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ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS
NEW BEDFORD MAIN LIBRARY
3rd FLOOR MEETING ROOM
PLEASANT STREET
NEW BEDFORD, MA
Thursday, November 14, 2019

MINUTES

PRESENT: Allen Decker, *(Acting Chairperson)*
Stephen Brown, *(Clerk)*
Robert Schilling
Celeste Paleologos
Laura Parrish

ABSENT: Leo Schick *(Chairperson)*

STAFF: Angela Goncalves, *Assistant Project Manager*
Danny Romanowicz, *Commissioner of Buildings and Inspectional Services*

CITY CLERKS OFFICE
NEW BEDFORD, MA
2020 JAN 17 A 9:31
CITY CLERK

1. CALL TO ORDER

Acting Chairperson Decker called the meeting of the City of New Bedford Zoning Board to order at 6:00 p.m. Acting Chairperson Decker then explained the meeting process and protocol.

2. PUBLIC HEARINGS:

ITEM 1 – CASE #4394 - Petition of: PRL Realty, LLC, Patricia L. Andrade, Wayne G. Tessler & Pauline Massed; Trustee of Suite 5 Real Estate Trust, Elizabeth Silva & Durval Silva; Trustee of Suite 6 Realty Trust (52-54 Brigham Street, New Bedford, MA 02740), Cleanslate Centers, C/O Michael Keleher (12 Cadillac Drive, Brentwood, TN 37027) and Thomas P. Crotty & Associates PLLC, (5 Dover Street, Ste 102, New Bedford, MA 02740) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations-Appendix A, commercial #25 medical offices, center or clinic) and 53005330 & 5360-5390 (special permit); relative to property located at 52-54 Brigham Street, Assessors' map 39 lot 18A-D,F,H,K in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to operate a medical office space for outpatient treatment per plans filed.

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The applicant's representative stated he was here only in case the board has a problem with the request.

A motion was made (SB) and seconded (RS) to receive and place on file a request for continuance to December 12, 2019. Board Member Brown read the remainder of the correspondence into the record.

ROLL CALL VOTE:

Board Member Decker - Yes
Board Member Brown - Yes
Board Member Parrish - Yes

Board Member Paleologos - Yes
Board Member Schilling - Yes

Motion passed 5-0

ITEM 2 – CASE #4395 - Petition of: Ildfonso Sousa (135 Cedar Street New Bedford, MA 02740) for a Variance under Chapter 9, Comprehensive Zoning Sections 2300 (accessory buildings and uses), 2310 (general), 2330 (accessory structures), 2331 (private garage), 2332 (accessory buildings or structures, including private garages, may occupy in the aggregate not over forty (40) percent of the required rear yard area), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, rear yard-ft., greenspace) 2750 (yards in residence district) and 2753 (rear yard); relative to property located at 135 Cedar Street, Assessors' map 57 lot 87 in a Residential B [RB] zoned district. The petitioner is proposing to construct a 22'x36' wood carport structure with a metal sheet roof in the yard per plans filed. Continued Agenda Item from October 17, 2019.

A motion was made (SB) and seconded (RS) that the following be received and placed on file: communications from the Commissioner of Buildings and Inspectional Services dated 9/27/19; communication from the Office of the City Planner dated 10/4/19; the appeal package as submitted; the plans as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Diana Santos, daughter of applicant, stated her father needs to do a driveway carport due to weather and snow shoveling in his health condition.

In response to Acting Chairperson Decker, both the applicant and Ms. Santos stated her father would do the construction with friends. Acting Chairperson Decker confirmed the existing driveway which will be covered with the proposal. In response to Acting Chairperson Decker, the applicant stated he would have gutters to deal with the roof runoff and avoid the neighbors.

Board Member Brown confirmed that there was a nearby property with a similar carport.

There was no response to Acting Chairperson Decker's invitation to speak or be recorded in favor.

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There was no response to Acting Chairperson Decker's invitation to speak or be recorded in opposition.

The public hearing was closed.

After brief discussion, a motion was made (SB) and seconded (CP) to grant a variance under provisions of the City Code of New Bedford relative to property located at 135 Cedar Street, Assessors' map 57 lot 87 in a Residential B [RB] zoned district, to allow the petitioner to construct a 22'x36' wood carport structure with a metal sheet roof in the yard per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 2300, 2310, 2330, 2331, 2332, 2700, 2710, 2720 -Appendix B, 2750 and 2753. Having reviewed this petition, including materials and testimony heard, in accordance with the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, and M.G.L. Chapter 40A, §10, the board finds that the applicable requirements have been met.

This determination includes consideration of the following:

The board finds there are circumstances related to the soil conditions, shape or topography especially effecting the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. In this instance, circumstances are that the property has a large paved open area with a curb cut but no garage or carport. Two, due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, the hardship is medical issues prevent the applicant being able to shovel snow in the winter, specifically a heart condition. Three, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. Four, the desirable relief may be granted without substantial detriment to the public good.

With no specific conditions, but general conditions are as follows: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of the variance must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted or they will lapse.

ROLL CALL VOTE:

Board Member Parrish - Yes	Board Member Paleologos - Yes
Board Member Brown - Yes	Board Member Schilling - Yes
Board Member Decker - Yes	

Motion passed 5-0

ITEM 3 – CASES #4396/4397 –

Case #4396 - Petition of: Gary Juvinal (11 Salt Creek Road, Dartmouth, MA 02748) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2400 (non-conforming uses and structures), 2410 (applicability), 2420 (nonconforming uses), 2421 (change or substantial

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extension of the use) and 5300-5330 & 5360-5390 (special permit); relative to property located at 61 Orchard Street, Assessors' map 46 lot 194 in a Residential A [RA] zoned district. The petitioner is proposing to have the 3rd floor apartment brought into legal standing as the 5th unit in the building per plans filed. Continued Agenda Item from October 17, 2019.

Case #4397 - Petition of: Gary Juvinal (11 Salt Creek Road, Dartmouth, MA 02748) for a Variance under Chapter 9, Comprehensive Zoning Sections 3100 (parking and loading), 3110 (applicability) and 3130 (table of parking loading requirements-Appendix C, multifamily (3) or more per structure); relative to property located at 61 Orchard Street, Assessors' map 46 lot 194 in a Residential A [RA] zoned district. The petitioner is proposing to have the 3rd floor apartment brought into legal standing as the 5th unit in the building, with no parking per plans filed. Continued Agenda Item from October 17, 2019.

Acting Chairperson Decker informed the board that he needed to recuse himself from the hearing/voting on the following cases. He informed the applicant that in that case he would need a unanimous vote to prevail. He gave the applicant the opportunity to continue the matter until a quorum was present.

Board Member Brown expressed concerns after reading the application.

Attorney Burke requested a continuance for a full quorum.

Acting Chairperson Decker confirmed the continuance request was related to both cases.

A motion was made (SB) and seconded (LP) to continue Cases #4396/4397 relative to property located at 61 Orchard Street at request of the applicant to our next regularly scheduled meeting. Motion passed unopposed.

ITEM 4 – CASE #4398 –Petition of: John A. Spencer (177 Seymour Street New Bedford, MA 02744) for a Variance under Chapter 9, Comprehensive Zoning Sections 2300 (accessory buildings and uses), 2310 (general), 2330 (accessory structures), 2331 (private garage), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, side yard-Ft.) 2750 (yards in residence district) and 2755 (side yard); relative to property located at 177 Seymour Street, Assessors' map 5 lot 113 in a Residential A [RA] zoned district. The petitioner is proposing to construct a 12'x30' carport structure per plans filed.

A motion was made (SB) and seconded (RS) that the following be received and placed on file: communications from the Commissioner of Buildings and Inspectional Services dated 10/25/19; communication from the Department of City Planning dated 11/6/19; the appeal package as submitted; the plans as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified. Motion passed unopposed.

John A. Spencer, 177 Seymour St., stated he seeks to build a carport attached to the house for convenience, especially in harsh weather.

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In response to Acting Chairperson Decker, Mr. Spencer stated his hardship is that he and his wife are senior citizens who have trouble shoveling snow, et cetera. Mr. Spencer stated the carport construction is to be done by Jose Fernandes. With regard to roof runoff, Mr. Spencer stated he would have gutters from the roof to the street, away from neighbors.

In response to Board Member Brown, Mr. Spencer stated there is a carport a block away with a carport very similar to that which he is proposing.

In response to Acting Chairperson Decker's invitation to speak or be recorded in favor, Councilor Joseph Lopes stated he is very familiar with the neighborhood and noted a nearby carport in this residential neighborhood. He stated he has not been contacted by any of the abutters. He offered his support for the project.

In response to Acting Chairperson Decker's invitation to speak or be recorded in favor, Councilor Scott Lima expressed his support for the project. He stated he is familiar with the construction contractor and the good work he has done.

In response to Acting Chairperson Decker's invitation to speak or be recorded in favor, Donald Gomes, Pleasant Street, stated he too is familiar with Mr. Fernandes' excellent work. He stated as a senior citizen, he too wishes for a carport or garage. He stated he is in favor of the project.

There was unrelated conversation between Acting Chairperson Decker and Mr. Gomes related to his prior service on the board.

There was no response to Acting Chairperson Decker's further invitation to speak or be recorded in favor.

There was no response to Acting Chairperson Decker's invitation to speak or be recorded in opposition.

The public hearing was closed.

After consultation with Commissioner Romanowicz, a motion was made (SB) and seconded (RS) to grant a variance under provisions of the City Code of New Bedford relative to property located at 177 Seymour Street, Assessors' map 5 lot 113 in a Residential A [RA] zoned district, to allow the petitioner is proposing to construct a 12'x30' carport structure per plans filed, which requires a Variance under provisions of Chapter 9, Comprehensive Zoning Sections 2300, 2310, 2330, 2331, 2700, 2710, 2720 -Appendix B, 2750 and 2753. Having reviewed this petition, including materials submitted and testimony heard, in accordance with the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, and M.G.L. Chapter 40A, §10, the board finds that the applicable requirements have been met.

This determination includes consideration of the following:

The board finds there are circumstances related to the soil conditions, shape or topography especially effecting the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. In this instance, circumstances are that there is

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an existing driveway and curb cut located on the east side of the property but no garage or carport. Two, due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, the hardship is that the property owners are senior citizens and shoveling in the winter presents a hardship. Three, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. Four, the desirable relief may be granted without substantial detriment to the public good.

With no specific conditions, general conditions are as follows: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of the variance must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted or they will lapse.

ROLL CALL VOTE:

Board Member Parrish - Yes
Board Member Brown - Yes
Board Member Decker - Yes

Board Member Paleologos - Yes
Board Member Schilling - Yes

Motion passed 5-0

ITEM 5 – CASE #4399 - Petition of: J LOMM Inc., C/O John Stone (86 Nautilus Street, New Bedford, MA 02744) and Diamond Signs, C/O Derek Fernandes (535 Ashley Boulevard, New Bedford, MA 02745) for an Administrative Appeal under Chapter 9, Comprehensive Zoning Sections 3200 (sign regulations), 3201 (purpose), 3220 (prohibited signs), 3222 (any sign which incorporates moving, flashing, animated or intermittent lighting, excluding public service signs such as those that display time and temperature), 5220 (powers) and 5223 (to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L.A. c. 40A, §§ 7, 8 and 15); relative to property located at 85 MacArthur Drive, Assessors' map 37 lot 323 in a Mixed Use Business (MUB) zoned district. The petitioners are proposing to install an electronic message board to an existing pylon sign per plans filed.

A motion was made (SB) and seconded (CP) that the following be received and placed on file: communications from the Commissioner of Buildings and Inspectional Services dated 10/25/19; communication from the Department of City Planning dated 11/6/19; the appeal package as submitted; the plans as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Derrick Fernandes, New Bedford Pack & Ship and Diamond Signs, stated he will be the electronic message center installer for Knuckleheads Bar & Grill. He stated an existing sign fell over due to a

vehicle accident and left the owner with a manual marquee which they changed for entertainment. The applicant seeks to put up the lighted sign and add an electric message center.

In response to Acting Chairperson Decker, Mr. Fernandes referred to Mr. Patenaude, manufacturer of the sign. Board Member Decker inquired as to moving/scrolling messages. Mr. Fernandes stated the applicant seeks to post ads for the weekend nights or food specials and is not looking to get motion.

Acting Chairperson Decker inquired as to more details of the sign and any moving postings. Mr. Fernandes again stated the applicant has said he not looking for movement, but the ease this sign provides to change messages automatically instead of manually. Acting Chairperson Decker noted some concern about the sign capabilities that could be used differently by any future owner.

In response to Acting Chairperson Decker's invitation to speak or be recorded in favor, City Councilor Joseph Lopes stated he has spoken to the ward 6 business owner who is not looking to have the sign display 30-40 second messages. He also discussed lumens with the applicant, and Councilor Lopes noted there are no residences in the neighborhood, and this is expected to be a static sign display.

Board Member Brown stated the issue they address with potentially moving signs is related to appeals, but he himself does not see such sign applications as needing to come before the board and does not want the message sent that anything with moving letters is not allowed in New Bedford.

Councilor Lopes stated he is in favor of the project with this good business owner.

In response to Acting Chairperson Decker's invitation to speak or be recorded in favor, Mike, of Watchfire Signs, stated he works with the manufacturer and passed out documents.

A motion was made (LP) and seconded (SB) to receive the documents.

Mike, the applicant's representative, stated the signs are capable of moving and stationary images. He stated this sign is part of their zoning friendly software, such as brightness, nit ratings, hold times and scrolling, et cetera, which can be set prior to installation. He further detailed the sign capabilities, such as turning down at night. In response to Board Member Brown, Mike stated he had reviewed the area and met with the customer. Board Member Brown confirmed this new sign is roughly the same size as the old one. In response to Board Member Brown, Mike stated there are no nearby residences where the sign lighting would negatively affect neighbors.

In response to Acting Chairperson Decker, this applicant's representative stated he has installed New Bedford signs previously, such as the one at DeMello's on Union Street. He also discussed other sign features that can be easily corrected.

There was no response to Acting Chairperson Decker's invitation to speak or be recorded in favor or opposition.

The public hearing was closed.

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After consultation with Commissioner Romanowicz and brief board discussion, a motion was made (SB) and seconded (RS) to grant an administrative appeal under provisions of the City Code of New Bedford relative to property located at 85 MacArthur Drive, Assessors' map 37 lot 323 in a Mixed Use Business (MUB) zoned district, to grant the petitioner's appeal to install an electronic message board to an existing pylon sign per plans filed. The appeal of the petitioner be granted per the administrative appeal process under provisions of Chapter 9, Comprehensive Zoning Sections 3200, 3201, 3220, 3222, 5220 and 5223. Having reviewed this petition, in light of the City of New Bedford Code, Ordinances, Chapter 9 as cited, and under provisions of M.G.L. Chapter 40A, §7, 8 and 15, the board finds the following facts:

- The proposed sign will be in the location of the previously existing pylon sign, essentially the same size as the previous sign.
- That no residential properties will be affected.
- And that the literature provided by the sign installer is sufficient in this estimation of the building commissioner.

ROLL CALL VOTE:

Board Member Parrish - Yes
Board Member Brown - Yes
Board Member Decker - Yes

Board Member Paleologos - Yes
Board Member Schilling - Yes

Motion passed 5-0

3) APPROVAL OF MINUTES

A motion was made (RS) and seconded (LP) to approve the minutes of August 15, 2019, Cases 4357, 4384, 4386, 4387, and 4388.

Motion passed unopposed.


A motion was made (SB) and seconded (RS) to approve the minutes of September 19, 2019 related to Cases #4389, 4390, 4391, 4392, and 4393.

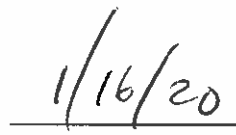
Motion passed unopposed.

4.) ADJOURNMENT

This Zoning Board meeting was adjourned.

NEXT MEETING IS SCHEDULED FOR DECEMBER 12, 2019.


Stephen Brown, Clerk


Date

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