



JONATHAN F. MITCHELL
MAYOR

ZBA Minutes
11/15/18
Page 1 of 10

City of New Bedford
ZONING BOARD OF APPEALS

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ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – 3rd Floor
WILLIAM STREET
NEW BEDFORD, MA
Thursday, November 15, 2018

MINUTES

PRESENT: Leo Schick (*Chairperson*)
John Walsh (*Vice Chairperson*)
Robert Schilling
Allen Decker

ABSENT: Stephen Brown

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

CITY CLERKS OFFICE
NEW BEDFORD, MA
2018 DEC 14 A 10:30
CITY CLERK

1. CALL TO ORDER

Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:00 p.m.. He then explained the meeting process and protocol. Chairperson Schick notified those in attendance that this evening's board consisted of only four members, and offered applicants an opportunity to postpone their hearing to be heard before a full board.

2. PUBLIC HEARINGS

ITEM 1 – Case #4346 – Petition of Mario B. Gomes (32 Sumner Street, Norwood, MA) and for Farland Corporation, C/O Matthew White (401 County Street, New Bedford, MA) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix-B lot frontage SF); relative to property located at NS Wilbur Street, Assessors' map 80 lot 11 & 89 in a Residential A [RA] zoned district. The petitioner proposes to construct a single-family dwelling with an asphalt driveway and associated grading per plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 10/19/18; communication from the Office of the City Planner dated 11/8/18; the appeal package as

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submitted; the plan 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.

Matthew White, Farland Corp, representing the applicant, described the property and its location. He stated the 30,000 s/f property is currently undeveloped and contains a significant amount of wetlands taking up nearly half of the square footage. He explained that they have 67.5' of frontage on Wilbur Street. He stated the reason for the proposed layout are the wetlands. They propose a 1,200 s/f single family dwelling with a driveway. He stated they will have typical utilities, water and sewer, as well as an underground recharge chamber. He stated they have received approval from the Conservation Commission with an order of conditions.

Mr. White explained the grading, noting any runoff will travel away from neighboring properties on Wilbur Street. He stated the look will be consistent with the neighborhood. He did not believe the small relief requested for this last street lot would add to traffic congestion.

Chairperson Schick expressed concern about the driveway affecting snow removal. Mr. White explained the reasons for the driveway location and proposed a small curb installation to help DPI with snow removal.

Board Member Decker confirmed that Mr. Gomes bought the non-conforming property in 2015. Mr. White stated Mr. Gomes saw previous plans with a smaller wetlands delineation and Mr. Gomes believed he could gain access from the other side of the lot. He stated Mr. Gomes is focusing on only one of the two lots owned, so he financially does not lose both.

In response to Board Member Walsh, there was discussion on any alternate location for the driveway.

In response to Board Member Decker, Mr. White indicated abutters had appeared at the Conservation meeting who were concerned about runoff.

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

In response to Chairperson Schick's invitation to speak or be recorded in opposition, George Carmo, an abutter to the back of the subject property, stated he had looked into buying the subject property, but was told it was not a buildable lot and was wetland. He stated he has maintained the lot, cutting the grass. He expressed drainage concerns and mentioned a stream that could be effected, as well as noting the lack of frontage. He stated he thought wetlands could not be back filled and they are like a sanctuary. He felt the size of the house may affect surrounding property values.

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

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In rebuttal, Mr. White stated the property and any storm water effects have gone before Conservation and been approved. In response to an inquiry by Chairperson Schick, Mr. White explained the proposed grading.

Christian Farland, Farland Corp, stated the only other option is to come in from the west side of the site, which would alter the wetlands. He noted the applicant has enough frontage there, but it would require filing with the state and would impact the abutting properties. He considers that a hardship to the applicant. He stated the owners bought the property with legal frontage on the other side and was unaware of the extent of the wetlands.

Board Member Walsh confirmed the location of Wilbur Street.

Mr. Carmo offered brief rebuttal.

The public hearing was closed.

Board Member Walsh inquired of Mr. Romanowicz if there was an effective way to deal with the driveway. Mr. Romanowicz indicated that DPI feels there is an issue dealing with snow. There was discussion on the issue, concluding that there is no alternative to fix the matter.

There being no further board discussion, a motion was made (AD) and seconded (JW) to grant a variance under the provisions of the City Code of New Bedford relative to property located at NS Wilbur Street, Assessors' map 80 lots 11 & 89 in a Residential A [RA] zoned district, to allow the petitioner to construct a single-family dwelling with an asphalt driveway and associated grading per plans filed, which requires a variance under the provisions of chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 -Appendix-B.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that with respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances.

This determination includes consideration of the following:

The board has found that there are circumstances related to the soil conditions, shape and 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, soil conditions and revised wetland delineations now prevent access from another portion of the property as originally envisioned when the property was purchased. Second, 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, not granting the variance prevents the applicant from proceeding with the development as planned, ad other options involve wetland incursion and greater expense. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and that the desirable relief may be granted without substantial detriment to the public good.

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In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no specific conditions, but with general conditions 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 granted 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 as follows:

Acting Chairperson Schick – No

Board Member Walsh – No

Board Member Decker - No

Board Member Schilling - Yes

Motion fails 1-3

ITEM 2 – Case # 4347 - Petition of JASGAR LLC., (319A Union Street, New Bedford, MA) and Job Roach (25 Middle Street, S. Dartmouth, MA) 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 office, center or clinic) and 5300-5330 & 5360-5390 (special permit); relative to property located at 319A Union Street, Assessors' map 52 lot 357 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to operate an office and retail business providing medical consultations per plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 10/19/18; communication from the Office of the City Planner dated 11/8/18; 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.

Board Member Decker confirmed that the applicant wished to proceed in light of the board composition.

Job Roach, owner of Jasgar LLC and owner of the subject property, stated they are the first New Bedford medical office to offer Medical Marijuana certifications. He stated this is a big part of their business, and they wish to offer this service to local patients, who now must travel to Wareham or Fall River. He stated the location was previously a dental office, with many other previous medical offices there. He stated their business would involve a consultation with a doctor, with no exams or x-rays.

Board Member Decker confirmed there are other activities going on the property, such as retail of CBD (Cannabidiol), supplements, et cetera, as well as their corporate operations.

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Board Member Decker confirmed with Mr. Romanowicz that the special permit is due to the medical office proposal.

In response to Board Member Decker, Mr. Roach stated they are proposing no changes to the structure. Board Member Decker complimented the applicant on their approach to secure parking.

In response to Board Member Schilling, Jeff Pepi, business partner, Mr. Pepi explained the difference between the hemp and cannabis plants and their uses.

In response to Chairperson Schick's invitation to speak or be recorded in favor, Councilor Scott Lima stated he was in favor of the request, and asked the applicants to keep an eye on the parking and any trash.

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

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

The hearing was closed.

After brief bard discussion, including previous uses of the building, a motion was made and seconded to grant a Special Permit under the provisions of the City Code of New Bedford relative to property located at 319A Union Street, Assessors' map 52 lot 357 in a Mixed Use Business [MUB] zoned district, to allow the petitioner to operate an office and retail business providing medical consultations per plans filed, which requires a special permit under the provisions of Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230– appendix A) and 5300-5330 & 5360-5390.

In accordance with the City of New Bedford Code of Ordinances Chapter 9, Section 5320, the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and the proposal in relation to that site.

This determination includes consideration of the following:

The social, economic or community needs served by the proposal. The proposal is offering services not currently available in the city and trying to remove the need for patients to travel to other communities. Concerning traffic flow and safety, including parking and loading, parking has been secured in the lot across the street, which is off-street parking, and there is on-street parking spaces in the neighborhood. Regarding the adequacy of utilities and other public services, current utilities are sufficient for the proposed use. Regarding the neighborhood character and social structures, the neighborhood consists of residential housing, rental housing and other small businesses and offices, and the proposed use fits within those social structures and neighborhood character. Regarding the impacts on the natural environment, there are no proposed changes to the structure, so impacts are neutral. Regarding potential fiscal impact, including impacts on city services, tax base and employment, the fiscal impact with this proposal includes a functioning business employing people and contributing to the city tax base.

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With no specific conditions, but with general conditions 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 this special permit 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 as follows:

Acting Chairperson Schick – Yes

Board Member Walsh – Yes

Board Member Decker - Yes

Board Member Schilling - Yes

Motion passes 4-0

ITEM 3 – Case #4348 - Petition of Bayberry at New Bedford, Claremont Management (One Lakeshore Center, Bridgewater, MA) and Farland Corporation, C/O Nick Dufresne (401 County Street, New Bedford, MA) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements- Appendix B- front yard) 2750 (yards in residence district) and 2751 (front yard); relative to property located at 155 Oakdale Street, Assessors' map 72 lot 2 in a Residential A [RA] zoned district. The petitioner proposes to construct an addition to an existing community center building with an access drive to allow pickup and drop-off for activities per plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 10/25/18; communication from the Office of the City Planner dated 11/8/18; 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.

Christian Farland, Farland Corp, representing Claremont Management, stated they are seeking a variance on setback for the proposed community center at Bayberry Village. He displayed the plans and explained the same. He noted the property lines are all over the place, but under one common ownership. He pointed out the same. He explained problems therefore with the shape of the lots and the soil conditions in the back, which necessitate the location shown. He stated the location also provide the ADA access to the building needed by most of the building residents. He stated they will create a one-way drive-thru and a drop-off area, as opposed to the walk they must currently take from the parking lot. He stated they are not seeking any unit increases, but will benefit the community and residents.

Mr. Farland addressed the requirements needed for granting the request. He explained the surrounding area, and the associated ledge which limits where they can put the proposed building, as well as the lot shapes.

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Jim Button, Vice President Claremont Residential, stated they currently have a small community room presently, but after ramping up resident services they need more room to accommodate the same.

In response to Chairperson Schick's invitation to speak or be recorded in favor, Mike Phillips, Victoria Street, stated he works for Claremont, noting all the same services are provided at the Car Barn Apartments. He stated the services are well used and well enjoyed by the residents.

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

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

The hearing was closed.

After brief board discussion, including the positive aspects of the proposal for the community, a motion was made (AD) and seconded (JW) to grant a variance under the provisions of the City Code of New Bedford relative to property located at 155 Oakdale Street, Assessors' map 72 lot 2 in a Residential A [RA] zoned district, to allow the petitioner to construct an addition to an existing community center building with an access drive to allow pickup and drop-off for activities per plans filed, which requires a Variance under the provisions of Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 -Appendix B, 2750 and 2751.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that with respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances.

This determination includes consideration of the following:

The board has found that there are circumstances related to the soil conditions, shape and 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, soil conditions and the shape of numerous lots all under common ownership do not allow for its location elsewhere on the property and, as cited, ADA access compliance works as proposed. Second, due to the 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 without the variance, community services which are heavily in demand would not be able to be adequately met without the proposed expansion.

The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on these items, along with all properly submitted

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materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no specific conditions, but with general conditions 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 granted 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 as follows:

Acting Chairperson Schick – Yes

Board Member Walsh – Yes

Board Member Decker - Yes

Board Member Schilling - Yes

Motion passes 4-0

ITEM 4 – Case #4349- Petition of: StreetSide Realty, LLC (16 Hassey Street, New Bedford, MA) and , Farland Corporation, Christian Farland (401 County Street, New Bedford, MA) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B-green space); relative to property located at 75 MacArthur Drive, Assessors' map 31 lot 248 & 255 in a Waterfront Industrial [WI] zoned district. The petitioner proposes to erect a +/-21,575 SF refrigerated warehouse addition per plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 10/25/18; communication from the Office of the City Planner dated 11/8/18; 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.

Christian Farland, Farland Corp, applicant has 11.9% green space, where 20% is required. He noted their appearance at a planning board meeting wherein the site plan and special permit were approved regarding a 21,575 s/f addition within the Waterfront District. He stated the site currently contains a vacant building. Mr. Farland displayed a rendering and explained the same, and noting the impervious area.

Board Member Walsh confirmed that after the project, there will be more green space on the site than is currently present.

Mr. Farland explained the applicant seeks to construct a freezer space that will house some four million pounds of fishing industry product.

Mr. Farland stated after the planning board meeting they plan to develop even more green space area, raising their total 18.2%.

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Mr. Farland noted a planned rooftop recharge per DPI; yet another significant improvement to this vacant building, which will benefit the community.

Michael Fernandes, owner, stated this project will add jobs. They plan to install a new freezer in the building and add on to the property at considerable expense.

The meeting room being absent any other people, the hearing was closed.

A motion was made (AD) and seconded (JW) to grant a variance under the provisions of the City Code of New Bedford relative to property located at 75 MacArthur Drive, Assessors' map 31 lot 248 & 255 in a Waterfront Industrial [WI] zoned district, to allow the petitioner to erect a +/- 21,575 SF refrigerated warehouse addition per plans filed, which requires a variance under the provisions of Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 -Appendix B.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that with respect to these sections, the applicable sections have been addressed. In addition, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances.

This determination includes consideration of the following:

The board finds that there are circumstances related to the soil conditions, shape and 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, the circumstances are such that the structure as proposed will actually increase the amount of green space on the existing property, bringing the property closer to conformance.

Second, due to the 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 without the variance the project would not go forward and would, therefore, not lessen the non-conformance on green space or address the runoff coming off the existing pavement which would be treated more appropriately by the project. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no specific conditions, but with general conditions 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 granted variance must be exercised by

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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 as follows:

Acting Chairperson Schick – Yes

Board Member Walsh – Yes

Board Member Decker - Yes

Board Member Schilling - Yes

Motion passes 4-0

3. APPROVAL OF MINUTES

A motion was made (AD) and seconded (JW) to approve meeting minutes of October 18, 2018, which addressed Cases #4340; 4341; 4342; 4343; 4344.

Motion passed unopposed.

4. OLD/NEW BUSINESS

Clerk Decker directed the board to the proposed meeting schedule for 2019. After brief discussion, a motion was made and seconded to approve the proposed calendar of meeting dates.

Motion was unopposed.

5. ADJOURNMENT:

The meeting was declared adjourned at 7:21 p.m.

NEXT MEETING SCHEDULED FOR DECEMBER 13, 2018



Allen Decker, Clerk



Date