



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

ADMINISTRATIVE MINUTES

DATE OF HEARING: September 29, 2015

6:00 P.M. Chairman Jacqueline Figueiredo opened the meeting; Pledge the Flag, Moment of Silence

PRESENT: Chairman Jacqueline Figueiredo, Robert Gardner and Michael Medeiros Esq.

ASSOCIATE MEMBER(S): Dr. Rahim Aghai

Principal Clerk Michelle Vieira

ABSENT: Halim Choubah P.E, and Alvin Youman Esq.

Chairman Jacqueline Figueiredo announced next meeting date for the Zoning Board of Appeals will be Wednesday, October 14, 2015 at 6:00 P.M., Room 304 at the Town Hall.

ADMINISTRATIVE MINUTES:

Robert Gardner made the motion to approve the Administrative Minutes of September 15, 2015 as amended. The motion was seconded by Michael Medeiros. The motion passed unanimously.

- Minutes of Variance Case #2015-21 11 Cottage Street deferred until October 14, 2015

Approvals of the following Hearing Minutes deferred until drafts have been reviewed by Town Counsel.

- Review and Approval of Minutes (January 20, 2015) Case # 2014-42 -769 State Road-Administrative Appeal
- Review and Approval of Minutes (February 17, 2015) Case # 2014-42 -769 State Road-Administrative Appeal

The following Hearing Minutes were approved as amended:

- Minutes of September 15, 2015 Special Permit Case #2015-20 180 Horseneck Road
The motion was made by Robert Gardner, seconded by Halim Choubah to approve the minutes as amended. The motion passed unanimously.

DARTMOUTH TOWN CLERK

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Other Administrative Items:

Chairman Figueiredo reviewed page 3 of the Application Instructions regarding the new form for Tax Collectors signature. Robert Gardner made the motion to approve the revision. The motion was seconded by Michael Medeiros. The motion passed unanimously.

Chairman Figueiredo informed the Board that on all Applications space for email addresses will be added.

Chairman Figueiredo and the Board continued revising the Rules and Regulations of the Zoning Board of Appeals until 6:20 PM. Chairman Figueiredo informed the Board that at the next meeting they will begin revising the Comprehensive Permit and the Supplemental Rules and Regulations.

The following Cases were heard September 29, 2015:

- Variance Case # 2015-23 -9 Bourgon Street-Continued to October 14, 2015
- Special Permit Case # 2015-22 – 498 Old Westport Road-Continued to November 4, 2015

Michelle Vieira, Principal Clerk

For the Zoning Board of Appeals

Date of Approval: _____



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Board Members

Jacqueline Figueiredo, *Chairman*
Halim Choubah, P.E., *Clerk*
Robert Gardner, *Member*

MINUTES

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DARTMOUTH TOWN CLERK

DATE OF HEARING: September 29, 2015
CASE: VARIANCE/CHANGE OF USE VARIANCE
CASE NO: 2015-23
PETITIONER/APPLICANT: Ana Maria Watts, Russell Watts, Nelson Watts
PROPERTY OWNER(S): Ana Maria Watts, Russell Watts, Nelson Watts
SUBJECT PROPERTY: 9 Bourgon Street
DISTRICT: General Residence
Map: 138 Lot: 250
BRISTOL COUNTY
REGISTRY OF DEEDS: Book: 11438 Page: 157

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Robert Gardner and Michael Medeiros Esq.
ASSOCIATE BOARD MEMBERS: Dr. Rahim Aghai
Principal Clerk Michelle Vieira and Director of Development Deborah Melino-Wender
ABSENT: Clerk Halim Choubah P.E., Alvin Youman Esq.

ALSO PRESENT: Attorney Peter Saulino and Nelson Watts, Petitioner

6:30 PM Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, September 29, 2015 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Ana Maria Watts, Russell Watts and Nelson Watts who are seeking a Variance to be allowed to operate a party rental and seasonal products business out of their home. The property is located at 9 Bourgon Street in the General Residence District and identified on Assessor's Map 138 as Lot 250. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 5.200 Allowed Uses)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, September 9, 2015 and Wednesday, September 16, 2015.

ABUTTER'S LIST: Robert Gardner motioned to waive the reading of the abutter's list into the record. The motion was seconded by Michael Medeiros. 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 August 27, 2015
- Schedule of Departmental Payment of Fees To Collector's Office
- Certified Abutter's List
- Vision Appraisal Card
- Letter from Planning Director John P. Hansen, Jr. dated September 3, 2015
- Letter/Photos from Victoria Callahan, Abutter dated September 29, 2015
- Map Geo dated September 21, 2015

Chairman Figueiredo read into the record a letter from Planning Director John P. Hansen dated September 3, 2015.

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

Attorney Peter Saulino stated that his client started negotiating for this property in September 2014 prior to the zoning change. The property was zoned General Business and the Petitioners's intention was living and conducting their business from the property. The property was advertised as commercial which was allowed at that time. The closing window was ninety (90) days, which occurred subsequent to the zoning change. Without the Change of Use Variance, the Petitioners's cannot make use of this property for his business. Mr. Saulino continued by informing the Board that the Petitioner's business is a party rental business. He rents party supplies, chairs, bounce houses etc. He continued by stating customers do not come to the business, the Petitioner delivers.

Chairman Figueiredo asked any Board Members if they had questions.

Robert Gardner asked if trucks will be loading and unloading at the site.

Mr. Watts stated that he does all the loading and unloading and that he has a box truck which will be on the property.

Chairman Figueiredo asked Mr. Watts the following questions: (a) Where will the equipment be stored? (b) Are you planning on putting the storage containers on the property and how many? (c) Is the business conducted by telephone? (d) Are you anticipating an expansion of the business that would require more storage units and employees? (e) Do you conduct your business out of your home now? and (f) How long have you been in business?

Mr. Watts replied: (a) The equipment will be stored in storage containers, (b) Yes the storage containers would be on the property and there would be one (1) or two (2) containers, (c) The business is conducted through the internet and the telephone, (d) As of now there are no plans for expansion, but as the business grows I may add employees and storage units (e) The business is conducted out of my home now and (f) Mr. Watts replied he has been in business for four (4) years.

Michael Medeiros has concerns regarding the containers. He asked Mr. Watts where the placement of the containers would be placed on the site.

Mr. Watts stated they will be placed on the Russells Mills Road side, the bushes and trees will be removed and the storage containers will be placed in an L shape.

Dr. Rahim Aghai asked if there was a maximum size of container regarding the lot coverage.

Chairman Figueiredo read the by-law pertaining to lot coverage and explained the procedure regarding the re-zoning of Bliss Corner.

Chairman Figueiredo invited public comments.

Ellen Furtado an abutter had concerns regarding the placement of the storage containers, the removal of trees and grass and the amount of vehicles that will be there.

Victoria Callahan an abutter voiced her concerns regarding vehicles, weekend activity, the appearance, etc. and submitted information that will be entered into the record.

Robert Gardner made the motion to accept the documents from Ms. Callahan and place into the record. Michael Medeiros seconded the motion. The motion passed unanimously.

Attorney Saulino responded to Ms. Callahan's concerns, stating to the Board that they can put restrictions regarding the concerns of Ms. Callahan and Mrs. Furtado.

Michael Medeiros stated that the application should have been more specific as to the size of the storage containers, the location of the proposed, if they are proposing curb side plantings, etc. Mr. Medeiros continued by stating it's difficult for him to make a decision without the specifics especially in that area of town. Mr. Medeiros stated that it seems like an open ended petition and suggested that the Petitioner have the opportunity to submit to the Board these details.

The Board Members along with Mr. Saulino agree that a site plan stamped by a certified engineer indicating the placement of containers, landscaping, setbacks, & lot coverage be submitted and the hearing be continued.

Chairman Figueiredo asked for a motion to continue.

Robert Gardner made the motion to continue the hearing until October 14, 2015. Michael Medeiros seconded the motion. The motion passed unanimously.

Robert Gardner made the motion to adjourn. Michael Medeiros seconded the motion. The motion passed unanimously.

7:15 P.M. Hearing adjourned

Michelle Vieira

*Michelle Vieira, Principal Clerk
For the Zoning Board of Appeals*

Date of Approval: 10/14/15



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Board Members
Jacqueline Figueiredo, Chairman
Halim Choubah, P.E., Clerk
Robert Gardner, Member

MINUTES

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DARTMOUTH TOWN CLERK

DATE OF HEARING: September 29, 2015
CASE: Special Permit
CASE NO: 2015-22
PETITIONER/APPLICANT: J.B. Lanagan and Company, Inc.
PROPERTY OWNER(S): Claudia Mello, Francis R. Mello, Robert J. Mello
REPRESENTATIVE(S): Daniel C. Perry, Esq.
SUBJECT PROPERTY: 498 Old Westport Road
DISTRICTS: Single Residence B, Zone II Aquifer Protection, Flood Zone A (Lots 28 & 39)
and X (Lot 29)
Map: 48 Lot(s): 28, 29, 39

BRISTOL COUNTY
REGISTRY OF DEEDS: Book: 2985 Page: 201

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Robert Gardner and Dr. Rahim Aghai

ASSOCIATE MEMBERS: Michael Medeiros, Esq.

Principal Clerk, Michelle Vieira and Director of Development Deborah Melino-Wender

ABSENT: Clerk Halim Choubah P.E. and Alvin Youman Esq.

ALSO PRESENT: Attorney Daniel C. Perry, J.B. Lanagan, Petitioner, Frank Mello, Co-Owner of property and Richard Rheaume, Engineer

7:25 P.M. Chairman Figueiredo opened the hearing

LEGAL AD:

Notice is hereby given of a public hearing to be held on **Tuesday, September 29, 2015 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of J.B. Lanagan & Company, Inc. who is seeking a Special Permit to change an existing non-conforming use of sand and gravel excavation business to be the headquarters for Petitioner's excavation business. The property is located at 498 Old Westport Road in the Single Residence B District and identified on Assessor's Map 48 as Lot(s) 28, 29, and 39. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 3B.105 Expansion or Change of Non-Conforming Uses Other Than One or Two Family Residential Uses)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, September 9, 2015 and Wednesday, September 16, 2015.

ABUTTER'S LIST: Robert Gardner 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

- Special Permit application time stamped with the Town Clerk on August 25, 2015
- Schedule of Departmental Payment of Fees To Collector's Office
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Card
- Letter from Planning Director dated September 18, 2015
- Google Maps
- Several Abutter's letters, photos, documents and a petition in opposition of application
- Aerial Photos; DVD brief, and other documents from Attorney Daniel C. Perry

Michael Medeiros recused himself from the hearing because of a conflict of interest.

Chairman Figueiredo read into the record a letter from Planning Director, John P. Hansen dated September 18, 2015. Chairman Figueiredo also read comments from Christopher Michaud, Director of Public Health/Soil Board Agent and Michael O'Reilly, Environmental Affairs Coordinator.

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

Attorney Daniel C. Perry informed the Board that the property known as Pine Hill Sand and Gravel is located at 498 Old Westport Road. The Petitioner is seeking a Special Permit under Section 3B.105 of the Zoning By-laws to change the existing non-conforming sand and gravel processing excavation business to become the Petitioner's site excavation business. Attorney Perry stated there will be no excavating at the site, the Petitioner's business excavates for commercial developments on the developments sites, and this property will be the Petitioner's home office. He continued by stating that his presentation will be in three (3) parts:

- (1) Documentary evidence that shows the sand and gravel business existed before the enactment of any use regulation making it non-conforming.
- (2) The gravel and crushing business has continued to the present time and is protected under the zoning act and by-law.
- (3) Describing the Petitioners proposed use and that this change in use will not be more detrimental, but the operation will be better for the neighborhood than the existing sand and gravel business.

Attorney Perry elaborated on the three (3) parts of his presentation and submitted a narrative that was attached with the petition. Attorney Perry submitted the following documents/DVD:

- 3 aerial views from Google earth dated April 4, 2009, April 30, 2010 and April 2, 2012 showing an active commercial presence.
- Change in the landscape indicating continued processing activity between 2009-2010 and 2010-2012.
- Profit Corporation Annual Reports for years 2008, 2009 and 2010.
- An active listing from Verizon Yellow Pages directory dated February 2009-2010 showing the listing for Pine Hill Sand & Gravel.
- A copy of Francis R. Mello affidavit with additional invoices.
- A DVD presentation showing operations in March 20, 2012 and June 22, 2013.

- And a photo (315 Converse Road, Marion MA) from Google Earth on the neighborhood where the Petitioner's business is currently located.

In Attorney Perry's narrative, it states that the Petitioner does not agree with Town Counsel's contention that the applicable legal standard for loss on non-conforming status is two years of non-use, as opposed to abandonment, which requires evidence of intent to discontinue.

Attorney Perry continued by informing the Board that the Petitioner, James Langagan is a site excavation contractor. He owns 20 large pieces of heavy equipment and has 30 employees. All of his business is done at the work sites and does not take place where his office is located. The large equipment moves from site to site and does not return to the garages except for major servicing. He continued by stating the only traffic in and out of the site would be small trucks that the supervisors drive, whereas up until recently Pine Hill Sand and Gravel had up to 30 noisy large trucks going in and out of the site with material creating dust. Attorney Perry continued by stating the site will be used for an office, for storage materials, and to occasionally service equipment in the garage. Attorney Perry said that Mr. Lanagan does recycle concrete which has always been done at the existing site; it will be crushed and reused as filler material. Pine Hill used to do this and there is material at the site that has been left there; Mr. Lanagan will be processing that material and will be cleaning up the site. The impact of the neighborhood will be the hammering of the concrete, which will take place no more than 8 times a year for a week between the hours of 7AM to 6PM. Attorney Perry stated that the neighbors are concerned with the gravel removal, but there isn't much on the site to be taken out. He said there are slopes that need to be smoothed out and the only gravel removal will be to smooth the out the slopes. Attorney Perry did say this site needs work, and that the groundwater issues and all other environmental issues will be addressed by Mr. Lanagan.

Chairman Figueiredo asked Town Counsel to comment.

Town Counsel Anthony Savastano stated to the Board that there are questions that need to be answered before the application can be evaluated. Town Counsel first informed the Board that there are different uses: soils, excavation, processing etc. and each are distinct uses. Town Counsel questioned the exact use of the site:

- *sand & gravel excavation business*
- *sand & gravel storage*
- *importation*
- *removal*
- *concrete (sandy materials, construction demolition)*
- *ABC Materials (asphalt, brick & concrete) which are defined as solid waste under 310 CMR 1600 which would need a permit or exemption from DEP.*

Town Counsel continued by questioning the application, stating that it is unclear, if the proposed use includes both excavation and processing. He continued by stating that there is documentation included with the application that implies the importation of outside earth materials for processing. This alleges it as a grandfathered use, which is not on the cover of the application. He also noted an affidavit from Frank Mello implying that the processing activity occurred on the site continuously before 1968 without mention of excavation activity. The affidavit also mentions the storage and repair of equipment and the maintenance of an office, which also is not mentioned in the application. Attorney Savastano also informed the board that clarification is needed regarding the exact nature of the use that the applicant contends is grandfathered, the different types of earth materials, the types of materials and what's been done with each of them re: removal, processing, importation etc. Without knowing the exact grandfather use, it's impossible to make a determination as to whether the new proposed use is more substantial detrimental to the neighborhood and also whether or not the existing use is grandfathered.

Attorney Perry replied that sand and gravel has been excavated from this site since the 1920's. The 1938 aerial photo shows excavation activity. By the 1970's, the site had been exhausted, then material came in from off-site and processed.

Chairman Figueiredo asked about the type of materials?

Attorney Perry replied, sand, gravel, loam, concrete, asphalt and brick.

Chairman Figueiredo asked Frank Mello, (Co-Owner of Pine Hill Sand & Gravel) after 1970 what was occurring with the excavation of sand and gravel?

Frank Mello replied Pine Hill Sand & Gravel did excavation work.

Chairman Figueiredo then asked Mr. Mello, if sand and gravel has been excavated from that site from 1970 to the present?

Mr. Mello stated when his parents took over in 1961 there was hardly anything left except for gravel underwater. Gravel was taken from under the water to until about 1982, then a cease and desist was received from the town. He stated that they always brought material in, processed it, and then sold it.

Chairman Figueiredo clarified that excavating from Pine Hill Sand and Gravel was not occurring, but sand and gravel was brought in and processed.

Mr. Mello agreed.

Chairman Figueiredo asked Attorney Savastano if the description on the application meant that excavating will be done on the site.

Attorney Savastano replied yes, and it's a distinct use from processing. Attorney Savastano stated that the application wasn't clear on what the specific change of use was being sought. He stated that it is important that the Board knows what the intended use is.

Attorney Perry stated the proposal is for an office, garage for maintenance and repairs of equipment, to store materials in bays, including loam, concrete, asphalt, pipes and recycling of concrete only.

Chairman Figueiredo voiced her opinion that there doesn't seem to be a continued non-conforming use. She visited the site and found no evidence of sand and gravel excavation and what was stated this evening was that sand and gravel stopped being excavated because it was limited, therefore, the business brought in materials and processed it. The application states headquarters for Petitioner's excavation business.

Richard Rheume, Engineer from Prime Engineering informed the board that he has done a lot of engineering on this site and described the operation at Pine Hill Sand & Gravel. In the 1980', 1990's and beyond, there was an excavation process for sale off-site. The majority of material was brought in, ABC (asphalt, brick concrete), which is allowed and a DEP permit is not required for processing ABC if you're an active sand and gravel operation.

There was further discussion with Attorney Savastano regarding a DEP permit. Attorney Savastano stated that an application for an exemption or a permit is needed depending on the size, and there has to be an active gravel permit to get the exemption. Mr. Rheume agreed.

Chairman Figueiredo asked Mr. Rheume if there was documentation from DEP regarding the exemption?

Mr. Rheume replied that many sand and gravel operations have filed and have the exemption and many don't.

Attorney Savastano stated there had to be an application, under 310.16 for ABC to be brought in and it needs to be processed and removed within 90 days.

Attorney Savastano stated that on the application it lists lots 28, 29, and 39 and it's unclear for which lots or portions of those lots that grandfathering is being asserted and which change of use is being sought. Also there is no site-plan. Town Counsel advised the Board to get clarification on which lots are grandfathered use and for which lots a change of use is being sought.

Attorney Perry replied that the entire site would be sold and that the active operation would be limited to Lot 29 which is 11.21 acres.

Chairman Figueiredo asked Attorney Perry to confirm that Lot 29 is the only lot the Petitioner is seeking to be grandfathered?

Attorney Perry replied yes.

After lengthy discussion between Attorney Savastano and Attorney Perry regarding abandonment and discontinued use for two or more years, Chairman Figueiredo stated that the Board uses the Zoning By-Laws and read Section 3B.103 Discontinuance of Non-Conforming Use. Chairman Figueiredo stated that is what the Zoning Board of Appeals will be using unless Attorney Savastano advises the Board to make findings related to intentional abandonment.

Attorney Savastano then informed the Board that a Soil Permit is needed for purposes of grandfathering as part of the zoning process and asked Attorney Perry if there were soil permits issued from the 1988 through 1994.

Attorney Perry believes that Pine Hill Sand & Gravel applied for permits in the 1990's and 2000's but did not have that data with him.

Attorney Savastano made reference to the 1970 Variance application which was for a shed. He stated there has been representation that the board had found a lawfully pre-existing non-conforming use. In the 1970 Variance there are no findings by the Zoning Board of Appeals that the business was a sand & gravel plant nor were there findings made that there was a use that was lawfully pre-existing non-conforming as was written in the application. This was only written in the application. Additionally, a lawful non-conforming use applies to a Special Permit not a Variance, and the Variance in 1970 was for a shed.

Chairman Figueiredo also made reference to the Special Permit Case 1982-61 that was also for a shed.

Attorney Perry read from a Zoning Board of Appeals January 26, 1983 to show that the decision to grant the Variance was made under the provision of the by-law, Section 2B Non-Conforming Use and Section 6E Aquifer Protection District. He further cited that, "The Board determined that the petitioner's ongoing non-conforming gravel operation utilizes heavy equipment which is presently stored and repaired out in the open", and that the use of the term non-conforming imports a finding. The Board could not grant a Special Permit without the non-conforming use deemed lawful.

Attorney Savastano made comment regarding the term lawful which was not in the Special Permit decision.

Attorney Savastano stated to the Board they need to make the following findings: (1) Is there a pre-existing non-conforming use in continuance until today without a discontinuance for more than two (2) years?, and (2) Is the proposal more detrimental to the neighborhood?

Chairman Figueiredo invited any board members to ask questions.

No questions from board members at this time.

Chairman Figueiredo stated she will read excerpts from letters received in opposition of this petition and will allow abutters to voice their concerns. All submitted documents are available at the Zoning Board of Appeals office.

James Costa, abutter voiced his concerns in opposition of this petition and submitted a petition with over 175 signatures, photographs, telephone directory, documents from the Registry of Deeds, and information from the Secretary of the Commonwealth of Massachusetts Corporations Division. Mr. Costa also provided information regarding the lack of electricity bills, water bills, mail not being delivered etc.

Chairman Figueiredo asked for a motion to accept the petition.

Robert Gardner made a motion to accept the petition. Dr. Rahim Aghai seconded the motion. The motion passed unanimously.

Chairman Figueiredo invited public comments.

Several abutters voiced their opinions in opposition regarding this petition and all relayed similar information; lack of activity in many years, overgrown vegetation, concern regarding the wells, noise levels, etc.

Chairman Figueiredo recommended that this case be continued until November 4, 2015.

Robert Gardner made the motion to continue this meeting until November 4, 2015. Dr. Rahim Aghai seconded the motion. The motion passed unanimously.

Chairman Figueiredo asked for a motion to adjourn.

Robert Gardner made the motion to adjourn this hearing. Dr. Rahim Aghai seconded the motion. The motion passed unanimously.

10:00 P.M. Hearing adjourned

Michelle Vieira

*Michelle Vieira, Principal Clerk
Zoning Board of Appeals*

Date of approval: 11/4/15