John Keegan of SITEC dated October 16, 2014
- Photos
- WPA Form 3-Notice of Intent
- Addendum to Stormwater Report Checklist
- Special Permit/Variance Plan by SITEC dated October 16, 2014
- Variance and Minutes of Prior Decision dated February 2, 1977

Chairman Jacqueline Figueiredo read into the record a letter from Planning Director, Donald Perry, dated December 30, 2014. Chairman Jacqueline Figueiredo also read comments from the Director of Public Health and the Environmental Affairs Coordinator.

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

Steve Gioiosa stated that this is an existing commercial building located on the south side of Route 6. In 1977, a variance was granted to enclose the existing porch attached to the front of the building and to allow the commercial use of the first floor and office use on the second floor. The petitioner has no intent of expanding the building or changing the footprint of the structure. The applicant has invested approximately \$200,000 on upgrading the exterior and interior of the building and did some on site drainage improvements. He is looking to reconfigure the parking lot and to improve the curb cut for entering and existing. There are six (6) proposed customer parking spots, and two (2) employee spots that are on the west side of the property. There is an arrangement (which goes back to 1977) with the Mobile Gas Station to allow some parking on their property. Petitioner is not proposing a change of use of the property. The petitioner is looking to use this as a high end jewelry store, dealing with specialty items (customers), and it will be low volume. The 2nd floor will continue to be office space for the petitioner. This is a General Business District so the use is allowed. It's in an Aquifer District Zone. It's approximately 92% impervious and when the project is completed it will still be 92% impervious. The intent is to create a more defined access, which requires us to approach Mass Highway to modify the curb cut which we will do after we receive all local approvals. There has been a major upgrade including signage which is now in compliance with local zoning. From the parking and Aquifer Protection District stand point, there have been major upgrades. (See attached memorandum from SITEC). The last component to the upgrade is the paving of the parking lot, re-shaping of the curb cuts onto Route 6, re-striping and signage to identify the parking. Regarding Mr. Perry's recommendation of removing a parking space, it may restrict the property, which is why we are requesting relief from Section 16 of the off street parking regulations regarding landscaping buffer. We do agree with the other landscaping regulations made. The Special Permit has to do with the modification of the non-conforming lot coverage issue. We are modifying some of the features onsite; we believe we met the performance standards by implementing an aggressive water quality treatment system as part of the site improvements. We believe what we are proposing is compatible with the district.

Chairman Jacqueline Figueiredo questioned the 2 parallel parking spaces. Mr. Gioiosa stated there's a short stone edging wall; a section will be moved as part of this petition. There is an agreement with Mobile allowing parking on their property. Chairman Figueiredo asked if a copy of the agreement was available. Mr. Gioiosa stated that could be in the conditions and he will obtain the agreement.

Chairman Jacqueline Figueiredo asked how many parking spaces typically would be required. Mr. Gioiosa answered for the retail component 8 spaces. Chairman Figueiredo asked why you are looking for relief if you have 8 spaces. Mr. Gioiosa replied in order to create 8 spaces to keep in compliance with Section 16, we would have to provide the landscaping buffer that Mr. Perry is recommending.

Chairman Jacqueline Figueiredo asked the board members if they had any questions.

No questions from board members.

Chairman Jacqueline Figueiredo asked if there were any comments from the public.

No comments from the public.

The Board determined the following findings:

- The locus property at 279 State Road is identified on Map 167 Lot 102 and is located in the General Business and Aquifer Protection Districts.
- Top-Deb Inc. has owned the property since December 1976.
- The two-story existing structure was originally 50% commercial with the first floor reserved for retail sales and the second floor available for residential use. At present, the facility is not used for residential but strictly for commercial use.
- In 1977, the owner was granted a Variance to enclose an existing front porch.
- Both the lot and structure are non-conforming pursuant to Section 3 of the zoning by-laws.
- Presently, lot coverage of the parcel is 92%.
- The Petitioner, A&A Jewelers proposes to operate a retail store featuring limited wares on the first floor of the building and as with the past occupants, A&A Jewelers will locate a one-person office on the second floor. Both uses are allowed by right in the General Business and Aquifer Protection Districts.
- A&A Jewelers is seeking a Special Permit pursuant to 20.601A and 3B.105 to make improvements to the existing parking lot without making any changes in the existing lot coverage of 92%.
- On July 3, 2014, an Order of Conditions was issued by Dartmouth Conservation Commission for the proposed site improvements, which included a proposed underground storm water infiltration system.
- The Petitioner is seeking a Variance from Section 16 parking regulations since compliance with all standards is not feasible.
- The proposed parking layout includes 8 spaces, one of which is to be designated a handicap space, a second space is for a compact car, and the remaining 6 spaces are standard size.
- In the past, some parking for the business at 279 State Road was allowed at the abutting gasoline station. The proposal for A&A Jewelers is to delineate two parallel parking spaces on a portion of the gasoline station property which will be used by employees.
- In his letter dated December 30, 2014, Planning Director Donald Perry identifies that a landscaped buffer must be maintained between the State Road property line and parking spaces. The requirement is that the buffer be either 20' wide or 15' wide with a tree planting. To accomplish this, one (1) parking space would need to be eliminated.
- The Petitioner proposes to maintain the 5 parking spaces which meets Section 16 and to seek relief from the landscaping regulation.
- The proposal for site improvements, meets the requirements for approving a Special Permit in the Aquifer Protection District (20.602).
- The parking layout plan meets meet the statutory requirements for granting a Variance pursuant to Massachusetts General Laws Chapter 40A §10.

1. There are circumstances related to soils, shape and topography that especially affect the subject property that do not generally affect the zoning district in which the structure or land is located.

The existence of a portion of the Paskamansett River abutting the east & south side of the property, and the location of the non-conforming structure on the non-conforming lot, do not allow enough space to meet Section 16 requirements. The proposed site plan is more conforming than existing conditions with the elimination of sub-standard size parking spaces and the installation of an upgraded storm water management system.

2. *A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner.*
Strict application of the by-laws would deprive reasonable use of the existing non-conforming lot and structure.
3. *Desirable relief may be granted without detriment to the public good.*
Proposed site changes improve the aesthetics and functionality of the property and the drainage plan provides environmental improvements.
4. *The Variance will not nullify or substantially derogate from the intent or purpose of the by-law.*
Approval of the requested Variance with a planned parking layout is in keeping with the basic intent of Section 16 of the Zoning By-Laws.

**CONDITIONS
THE BOARD'S APPROVAL SHALL BE SPECIFICALLY
CONDITIONED UPON COMPLIANCE WITH THE FOLLOWING:**

1. 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.
2. The Standard conditions of the Aquifer Protection special permit report that were adopted by the Zoning Board of Appeals on December 13, 2011 are to be followed.
3. A copy of the agreement that allows for two(2) parking spaces on the abutting property (presently a gas station) that is permitted to be used by A&A Jewelers' employees is to be provided to the Zoning Board of Appeals.
4. A sign designating "Parking for Employees of A&A Jewelers only" is to be erected at the area of the two parallel parking spaces that exist on the abutting property (gas station).
5. A Railing is to be erected along walkway on the east side of the building that leads to the door for the second floor.
6. There is to be no manufacturing of jewelry on the premises without a permit from Board of Health.
7. The Board approved plan referenced as:
Project: A&A Jewelers
Site Owners: Top-Deb, Inc.
By: SITEC, Inc. (Steven D. Gioiosa)
Site Plan dated: October 16, 2014

Dr. Aghai made the motion to close the public, Mr. Choubah seconded, motion carries unanimously.

Mr. Choubah made the motion to approve the petition based upon the findings and conditions as stated, seconded by Dr. Aghai. Chairman Figueiredo amended the conditions stating that the petitioner is to provide a copy of the agreement from the Mobile gasoline station regarding parking. Motion passed unanimously.

10:45 P.M. Hearing adjourned

Michelle Vieira

Michelle Vieira, Principal Clerk
Zoning Board of Appeals

Date of approval: _____



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

MINUTES

DATE OF HEARING: JANUARY 6, 2015
CASE: VARIANCE
CASE NO: 2014-45
Petitioner/Applicant: 321 ELM STREET
Property Owner(s): 10A BRIDGE STREET REALTY TRUST, L.L.C.
Representative: PETER C. BULLARD, ATTORNEY
Subject Property: 321 ELMS STREET
District: GENERAL RESIDENCE MAP:117 LOT: 179
Registry of Deeds Book: 8493 Page:132

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ATTENDANCE

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

ABSENT: Robert Gardner

ALSO PRESENT: Attorney Peter Bullard and Jordan Hitch

10:45 PM Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, January 6, 2015 @ 6:15 P.M.** in Meeting Room 304, Town Hall, and 400 Slocum Road, Dartmouth, MA on the petition of 321 Elm Street, L.L.C. who is seeking **VARIANCE/CHANGE OF USE VARIANCE**. The applicant is proposing to convert the space to retail/professional office and residential space. The property is located 321 Elm Street, Dartmouth MA in the General Residence District and identified on Assessor's Map 117 as Lot 179. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 5.408, Signs; 5.20 Allowed Uses; 16.2 Parking; 5.406 Percentages of Lot Coverage; and 5.409 Lighting)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, December 17, 2014 and Wednesday, December 24, 2014.

ABUTTER'S LIST: Halim Choubah motioned to waive the reading of the abutter's list into the record, which was seconded by Rahim Aghai. 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 11/6/2014.
- Schedule of Departmental Payment of Fees to Town Collector
- Legal Ad
- Certified Abutter's List

- Vision Appraisal Cards
- 2 Letter's from Planning Director, dated December 19, and December 30, 2014
- Comments from Board of Health
- Comments from Conservation
- A number of letters and e-mails of support from neighbors/abutters
- Letter from abutters James O'Day and Alan Gambrell dated December 16, 2014
- Letter from Jordan Hitch dated January 5, 2015
- Photos
- Schematic designs dated December 22, 2014
- Existing and proposed Site plans dated November 3, 2014 and November 5, 2014
- Multi-page plan by Damon Frazier dated Novem 11, 2014

Chairman Figueiredo stated there were two letters from the Planning Director but wanted to reserve reading those letters because of potential conditions. Chairman Figueiredo read the comments from the Director of Conservation, Michael O'Riley and Chris Michaud, Director of Board of Health.

Chairman Figueiredo invited the Petitioner or Representative to present the case. Attorney Peter Bullard stated the petitioner is seeking relief from the Zoning by-Laws regarding change of use, parking relief, lot coverage relief, parking as well as signs. Mr. Bullard stated back in the day this property was zoned commercial and it is presently zoned General Residence. It used to be a garage and then it became Bridge Street Café. Mr. Jordan Hitch is hoping to purchase this property. He has spoken with neighbors and received overwhelming support. Mr. O'Day, a neighbor has some concerns and Mr. Hitch has been in contact with him. Mr. Hitch has signed a purchase and sales agreement, but his obligation to purchase the property is contingent on getting the zoning relief. Mr. Bullard also stated that Mr. Hitch will need flexibility because he doesn't know who his tenants are going to be. For example Plan A may be constructing a 2nd floor, or Plan B not constructing a 2nd floor. Mr. Murphy the Zoning Enforcement Officer suggested requesting the 2nd floor in case Mr. Hitch decides to do that, to avoid the need to ask for an amendment. The commercial variance has lapsed due to lack of use, but Attorney Bullard and his client think there is substantial hardship for granting the requested relief.

Chairman Figueiredo asked about the DEP issues on the property. Mr. Hitch stated that he has been in contact with DEP and he feels he can clean it up and will be working with the DEP.

Chairman Figueiredo wanted to know about the communication between Mr. Hitch and Mr. O'Day. Chairman Figueiredo also asked why he needed the relief. Regarding the relief, Mr. Hitch stated he doesn't have tenants lined up and needs the zoning relief to purchase the property. He will comply with the Village Business Districts existing zoning clause for lighting 10.408, signs 10.407 and lot coverage 10.405. Regarding Mr. O'Day, Mr. Hitch spoke to him about his concerns and can agree with 4th and the 5th statement regarding valet services and commercial truck deliveries. Mr. Hitch said that he cannot agree to Mr. O'Days request that the restaurant facility and commercial-grade kitchen shall be limited to the former Bridge Street Cafe. Mr. Hitch stated, if he has someone who wants to open a sandwich shop etc. he wants to have the flexibility to do so.

Chairman Figueiredo asked any Board Members if they had questions.

No questions by Board Members.

*Chairman Figueiredo asked what plans are going to be for the record?
Mr. Hitch responded that he wanted all submitted plans to be plan of record.*

Chairman Figueiredo remarked on the setbacks listed on the Site Engineering plans regarding the setbacks. The Zoning requirements on the plan states front yard setback 20', rear yard setback 20' and side yard setback 20'. Setback exemptions of Section 5.404 apply since the lot and existing structures are non-conforming (20' front and 10' perimeter) pursuant to Sections 3B.200 and 3B.300.

Chairman Figueiredo invited public comments.

Will Newbury a neighbor who owns two (2) abutting properties fully supports Mr. Hitch and this project.

Chairman Figueiredo asked the board members if they had any questions.

No questions from the board.

Mr. Hitch had conversations with Donald Perry regarding his recommendations for the plans submitted. Mr. Hitch agrees with Mr. Perry's recommendation regarding shingles, and he will be working with David Hickox regarding the sidewalks. Also any trees planted on Elms Street would be Valley Forge American Elms and any trees planted on Bridge Street would be Magnolia "Loebneir Merrill" as recommended by Mr. Perry. Regarding the hedge in front, if there is a hedge it won't be higher than 30".

Mr. Choubah asked if he was asking relief for signage, and Mr. Hitch responded that he will comply with the Village Business District rules. Regarding parking, Mr. Hitch stated that he would have a parking space for each residential unit and five (5) or more commercial spaces.

Mr. Aghai asked about the steps and what about handicapped. Mr. Hitch stated the back will have a ramp, but the existing building will not be changed.

No further comments.

The Board made findings:

1. Locus property at 321 Elm Street is identified on May 117 Lot 179, and is located in the General Residence District with portions of the property in the Flood Zones AE and X.
2. The subject property has frontage on both Elm Street and Bridge Street.
3. The Elm Street side of the subject property abuts the Village Business District.
4. Frank J. Veale Jr. has owned the property since May 2004.
5. The Petitioner, 321 Elm LLC, proposes to renovate the existing structures on the subject property for a mix of commercial and residential uses.
6. The Petitioner is seeking Use Variances and a number of other Variances in order to use the subject property as a mixed-use site.
7. Twelve e-mail letters were received from residents in support of the proposed renovation project for the property. No testimony or letters were received in opposition.
8. One of the structures on the property was previously The Bridge Street Café. This non-conforming commercial use in a residential district has been discontinued since the restaurant has been closed for more than two years. Therefore, the Petitioner is seeking a Use Variance

pursuant to Sections 3B.103. A Use Variance is also needed pursuant to by-law 5.200 (Allowed Uses in General Residence District). Both Use Variances are needed to allow a mix of commercial and residential uses on the subject property.

9. The proposed commercial uses require additional Variances. These include relief from by-laws involving signage (Section 5.408), lightning (Section 5.409), and lot coverage (Section 5.406) in a General Residence District. A Variance is also needed for parking (Section 16.200).
10. Prior action was taken by the Board regarding the subject property between 1976 and 1995. The decisions involved changes to the commercial structure and to the residential building.
11. The lot and existing structures are non-conforming (20' front and 10' perimeter) pursuant to Sections 3B.200 and 3B.300, therefore, setback exemptions of Section 5.404 apply.
12. The existing lot coverage at 52.9% is not in compliance with the 50% lot coverage requirement in General Residence, and the proposed lot coverage would be increased to 69.2% due to the proposed building additions. An addition of 78 sq. ft. is proposed for the rear of the existing dwelling that fronts Elm Street and four (4) additions are proposed for the commercial structure that fronts Bridge St. Those additions include one at 408 sq. ft. a second at 212 sq. ft. a third at 33 sq. ft. and 43 sq. ft.
13. Parking relief is requested as it applies to non-residential use in a residential district. The proposed site plan from Site Design Engineering, LLC dated 11/5/14 shows six (6) off-street spaces on Bridge Street.
14. Since the subject property abuts The Village Business District, the Petitioner seeks to comply with the following Village Business District by-laws:
 - Section 10.200 Use
 - Section 10.405 Lot Coverage
 - Section 10.407 Signs
 - Section 10.408 Lightning
 - Section 10.412 Trash
 - Section 10.414 Noise
15. Submitted plans for the existing dwelling that fronts Elm Street is proposed to have a mixed-used with the first floor commercial and the second plus third floor as a single family three bedroom residence.
16. The submitted plans for the structure that fronts Bridge Street shows the retention of commercial use for both the existing first floor and proposed second floor. However, the Petitioner requests flexibility to use the proposed second floor of the Bridge Street structure for either commercial or residential use.
17. A change was to be noted in the "Zoning Requirements" legend for the plans by Site Design Engineering, LLC to read 10' for side and rear setbacks. This change would be in keeping with the exemptions section of setback by-law 5.404.
18. The requested Variances meet the statutory requirements for granting a Variance pursuant to Massachusetts General Laws Chapter 40A §10.

a. There are circumstances related to soils, shape, and topography that especially affect the subject property that do not generally affect the zoning district in which the structure or land is located.

The existing non-conforming structures on the non-conforming lot restrict the type of changes that can be made to the property. Although the property is in the General Residence District, the structure that faces Bridge Street has historically been used as commercial space. It has been used for a gas station, coffee shop, and restaurant. The proposed mixed use is in the keeping with prior uses and with the neighborhood since District #1 Fire Station abuts the property, and mixed-use is allowed by right in the Village Business District which abuts the property on the Elm Street side.

b. Literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner.

Strict application of the provisions of the General Residence by-laws would deprive reasonable uses of the existing structures in a manner equivalent to the use permitted in neighboring land or structures. Allowing a mixed-use of commercial and residential on the subject property allows flexibility of use in the existing and proposed structures as allowed in the abutting Village Business District.

c. Desirable relief may be granted without detriment to the public good.

Residents have complained about the deterioration of the structures on the subject property. Much support has been received regarding the mixed-use proposal. The proposal uses are compatible with the neighborhood; especially since the Village Business District and the District #1 Fire Station abuts the subject property. The proposed changes would be an attractive enhancement to the appearance of the existing "Padanaram Village", and they would be in harmony with the New England character of the surrounding neighborhood.

d. The Variance will not nullify or substantially derogate from the intent or purpose of the by-law.

The proposal aligns with the stated purposes for the General Residence District and is compatible with the by-laws for the abutting Village Business District.

**THE BOARD'S APPROVAL SHALL BE SPECIFICALLY
CONDITIONED UPON COMPLIANCE WITH THE FOLLOWING:**

1. 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.
2. Mixed- use is allowed in both structures on the subject property.
3. Lot coverage, signage, lightning, noise limits, and trash disposal are allowed to be in compliance with by-law standards delineated in the neighboring Village Business District (10.405, 10.407, 10.408, 10.414, and 10.412, respectively).

4. Shingles are to be used as the buildings' siding material.
5. Sidewalk plans and installation are to be completed in collaboration with the Department of Public Works.
6. At least three (3) of the proposed trees to be planted are to be Valley Forge American Elms, and one (1) is to be a Magnolia "Loebneri Merrill".
7. A low hedge that is at least 30" high is to be maintained along the property frontage.
8. The driveway off Elm Street on the north side of the property is to be used for residential tenant parking and not for valet parking, commercial truck deliveries, or customers of any commercial establishment on the property.
9. The project is to be in substantial compliance with the following plans of record:
 - ✓ Existing Conditions Plan & Proposed Site Plan
(With noted change in "Zoning Requirements" legend of 10' for required side & rear setbacks)
By: Site Design Engineering, LLC
Dated: 11/3/2014 & 11/5/2014, respectively
 - ✓ Plans EXC 1-5, A.1.1, A.1.2A, A1.2B, and L.1
By: Damon Frazier May, AIA
Dated: 11/1/2014
 - ✓ Bridge Street Retail Schematic Designs,
Including Plans entitled "Bridge Street", "Elm Street",
"First Floor" and "Second Floor"
By: Annino Incorporated
Dated: as received on 12/22/2014

Chairman Figueiredo asked Board Members for further comments.

No further comments by Board Members.

Dr. Aghai made the motion to close the public hearing, motion was seconded by Halim Choubah and made unanimous by Chairman Figueiredo. Motion passed unanimously.

Mr. Choubah made the motion to GRANT the VARIANCE based upon the findings as stated and conditions as proposed. Motion was seconded by Dr. Aghai and made unanimous by Chairman Figueiredo. Motion passed unanimously.

11:50 P.M. Hearing adjourned

Michelle Vieira

Michelle Vieira, Principal Clerk
For the Zoning Board of Appeals

Date of Approval: _____