

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, October 18, 2018

MINUTES

PRESENT:

Leo Schick (Chairperson)

John Walsh (Vice Chairperson)

Robert Schilling Laura Parrish

ABSENT:

Alan Decker

Stephen Brown

STAFF:

Angela Goncalves, Assistant Project Manager

Danny Romanowicz, Commissioner of Buildings and Inspectional Services

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 #4340 - Petition of: Ray Morrison (1001 Ashley Blvd., New Bedford, MA) and Fred J. Besch (545 Snipatuit Road, Rochester, MA) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix-B minimum lot size SF, front yard, and rear yard), 2750 (yards in residence district), 2751 (front yard) and 2753 (rear yard); relative to property located at NS Bristol Street and Acushnet Avenue, Assessors' map 130A lot 640 in a Residential A [RA] zoned district. The petitioner proposes to construct a 24'x40' single family dwelling per plans filed.

A motion was made (JW) and seconded (RS) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 9/19/18; communication from the Office of the City Planner dated 10/1/18; the appeal package as 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.

Fred Besch, representing the property owner, stated they are seeking to build a one-family, one level $24' \times 40'$, three-bedroom ranch house. He stated that there had been a considerably larger house on the property that underwent demolition for safety reasons. He stated the property is roughly $46' \times 112'$. He added the front door will be on the Bristol side of the house, as will the driveway. He noted the lot is currently not being used.

In response to Board Member Parrish, Mr. Besch stated there is no established curb cut, but there is trash pick-up and existing utilities. Ms. Goncalves noted there is a curb cut but no paved driveway.

In response to Chairperson Schick, Mr. Besch stated he believes the original house underwent demolition in 1996 and has been a vacant lot since.

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, Eleanor Morad, 989 Bristol Street, a direct abutter, voiced concern about the zoning requirement of 8,000' where the applicant has only half the requirement. She stated the house where the driveway is has a 6.5' clearance is also owned by the applicant and is a rental. She stated she expects this house would also be a rental. She described the proposed dwelling as a large house and explained that the lot is presently being used to park cars. She questioned Mr. Morrison's claim of a hardship, as the lot has been empty for 18 years. She stated there are no rentals in this quiet neighborhood, which was questioned by Chairperson Schick. Ms. Morad then stated the back house has always been rented, and there had been problems with dogs. She stated she is opposed and believes there will be an ill effect to her.

In response to Board Member Schilling, Ms. Morad stated the former house was less than 10' from her lot fence, and that they had tried to buy the lot.

In response to Board Member Walsh, Ms. Morad stated her primary concern is that this property will not be owner occupied. She also had a concern about any building of a garage.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Will Peloquin, 989 Bristol Street, stated he is opposed due to the size of the proposed house and the lot size. He noted the back and front do not meet the requirements. He stated the street has many large lots and this would be two houses on one lot. He stated that though the lot size has changed over the years to try to control growth, he is in favor of that. He stated he feels this would be a bad fit and noted this is a narrow street.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Councilor Greg Markey, 1520 Morton Avenue, stated his issue is the zoning was changed to avoid this very type of thing, the overbuilding. He stated he is in opposition.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Councilor Brian Gomes stated he is in opposition for some of the same reasons as his colleague. He stated he recalls the 1998 zoning lot size change. He asked the board to consider that the lot is undersized for the house proposed, and stated he too does not believe it is a good neighborhood fit at this time.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Diane Peloquin, 989 Bristol Street, stated her concern is the room in between the property, re: noise pollution so close to her bedroom.

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

The applicant had no rebuttal. In response to Board Member Schilling, Mr. Besch stated the board could make it a pre-requisite that the property, being built for re-sale, be sold as a single-family dwelling, which Board Member Walsh did not believe that the board had the authority to place such a restriction.

The hearing was closed.

After board discussion, including that regarding the lot size and ongoing need for a variance for any building on the lot, a motion was made (JW) and seconded (BS) to grant a Variance under provisions of the city code of New Bedford, relative to property located at Bristol Street, Assessors' map 130A lot640 in a Residential A [RA] zoned district, to allow the petitioner to construct a 24'x40' single family dwelling per plans filed, which requires a variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720-Appendix-B, 2750, 2751 and 2753.

Having reviewed this 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 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, the circumstances are that the property is located on a corner lot with a long rectangular shape, with more than enough frontage on Bristol Street, and the lot is an undersized lot. 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 lot is undersized and would be

unbuildable absent variance. 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.

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 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 Parrish - No

Board Member Walsh – Yes Board Member Schilling - No

Motion fails 1-3

ITEM 2 – Case #4341: Petition of: Times Square Realty, C/O Marty Pavao (902 Purchase Street, New Bedford, MA) and Ethan Pimental (49 Coulombe Street, Acushnet, MA) for a Special Permit under Chapter9, Comprehensive Zoning Sections 4200-4267 (body art) and 5300-5330 and 5360-5390 (special permit); relative to property owned by Time Square Realty located at880-902 Purchase Street, Assessor's map 53 lot 35 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to operate a tattoo studio under the name "Times Tattoo" per plans filed.

A motion was made (JW) and seconded (LP) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 9/19/18; communication from the Office of the City Planner dated 10/1/18; the appeal package as 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.

Ethan Pimental, 888 Purchase Street, stated the property was already a tattoo shop, a friend having owned it. He stated his friend has moved and Mr. Pimental seeks to take over the current location. He stated there are no changes to be made but a change in ownership.

There were no board questions.

There was no response to Chairperson Schick's 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.

There being no board discussion, a motion was made (JW) and seconded (RS) to grant a special permit under the provisions of the city code of New Bedford to Time Square Realty c/o Marty Pavao at 902 Purchase Street and Ethan Pimental, 49 Coulombe Street, Acushnet, MA, relative to property located at 880-902 Purchase Street Assessor's map 53 lot 35 in a Mixed Use Business [MUB] zoned district, to allow the petitioner to operate a tattoo studio under the name "Times Tattoo" per plans filed, which requires a special permit under the provisions of Chapter 9, Comprehensive Zoning Sections 4200-4267 and 5300-5330 and 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 outweighs the adverse effect of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

This determination includes consideration of the each of the following:

The social economic or community needs served by the proposal, which are, according to the applicant, that it provides a body art service in downtown New Bedford whose customers will continue to patronize that business and other businesses in the area.

Traffic flow and safety, including parking and loading, it is neutral.

Regarding adequacy of utilities and other public services, the proposal is adequate as there are existing utilities.

Regarding the neighborhood character and social structures, this is a commercial area, and this is a commercial business keeping in character with the neighborhood.

Impacts on the natural environment are neutral.

Regarding potential fiscal impact, including impact on city services and tax base, according to the applicant, this business will support three new employees and will be positive for the City of New Bedford.

The board members find that the above requirements are met, and the motion is to approve the permit with the following conditions: that the project be set forth according to the plans submitted with the application, and that the applicant ensure 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 be exercised by the issuance of a building permit issued 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:

Chairperson Schick – Yes Vice Chairperson Walsh – Yes Board Member Parrish - Yes Board Member Schilling - Yes

Motion passes 4-0

ITEM 3 – Case # 4342 – Petition of Beta Realty, LLC. (280 Ayer Road, Harvard,MA) and SITEC, Inc. (449 Faunce Corner Road, Dartmouth, MA) for a Variance under Chapter 9, Comprehensive Zoning Sections3200 (sign regulations), 3201 (purpose), 3250 (regulations governing particular types of sign), 3254 (ground sign), 3255 (area restrictions for ground signs) and 3256 (location restrictions); relative to property located at 209 Theodore Rice Blvd., Assessors' map 136 lot 322 in a Mixed Used Business [MUB] zoned district. The petitioner proposes to install two ground signs to the approved convenience store/gas station per plans filed.

A motion was made (JW) and seconded (LP) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 9/19/18; communication from the Office of the City Planner dated 10/1/18; the appeal package as 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.

Steve Gioiosa, SITEC Engineering, introduced the petitioners. Mr. Gioiosa explained the application for variance as relates to signs for a project under construction on Braley Road and Theodore Rice Blvd, at the entrance to the Industrial Park. Mr. Gioiosa explained the project had already been through site plan review and was approved some time ago. He stated they also had approval from the Conservation Commission regarding wetlands. He noted they had worked on the development and approval of the signage with the Industrial Foundation.

Mr. Gioiosa stated the applicant seeks two signs to direct customers to the facility located on a corner lot with two entrances. He then described in detail the sign locations and designs. He noted the use is an allowed use. Upon meeting with the planning board again, and after some discussion and modifications on sign height, the signs were approved.

A motion was made (JW) and seconded (LP) to receive and place on file new sign exhibits. Motion passed unopposed.

Mr. Gioiosa stated they are requesting variance to allow two signs on a MUB property. He then addressed the board's variance considerations, such as unique parcel shape, et cetera. He addressed the variance needed for the sign sizes, noting the pre-requisites gas stations have in their sign packages. He did add that the package has been reduced in size from its original submission.

Mr. Giolosa continued through the variance requirements the board must consider, including wetland restrictions, improvement on public safety, hardship, residential impact, et cetera. In response to Board Member Walsh, Mr. Giolosa confirmed the size of the sign is due to the number of business tenants in the building.

There was no response to Chairperson Schick's 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, a motion was made (JW) and seconded (LP) to grant a variance under provisions of the City Code of New Bedford, relative to property located at 209 Theodore Rice Blvd., Assessors' map 136 lot 322 in a Mixed Used Business [MUB] zoned district, to allow the petitioner to install two ground signs to the approved convenience store/gas station per plans filed, which requires a variance under the provisions Chapter 9, Comprehensive Zoning Sections 3200, 3201, 3250, 3254, 3255 and 3256.

Having reviewed this 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 finds that 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, the circumstances are that this is a uniquely shaped triangular parcel with some wetlands on the property, and the property is located on a corner lot with entrances to the property on two different roads and multiple businesses on the property. 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 would not economically viable for retail businesses without appropriate signage at each entrance large enough to accommodate the number of businesses located at the property. 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.

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 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: Chairperson Schick – Yes Board Member Parrish - Yes

Board Member Walsh – Yes Board Member Schilling - Yes

Motion passes 4-0

ITEM 4-

<u>CASE #4343</u> – Petition of: DBD Investments, LLC. (73 Columbia Street, Fall River, MA) and SITEC Inc. (449 Faunce Corner Road, Dartmouth, MA) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2400 (non-conforming uses and structures), 2410 (applicability), 2420-2422 (nonconforming use), and 5300-5330 & 5360-5390 (special permit); relative to property located at 152-160 Belleville Avenue, Assessors' map 93 lot 138 in an Industrial A [IA] zoned district. The petitioner proposes to reconfigure the lot lines to divide the existing buildings on the lot into two separate parcels per plans filed.

<u>CASE #4344</u> - Petition of: DBD Investments, LLC. (73 Columbia Street, Fall River, MA) and SITEC Inc. (449 Faunce Corner Road, Dartmouth, MA) for a Variance under Chapter 9, Comprehensive Zoning Sections 2710 (general), 2720 (table of dimensional requirements-Appendix-B, front yard, side yard, green space), 2750 (yards in residence district), 2751 (front yard) and 2755 (side yard); relative to property located at 152-160 Belleville Avenue, Assessors' map 93 lot 138 in an Industrial A [IA] zoned district. The petitioner proposes to reconfigure the lot lines to divide the existing buildings on the lot into two separate parcels per plans filed.

A motion was made (JW) and seconded (LP) to combine the above referenced cases for presentation.

Motion passed unopposed.

A motion was made (JW) and seconded (BS) regarding both afore-mentioned cases that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 9/19/18; communication from the Office of the City Planner dated 10/1/18; the appeal package as 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.

Steve Gioiosa, SITEC Engineering, described the 10,900 SF property location on Belleville Avenue with two existing buildings on site. He produced colored plans and explained the same, including the commercial building on site, an attached garage, as well as the second structure which is a two-family dwelling, and paved parking.

He stated the petitioner is seeking to sub-divide the property, as a family member seeks to live in the residential building and have an opportunity to sell the commercial building. He stated they have appeared before the planning board, and he detailed the parking space plans. He noted the planning board had discussion and plan modification on parking and lot coverage. Mr. Gioiosa introduced revised plans, which show the two changes made by the planning board, resulting in the approval of the reduction in parking.

A motion was made (JW) and seconded (LP) to receive and place on file. Motion passed unopposed.

Mr. Gioiosa again noted there is no plan to expand any of the structures nor eliminate any existing on-site parking. He said the applicant seeks a special permit for non-conforming use and structures within the Industrial A zoning district. He then addressed the considerations for the board in granting the special permit, noting the property is identical to one next door.

Mr.Gioiosa then addressed the variance request due to the planned addition of the lot line separating the residential property from the commercial property. He noted there is no minimum frontage necessary or lot area in an Industrial A zone, but there is the 25' property line setback requirements. He noted again there is no proposed expansion of the structures, so existing non-conforming conditions will be maintained. He also noted the planned increase in green space.

Mr. Gioiosa addressed the setbacks required in a residential zone and submitted photos he felt would be helpful to the board.

A motion was made (JW) and seconded (LP) to receive the same and place on file. Motion passed unopposed.

In response to Chairperson Schick, Mr. Gioiosa stated he did not know of the commercial building is currently being used, but any future change is use would require the applicant appear before the planning board again.

Mr. Gioiosa stated his view is that this is a unique structure on the parcel, as well as soil conditions, et cetera.

There being no other people in attendance, the hearing was closed.

There being no further board discussion, a motion was made (JW) and seconded (LP), regarding Case #4343, to grant a special permit under the provisions of the City Code of New Bedford to DBD Investments, LLC. and SITEC Inc. relative to property located at 152-160 Belleville Avenue, Assessors' map 93 lot 138 in an Industrial A [IA] zoned district, to allow the petitioner to reconfigure the lot lines to divide the existing buildings on the lot into two separate parcels per plans filed, which requires a special permit under the provisions of Chapter 9, Comprehensive Zoning Sections 2400, 2410, 2420-2422, 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 outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

This determination includes consideration of the each of the following:

The social economic or community needs served by the proposal, which are that the proposal will allow each building having its own use to be situated on separate parcels with off-street parking. With respect to traffic flow and safety, including parking and loading, it is likely neutral as it may positively affect traffic flow and safety as each parcel will have its own dedicated parking, allowing more efficient traffic flow into each property.

Regarding adequacy of utilities and other public services, the proposal is neutral, as there are existing utilities.

Regarding the neighborhood character and social structures, the project is consistent with the neighborhood character, which is both residential and commercial in nature.

Impacts on the natural environment are arguably positive as there will be a 5% increase in green space.

Regarding the potential fiscal impact, including impact on city services and tax base and employment, arguably the project will have a positive impact by putting each structure on its own separate parcel, which will increase the value of each structure.

The following general conditions apply: that the project be set forth according to the plans submitted with the application, and that the applicant ensure 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 be exercised by the issuance of a building permit issued 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:

Chairperson Schick – Yes Vice Chairperson Walsh – Yes Board Member Parrish - Yes Board Member Schilling - Yes

Motion passes 4-0

A motion was then made (JW) and seconded (LP), regarding Case #4344, to grant a variance under the provisions of the City Code of New Bedford to DBD Investments, LLC. and SITEC Inc. relative to property located at 152-160 Belleville Avenue, Assessors' map 93 lot 138 in an Industrial A [IA] zoned district, to allow the petitioner to reconfigure the lot lines to divide the existing buildings on the lot into two separate parcels per plans filed, which requires a variance under Chapter 9, Comprehensive Zoning Sections 2710, 2720-Appendix-B, 2750, 2751 and 2755. Having reviewed this 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 finds that 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, the circumstances are that we have a single lot containing two structures, both of which have different uses, with a current 100% lot coverage. 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 having two separate uses on a single lot would decrease the economic value of each use. 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.

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 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 Parrish - Yes Board Member Walsh – Yes Board Member Schilling - Yes

Motion passes 4-0

3. APPROVAL OF MINUTES

A motion was made (LS) and seconded (RS) to approve meeting minutes of September 13, 2018. Motion passed unopposed.

ADJOURNMENT:

The meeting was declared adjourned at 7:30 p.m.

NEXT MEETING SCHEDULED FOR NOVEMBER 15, 2018

John Walsh, Acting Clerk

Date