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ZBA Minutes
2/15/18
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City of New Bedford
ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS
NEW BEDFORD MAIN PUBLIC LIBRARY
PLEASANT STREET
NEW BEDFORD, MA
Thursday, February 15, 2018

MINUTES

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

ABSENT:

STAFF: Dan Romanowicz, *Commissioner Inspectional Services*
Jennifer Carloni, *Assistant Project Manager*

1. CALL TO ORDER

Acting Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:04 p.m. and explained the process and protocols to those in attendance.

2. PUBLIC HEARINGS

ITEM 1 – Case #4217 - The YWCA Southeastern Massachusetts, Inc. requests an extension of the Zoning Board of Appeals' decision approving Case #4217 for a special permit with conditions recorded February 18, 2016 and subsequently granted a one year extension on March 1, 2017; relative to property located 20 South Sixth Street, assessors' map 46, lot 69. The applicant seeks an extension of the decision for an additional one year period due to technical issues in permitting.

Clerk Decker announced that this matter will be continued to the March 15, 2018 meeting.

ITEM 2 - Case #4317 - Petition of: Moniz Properties, Inc. c/o Daniel Moniz (70 Lambeth Street

*Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at:
<http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>*

CITY CLERK
2018 APR 25 P 1:24
CITY CLERKS OFFICE
NEW BEDFORD, MA

New Bedford, MA) and Poyant Signs, Inc. c/o Stephanie Poyant Moran (125 Samuel Barnet Blvd) for a Variance under Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3210 (purpose), 3250 (regulations governing particular types of signs), 3254 (ground sign), 3255 (area restrictions for ground signs), and 3256 (location restrictions); relative to property located at 1169 Braley Road, assessor's map 136A, lot 927 in a Mixed Use Business District [MUB] zoned district. The petitioner proposes to install a pylon sign as plans filed.

Clerk Decker announced that this matter will also be continued to the March 15, 2018 meeting.

ITEM 3 - Cases #4318/#4319

Case #4318 - Petition of: Paul T. Tetrault, Trustee of the Paul T. Tetrault and Susan L Tetrault Living Trust (1070 Tobey Street New Bedford, MA) and Poyant Signs, Inc. c/o Stephanie Poyant Moran (125 Samuel Barnet Blvd) for a Variance (Case#4318) under Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3210 (purpose), 3250 (regulations governing particular types of signs), 3254 (ground sign), and 3255 (area restrictions for ground signs); relative to property located at 4317 Acushnet Avenue, Assessor's map 136A, lot 55 in a Mixed Use Business District [MUB] zoned district . The petitioner proposes to install a ground sign with an EMC (electronic message cabinet) as plans filed.

Case 4319 - Petition of: Paul T. Tetrault, Trustee of the Paul T. Tetrault and Susan L Tetrault Living Trust (1070 Tobey Street New Bedford, MA) and Poyant Signs, Inc. c/o Stephanie Poyant Moran (125 Samuel Barnet Blvd) for an Administrative Appeal (Case#4319) Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3210 (purpose), 3220 (prohibited signs), 3222 (any sign which incorporates moving, flashing, animated or intermittent lighting, excluding public services signs such as those that display time and temperature); relative to property located at 4317 Acushnet Avenue, assessor's map 136A, lot 55 in a Mixed Use Business District [MUB] zoned district. The petitioner proposes to install a ground sign with an EMC (electronic message cabinet) as plans filed.

Clerk Decker announced that these matters will also be continued to the March 15, 2018 meeting.

ITEM 4 - Cases #4314 Petition of: John W. Sacramento (76 Bellevue Street New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Regulations, Appendix B – rear yard), 2750 (yards in residence district), and 2753 (rear yard); relative to property located at 76 Bellevue Street, assessor's map 8, lot 208 in a Residential-B [RB] zoned district. The petitioner proposes to create an entrance to the basement in the rear yard as 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 1/26/18; communication from the Office of the City Planner dated 2/15/18; 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.

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Motion passed unopposed.

John Sacramento, Bellevue Street, said for personal reasons he is looking to increase the size of his 480 square foot home by finishing his basement, which will provide two bedrooms, two bathrooms. Mr. Sacramento stated he needs two exits from the ground up out of the basement. He stated he has one, and intends to make an entrance on the other side of the building. Mr. Sacramento mentioned that there will be a small, dog-house type of weather protected area attached to the house.

In response to Clerk Decker, Mr. Sacramento said he needs the variance for safety reasons regarding egress from the building. He stated it cannot be located anywhere else.

In response to Clerk Decker, Mr. Sacramento stated he does not have plans regarding any additional vehicles being parked off-street.

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

The hearing was declared closed.

After brief board discussion, a motion was made (AD) and seconded (JW) relative to property located at 76 Bellevue Street, assessor's map 8, lot 208 in a Residential-B [RB] zoned district, wherein petitioner requests to create an entrance to the basement in the rear yard as plans filed, which requires a Variance under Chapter 9 Comprehensive Zoning sections 2700, 2710, 2720 Appendix B, 2750 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, in respect to these sections, the petition has been found to be in accordance with M.G.L Chapter 40A, Section 10, relative to the granting of variances, because 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 case, the shape of the lot is such that the proposed entrance only works in the proposed location, given the location of the house on the property. Due to those circumstances especially affecting 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. In this case, literal enforcement would prevent the creation of the required second egress, preventing the applicant from proceeding with the renovation and presenting a substantial hardship for he and his family for the use of the basement as proposed. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. In this case, this is not a substantial derogation thereof. 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 based on these items, along with all properly submitted materials and testimony made, and the board's consideration of the petitioner's

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request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

No specific conditions are added to this motion, 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 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

Clerk Decker - Yes

Board Member Schilling - Yes

Board Member Brown – Yes

Motion passes 5-0

A motion was made (JW) and seconded (AD) to consolidate the next two cases.

Motion passed unopposed.

ITEM 5: Cases # 4315/4316 --

#4315 - Petitions of Benvindo Dos Santos Faria Neves, Trustee of #4315 - Benvindo Dos Santos Faria Neves and Ana Gomes Pinto Inter Vivos Trust (475 Purchase Street New Bedford, MA) and Ricardo Romao-Santos (1118 Acushnet Avenue New Bedford, MA) for a Variance (Case#4315) under Chapter 9 Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Regulations, Appendix B-Green Space, Side Yard) 2750 (yards in residence district), and 2755 (side yard) and 3147 (all parking spaces and loading area or berths in the open-air and access drives or aisles, shall be provided with a concrete or asphalt surface. Compact gravel or stone shall be permitted only for single- or two-family residential dwellings; relative to property located at 475 Purchase Street, assessors map 41, lot 52 in a Residential-C. [RC] zoned district. The petitioners propose to create a new dwelling unit on the third floor with a new driveway and parking area as plans filed.

#4316- Petitions of: Benvindo Dos Santos Faria Neves, Trustee of Benvindo Dos Santos Faria Neves and Ana Gomes Pinto Inter Vivos Trust (475 Purchase Street New Bedford, MA) and Ricardo Romao-Santos (1118 Acushnet Avenue New Bedford, MA) for Finding (Case#4316) under Chapter 9 Comprehensive Zoning sections 2400 (nonconforming uses & structures), 2410 (applicability), 2440 (nonconforming single and two family structures) relative to property located at 475 Purchase Street, assessors map 41, lot 52 in a Residential-C [RC] zoned district. The petitioners propose to create a new dwelling unit on the third floor with a new driveway and parking area as plans filed.

A motion was made (AD) and seconded (JW) concerning Case # 4315 that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 1/29/18; communication from the Office of the City Planner dated 2/18/18; 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.

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Motion passed unopposed.

A motion was made (AD) and seconded (JW) concerning Case #4316 that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 1/29/18; communication from the Office of the City Planner dated 2/15/18; 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.

Ricardo Romao-Santos, Romao-Santos Architects, stated the owner lived in Florida and could not be present, but his father, who lives in the residence, was present. Mr. Romao-Santos admitted being a little disorganized in regards to all of the zoning requirements and aspects that are non-compliant. He stated he found the planning staff comments interesting. Mr. Romao-Santos stated that the owner is looking to improve the property, both the site conditions related to parking and safety, as well as improvement to the historic character of the building.

Mr. Romao-Santos stated the owner seeks to create a third apartment on the third floor, requiring some partial roof demolition, already approved by the Historical Commission and City Council. Mr. Romao-Santos stated that the items that have raised the most concern seem to be the parking and green space. He stated the property is presently non-conforming, and there are no proposals for footprint changes. Mr. Romao-Santos stated that the green space requirement is 35%, and the site has about 16%; he stated that he didn't find an explanation for the green space reasoning and assumes is for aesthetics and permeable surfaces. Mr. Romao-Santos emphasized that the property has well over 35% of permeable area, and the present landscaped areas will remain the same, for the most part.

Mr. Romao-Santos stated the three parking spaces in the rear are expected to be covered with grass to address green space requirements and permeable areas. He stated that alternatively, permeable pavers could be installed in the parking area.

In response to Board Member Walsh, Mr. Romao-Santos stated the site has approximately 16% green space per the strict reading of the code. He then read the applicable code to the board. Mr. Romao-Santos also stated that his understanding is that parking areas with less than four parking spaces do not need to be paved.

Mr. Romao-Santos drew the board's attention to the plan showing green space and permeable space. He stated that mathematically, the site has the practical permeable space necessary, as the applicants cannot meet the green space requirement.

Clerk Decker stated the problem is in a three-family structure, the ordinance requires paved parking. Mr. Romao-Santos replied by explaining that paved parking is required for more than four spaces, and they have only three.

Ms. Carloni noted that the application has yet to go before the Planning Board for the reduction in parking spaces.

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In response to Board Member Schilling, Mr. Romao-Santos stated the second floor is currently vacant and the addition of the third floor would create a total of two rental units, while improving and reviving the historical structure. He stated the vinyl siding presently on the structure is unattractive, but the front Egyptian columns, frieze and roof overhangs will be restored, and the side porches are proposed additions for the property.

Board Member Walsh noted the variance concerns itself with the green space issue. Ms. Carloni clarified the variance is for green space, the side setbacks for the porches, and the rear yard concrete surfaces for parking.

Mr. Romao-Santos commented on parking space requirements, and then deferred to planning board proceedings.

In regards to hardships to the petitioner if the variance is not granted, Mr. Romao-Santos stated he expects the same conditions will remain, with no improvement to the structure, and four parking spaces would still be required for the two-family.

Mr. Romao-Santos stated the partial demolition of the roof will create space for the proposed dormers, which will not be seen from the street. Mr. Romao-Santos stated once again that the dormers have been approved by the Historical Commission.

In response to Board Member Brown, Mr. Romao-Santos stated the building height would not be increased. Mr. Romao-Santos confirmed that the owner intends to have two rental units with modifications to the third floor.

In regards to the proposed porches, Mr. Romao-Santos noted that many porch amenities are now absent within the city. He stated that he believes that porches are a nice social amenity. He explained why the porches could not be located in the rear, citing the challenge with the parking, kitchen and bedroom locations within the apartments. Mr. Romao-Santos stated the decks located on the side of the structure will not negatively impact the existing pervious areas on the site. He offered to work with the building department to move the decks back further to be within the 10' setback.

In response to Clerk Decker, Mr. Romao-Santos stated he believes the neighbor to the south does not live locally and could not be reached. Board Member Decker consulted with Commissioner Romanowicz with regard to any possible relocation of the porches. Mr. Romao-Santos welcomed any board suggestions.

In response to Board Member Brown, Mr. Romao-Santos discussed the egress stairs. Ms. Carloni clarified that the variance only pertains to the parking area surface material.

There was board discussion on the pros and cons of the project.

In response to Acting Chairperson Schick's invitation to speak or be recorded in favor, Mr. Emanuel Neves, the owner's father, through Mr. Romao-Santos interpreting, stated he is in favor of the project and, to his knowledge, the neighbors were also in favor of the project.

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

After board discussion with the applicant regarding permeable parking area, a motion was made (AD) and seconded (JW) with regard to Case # 4315 relative to property located at 475 Purchase Street, assessors' map 41, lot 52 in a Residential-C. [RC] zoned district wherein the petitioners requests to create a new dwelling unit on the third floor with a new driveway and parking area as plans filed, which requires a variance under Chapter 9 Comprehensive Zoning sections 2700, 2710, 2720 Appendix B, 2750, 2755, and 3147.

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, in respect to these sections, the petition has been found to be in accordance with M.G.L Chapter 40A, Section 10, relative to the granting of variances, because the board has found that there are circumstances related to the soil conditions, shape or topography which especially effect 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 case, given the location of the existing house, the proposed parking does not fit or work elsewhere on the property. Due to those circumstances especially affecting 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. In this case, literal enforcement would require paving, which would also violate the required percentage of green space, resulting in a substantial hardship to the applicant in either case. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. In this case, allowing for unpaved parking to also serve as permeable space does not substantially derogate for purpose of the zoning ordinance. 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 based on these items, along with all properly submitted materials and testimony made, and the board's consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With the specific condition added to this motion that the petitioner use permeable pavers for the proposed driveway.

General conditions are as follows: that the project be set forth according to the plans submitted with the application, including the special condition; 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

Clerk Decker - Yes

Board Member Schilling - Yes

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Board Member Brown – Yes

Motion passes 5-0

After board discussion on whether the vote is for a finding or a special permit with regard to Case #4316, a motion was made (JW) and seconded (RS) that the board has found that project, as proposed, is not substantially more detrimental to the neighborhood than the existing non-conforming structure.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Walsh – Yes

Clerk Decker - Yes

Board Member Schilling - Yes

Board Member Brown – Yes

Motion passes 5-0

3. APPROVAL OF MINUTES

A motion was made (SB) and seconded (AD) to accept the meeting minutes.

Motion passed unopposed.


4. OLD/NEW BUSINESS:

Ms. Carloni noted that there was a matter that will be deferred to our next meeting.

5. ADJOURNMENT:

The meeting was declared closed at 7:29 p.m.

ATTEST.



Allen Decker, Clerk

04-23-2018
Date