



**JONATHAN F. MITCHELL**  
**MAYOR**

*City of New Bedford*  
**ZONING BOARD OF APPEALS**

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**ZONING BOARD OF APPEALS**  
**NEW BEDFORD CITY HALL – 3<sup>rd</sup> Floor**  
**WILLIAM STREET**  
**NEW BEDFORD, MA**  
**Thursday, September 13, 2018**

**MINUTES**

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

**ABSENT:** None

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

CITY CLERKS OFFICE  
NEW BEDFORD, MA  
2018 OCT 19 A 10:29  
CITY CLERK

**1. CALL TO ORDER**

Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:01 p.m.. He then explained the meeting process and protocol.

**2. PUBLIC HEARINGS**

**ITEM 1 – Case #4338 – Petition of:** Bethany and Kenneth DeGrace (244 Chestnut Street ,New Bedford, MA) and Dupre, Inc., C/O Joseph Dupree III (369 Nash Road, New Bedford, MA) for a Special Permit under Chapter9, Comprehensive Zoning Sections 1200 (definitions-lot-Frontage of a lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and actual physical vehicular access to a lot, said line to be measured continuously along a single street for the entire width of the lot. Vehicular access to a building site on the lot shall be exclusively through the legal frontage of the lot), 3100 (parking and loading), 3110 (applicability), 3149 (special permit vehicular access to a building accessed from

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**a public way does not constitute frontage of the lot), 5300-5330 & 5360-5390 (special permit; relative to property located at 244 Chestnut Street, Assessors' map 71 lot 217 in a Residential B [RB] zoned district. The petitioner proposes to install the driveway entrance at the rear of the property on Merrimac Street not on Chestnut Street 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 8/17/18; communication from the Office of the City Planner dated 9/4/18; 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.

Joseph Dupre, Dupre Inc., representing the applicants who are requesting a driveway at the rear of their house on this corner property. He stated to the right is a grass area being used as a playground for their children, as well as a tree on the public sidewalk that would need to be removed. He stated the rear of the house seems a better situation for the driveway and there is a rear entrance to the home.

In response to Board Member Decker, Mr. Dupre stated they are currently parking on the street.

In response to Chairperson Schick, Mr. Dupre confirmed there is gravel at the back of the house, but it is not used as parking.

In response to Board Member Decker, Mr. Dupre confirmed that the plan is to use a concrete entrance and pavement with no permeability. With regard to drainage, Mr. Dupre stated the pitch would drain the water onto their property where the grass is. Mr. Dupre stated the plan also meets the 4' buffer from the neighboring property line.

In response to Board Member Brown, Mr. Dupre stated he believes the gravel area has existed for at least a year, but he was unsure. He also confirmed that the applicant is not present this evening.

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 discussion, including drainage, a motion was made (AD) and seconded (JW) to grant a Special Permit under provisions of the city code of New Bedford relative to property located at 244 Chestnut Street, Assessors' map 71 lot 217 in a Residential B [RB] zoned district, to allow the petitioner to install a driveway entrance at the rear of the property on Merrimac Street rather than fronting on Chestnut Street per plans filed, which requires a Special Permit under the provisions of Chapter 9, Comprehensive Zoning Sections 1200, 3100, 3110, 3149, 5300-5330 & 5360-5390.

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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:

- As concerns the social, economic or community needs served by the proposal, this proposal adds off-street parking not currently available, and thereby frees up on-street parking in the immediate area.
- As concerns traffic flow and safety, including parking and loading, the proposal increases street safety by adding off-street spots, thereby reducing on-street parking and its congestion.
- As concerns the adequacy of utilities and other public services, the proposal is neutral as to those issues.
- As concerns neighborhood character and social structures, the proposal promotes an action and use already present in the immediate area, thereby fitting in with the neighborhood's character and social structure thereof.
- As concerns impacts on the natural environment, this proposal accounts for surface water runoff by pitching runoff to the remainder of the property and the green space on the property.
- As concerns the potential fiscal impact, including impact on city services, tax base and employment, this proposal promotes potential increases in the value of the property with the addition of the paved driveway/parking area, thereby increasing the potential tax base.

With no special conditions, the following general conditions are 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

Board Member Walsh – Yes

Board Member Schilling - Yes

Board Member Brown – Yes

Board Member Decker - Yes

Motion passes 5-0

**ITEM 2 – Case #4339: Petition of: Moniz Holdings, LLC., C/O Scott D. Moniz (19 Anthony Terrace, New Bedford, MA) and Christopher T. Saunders Esquire(700 Pleasant Street, New Bedford, MA) for an Administrative Appeal under Chapter 9, Comprehensive Zoning Sections 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 3863 Acushnet Avenue, Assessors' map 136C lot 98 in a Residential A [RA] zoned district. The petitioner is requesting that the Zoning Board of Appeals overrule the Building**

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**Commissioner's decision and make a finding that the lots created by the "approval not required plans" are legal and conforming lots within the City of New Bedford's Zoning Bylaws.**

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 8/22/18; communication from the Office of the City Planner dated 9/4/18; 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.

Att. Chris Saunders, representing Moniz Holdings, LLC, stated his clients are the owners of 3863 Acushnet Avenue. He stated an engineer drafted an ANR Plan recorded on 6/27/18, as approved by the City of New Bedford after the minimum lot size and frontage had been met. He noted that ANR Plans have nothing to do with zoning compliance. Att. Saunders stated that after recording, the applicant received a notice from the City of New Bedford Building Department that he was in violation of Section 2755 of the City of New Bedford Zoning Bylaw relating to side yards. Att. Saunders then read the Bylaw into the record. Att. Saunders reminded board members that he had appeared before the board last November 16, 2017 on a nearly identical type of case, Case #4300. He then submitted the same.

A motion was made (AD) and seconded (SB) to receive the plan submitted.

Motion passed unopposed.

A motion was made (JW) and seconded (AD) to receive and place on file a letter from Helena T. Bernado entered September 4, 2018.

Motion passed unopposed.

Att. Saunders stated that last year's case also involved a letter directing the applicant to seek a variance from the board. He stated he disagreed at the time and still disagrees, but applied for the variance after considering the options, including financial considerations. Att. Saunders referred to the decision on that matter and read portions of the same to the board. He stated that in this instance he is seeking an administrative appeal. He stated that while he understands the city formulating a policy concerning "pork chop" lots with different angles, he respectfully disagrees. He quoted the ordinance and stated that it is clear, as it was in the Dutton Case of November 2017, there is an unobstructed line from the street to the rear lot line. He noted that if the ordinance required an unobstructed line 10' wide from the street to the rear lot line, it would be different. He stated they stand on the literal interpretation of what is stated in the bylaw. Att. Saunders stated he had looked up "pork chop" lot in the city code and found nothing, because it is not therein contained.

He stated that if the city chooses to have a policy where they don't like these types of lots, the remedy is not to say he's got a non-conforming lot. He stated the remedy is to amend the bylaw to prohibit such lots, but that is not the case here. He stated the square footage requirement is met. Att. Saunders stated that though letters have been submitted, it is not about whether or not we should have a lot cut into three. He stated they have a lot cut into three that meets the

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frontage and square footage. He stated they have a side yard with an unobstructed view from the line of the street to the rear lot line. He respectfully requested the board opine that these are conforming lots pursuant to the existing bylaw.

Att. Saunders stated that further research revealed an ANR Plan endorsed in 2016, and is again a similar situation. He noted the angles and stated that in that case one cannot see from the street to the rear lot line. Reiterating that the applicant in this case complies. He again requested the board overturn the Commissioner's decision.

Board Member Brown stated he expects the city will refer to the definition of a side yard. He inquired as to why the applicant wants the board to interpret the ambiguity in favor of the applicant. He then read the side yard definition into the record, and raised interpretation as to the front yard.

There was discussion on the interpretation of the front, side and rear yards. Att. Saunders opined that the front yard runs from the street to the front of the building. He also noted the applicant meets the side yard setbacks, and the concern is with a view. He reiterated the side yard is only on the side of the structure, and this matter is about the unobstructed view, which the applicant has. He said the ambiguity should be held against the drafter of the ordinance.

Board Member Walsh stated he had researched the matter and found a code in Gloucester that is absent from our code.

At Chairperson Schick's request, Board Member Walsh read the opposition letter received into the record, after noting that as an administrative appeal, there is a legal issue between the city and the applicant, and in his view, there is no relevance to abutters' opinions on the issue.

Att. Shannon Shreve, of the solicitor's office, addressed the board on behalf of the city. He stated he had discussed the matter with Commissioner Romanowicz. He stated this matter was not about a view, but rather the concept that the front, side and rear yard requirements create an envelope around the building. He felt the side of the envelope, the side yard, of at least 10', needs to be unobstructed. He stated there is nothing wrong with a "pork chop" lot, as long as it does not invade or encroach upon the envelope, which in this case it does. He stated that a tree is not an obstruction, but another piece of property is, and in this case prevents the side yard from reaching the street.

Board Member Brown respectfully disagreed and stated there is still a 10' envelope from the edge of the property line. He also commented on the vagueness of the statute, and felt it must be construed in favor of the applicant.

Board Member Walsh added that his concern is that the language of 2755 was drafted by the city, and as such, the city is stuck with it. He stated that in forcing the applicant to file for a variance rather than an administrative appeal, he could foresee an argument where the appellant could create its own hardship by dividing the property, and he would hate to see that happen.

Board Member Brown commented that he does not see in the statute that the 10'/12' requirements have to be in a straight line extending from property line to street. He encouraged the ordinance be more specific.

Board Member Walsh noted, again, that he did not know that it was appropriate in an administrative appeal to hear from those in the general audience or abutters to speak in favor or opposition, as the matter is between the city and the applicant. Att. Shreve agreed.

The general hearing was closed for board discussion.

After board discussion on the proposed facts, a motion was made (AD) and seconded (JW) to grant the administrative appeal under the provisions of the city code of New Bedford **relative to property located at 3863 Acushnet Avenue, Assessors' map 136C lot 98 in a Residential A [RA] zoned district, to grant the petitioners their appeal of the Building Commissioner's ruling in order to find that the lots created by the ANR Plan are legal and conforming lots within the City of New Bedford Zoning Bylaws and will therefore not require two variances. Motion to approve the administrative appeal that the cease and desist order issued by the Commissioner of Inspectional Services be overturned and the appeal of the petitioner be granted per the administrative appeal process under the provisions of Chapter 9, Comprehensive Zoning Sections 5220 and 5223; relative to property located at 3863 Acushnet Avenue.**

Having reviewed this petition in light of the City of New Bedford Code of Ordinances under Chapter 9, Comprehensive Zoning Sections 5220 and 5223, the board finds the following facts:

- So-called "pork chop" lots are permissible within the city of New Bedford;
- Section 2755 and the definition of side yard in the zoning ordinance is found to be ambiguous and vague;
- The interpretation of Section 2755 is possible as such to permit and allow Lot 98-1 as a conforming lot;
- The ambiguity in the wording of Section 2755 and the relevant definition for side yard is construed under general construction procedures to be construed against the drafter;
- The finding of the zoning enforcement officer is overturned due to said ambiguity of Section 2755 and the relevant definition of the side yards.

Roll-call vote as follows:

Chairperson Schick – Yes	Vice Chairperson Walsh – Yes
Board Member Brown - Yes	Board Member Schilling – Abstained
Board Member Decker - Yes	

Motion passes 4-0

### **3. APPROVAL OF MINUTES**

A motion was made (LS) and seconded (SB) to approve meeting minutes of July 19, 2018.

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Motion passed unopposed.

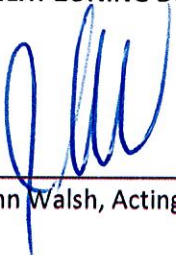
A motion was made (LS) and seconded (JW) to approve meeting minutes of August 16, 2018.  
Motion passed unopposed.

**ADJOURNMENT:**

A motion was made (JW) and seconded (SB) to adjourn at 7:16 p.m.  
Motion passed unopposed.

(Whereupon proceedings on the record concluded)

**THE NEXT ZONING BOARD MEETING IS SCHEDULED FOR OCTOBER 18, 2018**

  
\_\_\_\_\_  
John Walsh, Acting Clerk

  
\_\_\_\_\_  
Date