



TOWN OF DARTMOUTH
 Office of the Zoning Board of Appeals
 400 Slocum Road, Dartmouth, MA 01944
 (508) 910-1868

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DARTMOUTH TOWN CLERK

MINUTES

DATE OF HEARING: January 20, 2015
 CASE: SPECIAL PERMIT/VARIANCE CONTINUANCE
 CASE NO: 2014-22
 Petitioner/Applicant: NEW CINGULAR WIRELESS PCS, LLC (AT&T)
 Property Owner: THISTLE TRUST LLC, TENANT AND CONCORDIA COMPANY LLC, LANDLORD
 Representative: ELISABETH RUTKOWSKI OF TRM AND EDWARD PARE, JR., Esq.
 Subject Property: 300 GULF ROAD
 Registry of Deeds: BOOK 7917 PAGE 343
 District: MARITIME/MARINE INDUSTRIAL

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Robert Gardner, Dr. Rahim Aghai
 ASSOCIATE MEMBERS: Michael Medeiros and David Dore
 Director of Development Deborah Melino-Wender and Principal Clerk, Michelle Vieira
 ABSENT: Halim Choubah
 ALSO PRESENT: Town Counsel Anthony Savastano, Attorney Pare, and David Maxson, Isotrope, and Many Residents

6:30 Chairman Jacqueline Figueiredo gave a brief summary on Special Permit/Variance Case #2014-22, AT&T Telecommunications Facility located at 300 Gulf Road which was continued from January 6, 2015. The Petitioner AT&T is requesting to allow the installation operation maintenance of a new telecommunication facility which now will be described as a 100' above ground unipole and a 40x40 fenced in compound for AT&T and future pole locaters. The reason for this continuance was because the Board asked Town Counsel to review with our Director of Inspectional Services the relief from the by-laws that would be needed for the property at 333 Bakerville Road.

NEW CORRESPONDENCE AND DOCUMENTS RECEIVED SINCE JANUARY 6, 2015

- January 9, 2015 email from Chris Hesse
- January 10, 2015 2 letters from William McQuiggan
- January 10, 2015 letter from Robert Chapin
- January 15, 2015 letter from Attorney Daniel C. Perry
- January 15, 2015 letter from Christine & Michael Hubert
- January 16, 2015 letter from June Chapin
- January 20, 2015 List of Questions from Michael Pope
- January 20, 2015 Power Point Document from Peter Rhys Jenkins
- January 20, 2015 Report from Anthony Savastano
- List of Abutters within 500' of 333 Bakerville Road provided by AT&T
- Setback Plans and Ortho Images by EG Advanced Engineering Group dated 1/20/2015 for 333 Bakerville Road and 300 Gulf Road properties
- Photographic Renderings related to 100' Unipole at 300 Gulf Road provided by AT&T

- MapGeo.com setback map for 333 Bakerville Road provided by resident, Kevin Santos

Chairman Figueiredo read excerpts from the residents' emails/letters. (Letters on file)

Chairman Figueiredo stated that she and Attorney Savastano received information from the Environmental Officer. She stated that the Santos property may not be a viable site. Attorney Savastano stated that a decision on an applicant's petition cannot be delayed without cause, and that there's no direct evidence related to these sites that would influence the Board's decision for the Concordia site.

Chairman Figueiredo asked the board members for any comments or questions, and there were none at this time.

Attorney Savastano, Town Counsel reviewed his zoning analysis of 333 Bakerville Road per his memo to the Board dated January 20, 2015. His conclusion was that the site would need the same federal preemption variance that is needed for the Gulf Road site, and at best, the Bakerville Road site is no better, and is likely worse, than the Gulf Road site from a local zoning conformity perspective.

Chairman Jacqueline Figueiredo asked the members whether or not they thought the Bakerville site was a viable site. Based on the responses from the Board members, Chairman Figueiredo concluded that the Bakerville site was not a viable site.

Chairman Jacqueline Figueiredo asked the public for any comments.

Attorney Pare stated he had already submitted his report on the 333 Bakerville Road site. He submitted comparison maps regarding 333 Bakerville Road (Oliver Property) and Concordia. On each map there is a zoning summary table, comparison table and structure distances from tower center. Also, Mr. Pare submitted an abutter's list for 333 Bakerville Road (Oliver property) re: 500' offset from property boundaries.

Chairman Figueiredo asked the board members for any comments or questions. There were none at this time.

Chairman Figueiredo stated she went on the GIS website to do some comparisons and agreed with the petitioner.

Chairman Figueiredo asked the public for any comments.

Mr. Pope reiterated the concerns for his group "STOP CONCORDIA" and had a number of questions. He also asked why, if the 333 Bakerville Road (Oliver Site), is 25' higher than the Concordia site, would it require an increase of 50' in the mast height?

Chairman Figueiredo responded that 333 Bakerville Road will not meet the Special Permit requirements.

Peter Rhys Jenkins gave a power point presentation.

Kevin Santos reminded the Board that they dismissed his property at the previous meeting and stated that he would like an answer in writing from the Conservation Commissioner that a cell tower cannot be placed on his property.

Chairman Figueiredo replied that the Board does not have anything in writing and that Mr. Santos has not made a presentation to the Board regarding his property. She stated that Attorney Savastano did consult with

Mr. O'Reilly, and based on testimony and information received on January 6, the Board concluded it was not a viable site.

Gary Adriance whose property abuts Concordia, requested that the Board deny the cell tower. He referenced portion of Attorney Daniel Perry's letter, which supports "STOP CONCORDIA" and would like his letter read into the record. He also stated that allowing the cell tower on the Concordia property would not be in harmony with the neighborhood and that there are less intrusive sites.

Michael Hubert read into record a letter he had submitted.

Chairman Figueiredo asked Attorney Savastano if there were any other issues regarding Santos property. Mr. Savastano replied that setbacks were an issue on this site.

Chairman Figueiredo asked Mr. Adriance to repeat the questions he had for Attorney Savastano.

Mr. Adriance requested that Attorney Perry's letter be read into the record and then asked Attorney Savastano to respond. Chairman Figueiredo clarified that the role of the ZBA. She stated that it is a quasi-judicial board that takes in evidence and makes an informed decision based on the petition of the applicant and the evidence presented. Chairman Figueiredo read into record Attorney Perry's letter and make clarifications to certain points raised in the letter. Attorney Savastano stated that Mr. Perry's letter raises the same issues that were previously raised. He said that the board needs to look at several issues including gap coverage, feasible alternatives and other factors, which include zoning and wetlands, and that he has already given the Board his opinion with respect to what the issues and standards are.

Chairman Figueiredo asked Mr. Adriance if he had any question for Attorney Savastano.

Mr. Adriance asked what is Attorney's Savastano response that AT&T has not and cannot show effective prohibition because AT&T did not investigate the sites where the by-law approved by Town Meeting authorizes towers to be built. Also, will Mr. Perry's letter have merit if it goes to Circuit Board of Appeals.

Attorney Savastano stated that if local standards and state standards cannot be met, the Board needs to look to the Federal standards under the Federal Communications Act. He referenced his previous letter to the Board.

Mr. McQuiggan addressed the Board. He referenced Mr. Savastano's letter and stated that he feels that this is similar to the Acton case and that it is a simple zoning case.

Mr. Medeiros asked what the Board needs to consider if approvals are needed by other Boards. Attorney Savastano responded that he looked at the other sites from a zoning perspective. The Board can consider issues such as wetlands and other factors.

In response to questions raised, Mr. Pare stated that AT&T is offering a 4GLTE integrated service which is already launched in a number of markets, and this is what AT&T is building its network on. He again commented on DAS (Distributed Antenna System) which he explained at previous meetings. Mr. Pare informed the Board that AT&T uses the 2010 US Census. Regarding Conservation Commission, he stated that Mr. Santos's property has a problem with wetlands. At the request of the board, AT&T looked at the Santos' site, which would require a setback relief and a wetlands crossing. Regarding a petition that was signed by 500 people, that was regarding a different application; the tower has now been set back from the original application.. Mr. Pare commented on Attorney Perry's letter stating the First Circuit Court has said two (2) things: 1. Significant gap in coverage, 2. Feasible solution. Attorney Pare said that when the application was submitted, an alternative site analysis was submitted. AT&T did look at the Santos property and the Oliver

property. AT&T has been doing this since July, and analyzed all suggested sites. He explained why the town of Acton denied that application.

Chairman Figueiredo stated that the Board has received a lot of information, and they have looked carefully at alternative sites.

David Maxson gave his comments regarding the Acton case. He stated that the second case Acton was denied for data only, and did not include voice. He stated that at that time AT&T did not have a time frame for the voice over LTE. He stated that there was a clear discussion of an alternative on a Mass DOT property that the Acton Board considered viable. He stated that regarding the Santos property, there has been no rebuttal by Mr. Santos with a qualified engineer concerning the issues raised on the Santos property

Chairman Figueiredo asked for a motion to close the public hearing, Mr. Gardner made motion and Dr. Aghai seconded, passed unanimously.

8:40 closed public hearing

Chairman Figueiredo asked the Board members if they felt that AT&T has met the burden of a significant gap.

Mr. Gardner stated that he is undecided at this time. Dr. Aghai stated that he feels they have met the burden of showing a significant gap. Chairman Figueiredo stated that she feels AT&T has shown a significant gap..

Chairman Figueiredo asked the Board if they feel that AT&T has met their burden to demonstrate that it has investigated thoroughly the possibility of other viable alternative sites?

Mr. Gardner stated he wasn't convinced of that. Dr. Aghai agree with Mr. Gardner, Chairman Figueiredo state she believes they have accomplished that.

Chairman Figueiredo asked the Board members what they felt AT&T needs to do further to show that they do have significant gap?

Mr. Gardner replied that he could not give an answer because as a result of hearing information regarding the gap tonight, he was not convinced that that gap exists, so he needed more time to review the information.

With respect to alternative sites, Dr. Aghai stated if other people want their sites to be considered, they should have the opportunity to get their own experts and submit the information to the Board for evaluation.

Chairman Figueiredo asked Kevin Santos if he would consider getting his own experts. She noted that this evaluation would need to include the viability of the site from a zoning and wetland perspective.

9:00 P.M. Chairman Figueiredo asked for a motion to re-open the public hearing, Mr. Gardner made the motion, Dr. Aghai seconded the motion. The motion passed unanimously.

Mr. Pare stated that AT&T was asked to evaluate 333 Bakerville Road, which was done and at the last meeting, the Santos property was removed from consideration. He expressed concern that the Santos property is now being reconsidered and said they would cooperate if Mr. Santos provides the information to the Conservation Commission. Mr. Pare expressed concern on how many times this is going to happen and the timetable.

Attorney Savastano requested that Mr. Santos provide the information to the Board one week in advance of the February 26th meeting. Chairman Figueiredo informed Mr. Santos that he needs to act quickly to move forward and get this information on the agenda for the Conservation Commission.

Mr. Santos stated that he isn't sure he can get this done in this time frame, but will attempt to do so and will get his own experts at his own cost.

Mr. Santos will keep Attorney Savastano informed.

Mr. Gardner asked Mr. Pare why is there so much controversy with respect to gap and coverage.

Attorney Pare responded that AT&T has provided its own expert testimony that there is a gap in coverage. Additionally, the Board's expert, Mr. Maxson has concurred with that conclusion. Attorney Pare stated that this is the only expert coverage that has been provided and that other comments are lay testimony.

Mr. Jenkins and Mr. McQuiggan disagreed.

Chairman Figueiredo asked the Dr. Aghai and Mr. Gardner if they feel that Santos property is the last alternative site to be investigated. Both replied yes. Chairman Figueiredo stated that this is the last she feels needs investigation also.

Chairman Figueiredo asked for a motion to continue the hearing until February 26, 2015, Mr. Gardner made the motion which was seconded by Dr. Aghai. The motion passed unanimously.

9:15 meeting adjourned

Michelle Vieira, Principal Clerk
Zoning Board of Appeals
Date of approval: _____



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400 Slocum Road, Dartmouth, MA 02747
(508) 910-1868

MINUTES

DATE OF HEARING: JANUARY 20, 2015
CASE: VARIANCE
CASE NO: 2014-48
Petitioner/Applicant: Michael R. Bachstein
Property Owner(s): Michael R. Bachstein
Representative: Christopher T. Saunders
Subject Property: 44 Middle Street
District: GENERAL RESIDENCE MAP: 117 LOT: 90
Registry of Deeds: Book: 11114 Page(s)283

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ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Robert Gardner, Dr. Rahim Aghai
Associate Board Members: Michael Medeiros, David Dore,
Director of Development Deborah Melino-Wender and Principal Clerk Michelle Vieira
ABSENT: Halim Choubah
ALSO PRESENT: Attorney Christopher T. Saunders, Michael R. Bachstein

9:45 PM Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, January 20, 2015 at 6:15 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/CHANGE OF USE 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 5.204(D) and Section 5.204(L). The property is located at 44 Middle Street in the **GENERAL RESIDENCE 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, December 31, 2014 and Wednesday, January 7, 2015.

ABUTTER'S LIST: Robert Gardner 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

- Variance application time-stamped with the Town Clerk on December 17, 2014
- Schedule of Departmental Payment of Fees to Town Collector
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Cards
- Letter from Planning Director, Donald Perry, dated November 13, 2014

- Site Plan prepared by SITEC
- Certified Plot Plan prepared by Douglas L. Aaberg
- Plan of Hillside, Frank M. Metcalf Chief Engineer and Surveyor
- Architectural Drawing of existing conditions

Chairman Figueiredo mentioned that this case had been withdrawn due to the citing of incorrect by-laws. The petitioner, abutters and the request remain the same in this new 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. It has plumbing and can easily be converted to a residence. He stated that the detached accessory structure was in existence prior to June 6, 2006. The detached structure was renovated in 2012 to expand the existing footprint for the then owner to use the structure as an art studio. The majority of the existing footprint was in existence prior to June 6, 2006 in compliance with the Zoning By-Law. The Applicant is seeking Variances from the requirements that the detached accessory apartment be located within the footprint in existence prior to June 6, 2006 as called for in Section 5.204 (D) and that the detached accessory apartment be located on a lot of at least 12,000 square feet as called for in this Section 5.204 (L). The lot is slightly under the 12,000 sq.ft. requirement and contains 11,065 sq. ft. 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 father do not have the financial resources to own a single family home.

Chairman Figueiredo asked the Board Members if they had questions.

No questions from the Board Members

Chairman Figueiredo asked the public for any comments.

There were none.

Findings: The Board made findings which are listed in the Decision.

Conditions: The Board proposed conditions which are listed in the Decision.

Mr. Gardner made the motion to close the public hearing. The motion was seconded by Dr. Aghai, and the motion passed unanimously.

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

10:02 P.M. Hearing adjourned

Michelle Vieira

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



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Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, MA 02747
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MINUTES

DATE OF HEARING: JANUARY 20, 2015
CASE: SPECIAL PERMIT
CASE NO: 2014-46
Petitioner/Applicant: SCOTT LOPES
Property Owner: SCOTT LOPES
Representative: DAN AGUIAR, SITEC ENGINEERING
Subject Property: 8 EDGEWORTH STREET
MAP: LOT(S) MAP 133 LOT 216
District: GENERAL RESIDENCE

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ATTENDANCE

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

ALSO PRESENT: Dan Aguiar, SITEC Engineering, Scott Lopes

9:22 P.M. Chairman Figueiredo *opened the hearing*

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, January 20, 2015 @ 6:15 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Scott Lopes who is seeking a **SPECIAL PERMIT** to construct a second floor and additions to an existing single family dwelling. The property is located 8 Edgeworth Street in the GB District and identified on Assessor's Map 133 Lot 216. Information is on file in the office of the Board of Appeals and may be seen upon request. (Sections 3B.200, 3B. 202, 3B. 301, Non-Conforming Uses, Structures and Lots)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, December 31, 2014 and Wednesday, January 7, 2015.

ABUTTER'S LIST: David Dore motioned to waive the reading of the abutter's list, 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

- Special Permit application time stamped with the Town Clerk on November 21, 2014
- Schedule of Departmental Payment of Fees To Collector's Office
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Card
- Special Permit Plan by SITEC Inc. dated November 6, 2014

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

Dan Aguiar, SITEC Engineering stated that this 7200 sq. ft. parcel of land falls in the General Business District. The applicant is requesting a Special Permit allowing the expansion of a non-conforming use on a non-conforming lot. The applicant proposes to construct a second floor, a garage and bulk head addition to the existing dwelling. He stated the proposed improvements are not more detrimental to the neighborhood than the existing non-conforming structure and although in a General Business District, the neighborhood is comprised of single family homes and the improvements will enhance the neighborhood.

Chairman Figueiredo asked if the small addition was an entrance into the existing first floor dwelling, Mr. Aguiar stated that that was the bulk head on the west side of the property. Chairman Figueiredo asked if the other addition was the garage, Mr. Aguiar replied yes and that would have a proposed 10' setback. Chairman Figueiredo wanted it to be clear that this property abuts Single Residence B and that the requirement for Single Residence B are different. The setbacks in the neighborhood are not as large because of some exemptions and it encompasses a lot of single family homes that are actually in Single Residence B.

Chairman Figueiredo invited any board members to ask questions.

Mr. Gardner asked about a small addition on Plan A-4. Mr. Aguiar stated it goes straight to the basement, it's called a doghouse bulk head.

No further questions from board members.

Chairman Figueiredo invited public comments regarding this project.

William Norton who owns and resides at 18 Edgeworth Street and rents to the petitioner stated that he fully supports the project.

Findings: The Board made findings which are listed in the decision.

Conditions: The Board proposed conditions which are listed in the decision.

Mr. Gardner made the motion to close the public hearing which was seconded by David Dore. The motion passed unanimously.

Mr. Gardner made the motion to approve the Special Permit, Mr. Dore seconded the motion. Motion passed unanimously.

9:40 P.M. Hearing adjourned

Michelle Vieira

Michelle Vieira, Principal Clerk
Zoning Board of Appeals

Date of approval: 2-17-15