

**ZONING BOARD OF APPEALS
NEW BEDFORD MAIN PUBLIC LIBRARY
PLEASANT STREET
NEW BEDFORD, MA
Thursday, October 19, 2017**

MINUTES

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

ABSENT: Debra Trahan

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

CITY CLERK
2017 DEC 21 P 12:36
CITY CLERK'S OFFICE
NEW BEDFORD, MA

1. CALL TO ORDER

Acting Chairperson Walsh called the meeting of the City of New Bedford Zoning Board to order at 6:05 p.m. and explained the process and protocols to those in attendance.

2. PUBLIC HEARINGS

A motion was made (AD) and seconded (JW) to take Case #4288 out of order.
Motion passed unopposed.

Clerk Decker notified petitioners on upcoming cases, Cases #4297 and #4298, and Case #4299, that one board member will have to leave, and as such the petitioner would need four affirmative votes to prevail. Petitioners were given the opportunity to continue their cases to the next scheduled meeting before a full board. Each petitioner decided to go forward.

ITEM 1: Case #4294 - Petition of: Eastland Farms Nominee Trust (759 Chief Justice Cushing HWY. #375 Cohasset, MA) and SITEC INC. (499 Faunce Corner Road Dartmouth, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Lot Frontage); relative to property located at SS Eastland Terrace, assessors' map 74, lot 163 in a residential-A [RA] zoned district. The petitioner proposes to erect a single family dwelling as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 8/29/17; communication from the Office of the City Planner dated 10/19/17; communication from Councilor

Winterson, dated 10/6/17, wherein he expressed his support; 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, presented the request for a frontage variance on this uniquely shaped lot. He displayed a photo and provided orientations for the board. He stated the 1969 created subdivision was finally completed in 2015. He stated the subject lot is the last held by the developer. He stated the lot, when created was just over 6,000 s/f. He stated additional land was acquired and increased this corner lot size to 8,528 s/f and complies with zoning lot size, and with frontage on two streets. Adding the frontage on the two streets creates enough for the requirement, but neither has enough frontage standing alone, lacking some 9.3'.

Mr. Gioiosa displayed a former plan showing the lot. He stated the applicant seeks to create a small single-family dwelling. He noted the proposal would create 85% green space. He stated without the relief, a significant financial hardship would be created. He commented on the other requirements for relief.

Board Member Decker confirmed ownership of the lot. There were no board questions.

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

In response to Acting Chairperson Walsh's invitation to speak or be recorded in opposition, Nancy Vital, 8 Eastland Terrace, stated she was told when purchasing her land some 18 years ago that the adjacent lot was not buildable and that influenced her choice of lot. She stated she has maintained care for the grass and feels approval of this project will close her in.

Karen Vital, Emerald Drive, Dartmouth, inquired if the 700 s/f house was two stories, in essence 1,500 s/f. She also asked how the acquired additional land was added to the lot.

Board Member Decker noted that in 1996, the lot was a buildable lot.

In response to Acting Chairperson Walsh's further invitation to speak or be recorded in opposition, Linda Huff, 31 Eastland Terrace, stated that at a planning board meeting in 2016 it was stated that it was an unbuildable lot at the top. She stated this will make everything in the development look pushed together.

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

Mr. Gioiosa identified the location of the two speakers within the subdivision. He stated the 775 s/f he had referred to was the building footprint, which will occupy only some 9% of the lot. He confirmed that it is a proposed two story structure. Mr. Gioiosa stated the area added on was two-fold and creates

a buffer. He agreed with the second speaker that most houses in the development are some 10' away from each other, but this proposal puts the adjacent house some 21' away.

Board Member Schilling confirmed with Mr. Gioiosa that in 1996 this was a buildable lot. Board Member Brown inquired as to whether Ms. Vital liked the fact that the treed area behind her house would remain. She stated she liked the trees, but the trees are not behind her house. Ms. Vital also stated this was a high traffic area.

The hearing was closed.

After brief board discussion, a motion was made (AD) and seconded (JW) relative to Case #4294, Eastland Farms Nominee Trust, concerning property located on the south side of Eastland Terrace, Assessors' map 74 lot 163 in a residential A zoned district, to erect a single-family dwelling as per plans filed, which requires a Variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, and 2720 – Appendix B.

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, that there are circumstances related to the soil condition, shape or topography affecting the subject lot. In this case subject lot is uniquely or unusually shaped. And that due to those circumstances especially affecting the land or structure literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise, to the petitioner or appellant. The petitioner in this case is the original developer of the subdivision, and when laid out, the lot did meet zoning requirements. The applicant has incurred long-term carrying costs of the subdivision and denial would present substantial financial hardship. Desirable relief may be granted without nullifying or substantially derogating from the intent of the zoning ordinance. In this case the applicant's lot lacks less than 10' of frontage on one of two roads. Granting a variance does not substantially derogate from the intent or purpose of the zoning ordinance. The residential use would not be a 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.

No specific conditions are added to this decision, 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 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:

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|--------------------------------|------------------------------|
| Acting Chairperson Walsh – Yes | Board Member Schilling – Yes |
| Clerk Decker - Yes | Board Member McTigue - Yes |
| Board Member Brown – Yes | |

Motion passes 5-0

ITEM 2: Cases #4295/#4296

#4295 Petition of: Terceira Construction LLC. (1 Cookie Way Dartmouth, MA) and Jason Braz (42 Bush Street Dartmouth, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Minimum Lot Size, Lot Frontage, Side Yards (both sides)), 2570 (Yards in Residence District), and 2755 (Side Yard); relative to property located at NS Eastland Terrace, assessors' map 74, lot 180 in a residential-A [RA] zoned district. The petitioner proposes to erect a single family dwelling as plans filed.

#4296 - Petition of: Terceira Construction LLC. (1 Cookie Way Dartmouth, MA) and Jason Braz (42 Bush Street Dartmouth, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Minimum Lot Size, Lot Frontage, Side Yards (both sides)), 2570 (Yards in Residence District), and 2755 (Side Yard); relative to property located at NS Eastland Terrace, assessors' map 74, lot 179 in a residential-A zoned [RA] district. The petitioner proposes to erect a single family dwelling as plans filed.

A motion was made (JW) and seconded (RS) to consolidate these two cases as the issues are the same. Motion passed unopposed and the applicant agreed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 8/29/17; communication from the Office of the City Planner dated 10/19/17; communication from Councilor Winterson, dated 10/6/17, wherein he expressed his support; communication from Carlos Paiva, dated 10/16/17, with a series of questions; the appeal package as submitted; the plan as submitted; and, that 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.

A motion was made (AD) and seconded (SM) regarding Case #4296 that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 8/29/17; communication from the Office of the City Planner dated 10/19/17; communication from Councilor Winterson, as stated previously; the same communication from Carlos Paiva, dated 10/16/17; the appeal package as submitted; the plan as submitted; and, that 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 parties present. He stated this petition relates to the same development. He displayed an aerial photo and explained the orientation and the two subject lots. He stated the lots were again created in 1996 and were developed in conformance with the zoning in place at the time.

Mr. Gioiosa provided excerpts of the 1997 pertinent zoning.

A motion was made (AD) and seconded (SM) to accept the documents.
Motion passed unopposed.

He noted that at the time, minimum lot area was 4,800 s/f with minimum frontage of 50', with setbacks of 4' on one side and 6' on the other. He stated the applicant and current owner purchased the property four months ago with the understanding that they would pursue the original subdivision intent and create two single-family homes on the two lots, which are some 6,900 s/f in size with 60' of frontage. He stated their current proposal is to mirror the general size of the homes that exist nearest the subject property.

Mr. Gioiosa stated the situation is unique in that the lots are positioned in an existing development legally created under applicable zoning, and encouraged the board to consider the intent of the zoning in creating a neighborhood style setting. He stated granting this relief would not be detrimental to the neighborhood.

In response to Board Member McTigue, Mr. Gioiosa stated the applicant's plans have been used on other projects. He stated the applicant may consider better buffering to adjacent properties. In further response to Board Member McTigue, Mr. Gioiosa agreed that the only option is to combine the two lots for one building. She stated technically the applicant can still construct a building and meet zoning requirements.

In response to Board Member Schilling, Mr. Gioiosa explained that some lots were held back in the history of this development, which went on for years.

The communication from Carlos Paiva was read into the record.

In response, Mr. Gioiosa stated his understanding is that the parcel that concerns Mr. Paiva has frontage on Rockdale Avenue. Board Member McTigue confirmed that there is no existing easement or right of way between the two.

Board Member Decker stated he was bothered by the fact that the applicants bought the property this year fully knowing that neither lot conformed with the current zoning. He stated the prior case had just a single issue, while these cases have multiple variance issues. He stated these facts leave him hard pressed to determine what their hardship is, but one that is self-created.

Applicant Jason Braz stated when the owner purchased the lots they were under the impression from the realtor that these were buildable grandfathered lots in a pre-approved, and only learned of the problem when they applied for the building permit.

Board Members Decker and Walsh confirmed that the building permit rejection was after the purchase.

Mr. Gioiosa again related that the applicant could try to increase the setbacks, but could do nothing about the frontage and lot area.

Board Member McTigue stated the two lots in question do not have a hardship in her mind, as one lot would have both the frontage and size required.

In response to Acting Chairperson Walsh's invitation to speak or be recorded in favor, John Saunders stated he was on the Board of Survey in 1996 when the project got approved.

Mr. Saunders stated the original owner of the subdivision had his office trailer on one lot and a storage garage on the other. He stated he believed the lots were held back. He stated there was a sign up showing all the lots in the subdivision. He stated the sidewalks, streetlights and curbing were finally installed in order to get acceptance of the street. He stated there are two driveways already poured for these two lots, and the city accepted it that way in 2013. He stated it would look funny to stick in one house with two driveways.

In response to Acting Chairperson Walsh's further invitation to speak or be recorded in favor, Councilor Steve Martins requested he be recorded in favor.

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

In response to Acting Chairperson Walsh's invitation to speak or be recorded in opposition, a butter Linda Huff stated there is only one driveway. She stated this matter appeared last year before the Planning Board, who said that because it took so long to complete the subdivision and the lot size requirement changed, it would be made one lot. She stated the driveway opening was removed and curbing installed at that time. She stated she did not understand the sense of taxpayers coming to the Planning Board meeting to have themselves heard when they knew it was one lot.

Ms. Huff stated she purchased in 2000, and had she known the lot sizes were that tight, she would not have bought, but at the time there were no houses built alongside of her. She stated this vacant lot has been a thorn in her side, with animals and overgrowth.

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

Mr. Gioiosa, in conclusion, stated again there is flexibility in the size of the planned structures, but no flexibility to address frontage and area. He reiterated it was contemplated as two lots and original purchasers in the development were aware of that.

In response to Board Member Schilling, Mr. Gioiosa stated they were sold to the owner as two separate lots with two separate deeds.

Linda Huff stated the trailer Mr. Saunders spoke of has been gone for at least seven years, so they had plenty of time to sell the lot. And the garage was knocked down prior to that when homeless people were living in it and there was a fire.

The hearing was closed.

Board Member Brown cited case law stating that a variance is upheld when written setback requirements and subsequent zoning amendments rendered it unbuildable. He cited another case which stated the mere fact that a landowner purchased a nonconforming lot with knowledge that the lot did not conform to zoning requirements is not enough to justify denial of a variance. He stated there are also arguments against it as well, such as the potential economic advantage to a landowner does not qualify as a substantial hardship. He stated it would be tough for him to vote yes when the two lots are next to each other and multiple areas of relief is being requested.

Board Member Walsh stated his position has always been that one does not create their own hardship by purchasing nonconforming lots. You can create your own hardship by buying a subdivided lot. He stated his issue was that allowing the variance would allow for two consistent lots with others in the neighborhood. He stated denial would leave one lot not consistent with the lots around it.

After board discussion, including the multiple elements needing approval, the fact that speakers expressed the property has been vacant, and now there is someone wanting to put it to use, and the applicant's purchase of the two non-buildable lots, a motion was made (AD) and seconded (JW) relative to Case #4295, concerning property on the north side of Eastland Terrace, Assessors Map 74, Lot 180, in a residential A zoned district for a variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710 and 2720 – Appendix B, and Sections 2570 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, in respect to these sections, there are circumstances related to the soil condition, shape or topography especially affecting the land or structure in question. In this case, the size of subject lot was conforming and proposed development would have complied at the time the lot was laid out. Applicant is asking to develop the lot as initially contemplated. Due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise. In this case, without the variance, the lot is rendered unbuildable, creating a substantial hardship for the applicant. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. Relief to develop is not substantially derogating from the intent of the zoning ordinance, as this is a laid out lot in a residential subdivision. The desirable relief may be granted without substantial detriment to the public good. Development of the lot would not substantially deter the public good, because the lot is one of a number of lots in an existing subdivision.

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 those 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.

No specific conditions are added to this decision, 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 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:

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| Acting Chairperson Walsh – Yes | Board Member Schilling – No |
| Clerk Decker - No | Board Member McTigue - No |
| Board Member Brown – No | |

Motion failed 1-4

A motion was made (AD) and seconded (JW) relative to Case #4296, concerning property on the north side of Eastland Terrace, Assessors Map 74, Lot 179, in a residential A zoned district for a variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710 and 2720 – Appendix B, Sections 2570 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, in respect to these sections, there are circumstances related to the soil condition, shape or topography especially affecting the land or structure in question, but which do not generally affect the zoning district. In this case, the size of subject lot was conforming as proposed within the development and would have complied. Applicant is asking to develop the lot as initially contemplated. Due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise. In this case, without the variance, the lot is rendered unbuildable, creating a substantial hardship for the applicant. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. Relief to develop this lot would not substantially derogate from the intent of the zoning ordinance, as this is a laid out lot in a residential subdivision. The desirable relief may be granted without substantial detriment to the public good. Development of this residential lot would not substantially deter the public good, because the lot is one of a number of lots in a laid out residential subdivision.

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 those 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.

No specific conditions are added to this decision, 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 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:

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| Acting Chairperson Walsh – Yes | Board Member Schilling – No |
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Clerk Decker - No
Board Member Brown – No

Board Member McTigue - No

Motion failed 1-4

Board Member McTigue recused herself from the upcoming case. She noted this was her last meeting and thanked the board members for the opportunity to serve on the board.

Board Member Decker, in light of Board Member McTigue's absence, informed the applicants for Case #4299 that they would need four affirmative votes to prevail. He offered the opportunity to continue the matter to the next scheduled meeting. Applicants wished to go forward.

A motion was made (JW) and seconded (SB) to consolidate upcoming Case #4297 and Case #4298.

ITEM 3: Cases #4297/4298:

#4297 Petition of: 128 Union Street, LLC c/o James DeMello (128 Union Street New Bedford, MA), Michael McGlone Esq. (128 Union Street New Bedford, MA), Poyant Signs c/o Jennifer O'Neil (125 Samuel Barnet Boulevard New Bedford, MA) for an Administrative Appeal under Chapter 9 Comprehensive Zoning sections 5100 (Administration), 5110 (Permits), 5120 (Enforcement), 5220 (Powers), and 5223 (related to the inability to obtain a permit for a Digital Sign); relative to property located at 128 Union Street , assessors' map 47, lot 5 in a mixed use business zoned [MUB] district. The petitioner is appealing a rejected building permit issued by the Department of Inspectional Services. The permit was requested for the installation of a digital sign (LED).

#4298 Petition of: 128 Union Street, LLC c/o James DeMello (128 Union Street New Bedford, MA), Michael McGlone Esq. (128 Union Street New Bedford, MA), Poyant Signs c/o Jennifer O'Neil (125 Samuel Barnet Boulevard New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3201 (Purpose), 3220 (Prohibited Signs), 3228 (digital signs), 3275AA (area restrictions), and 3276AA (Height from Grade); relative to property located at 128 Union Street , assessors' map 47, lot 5 in in a mixed use business zoned [MUB] district. The petitioner proposes to install a digital sign as plans filed.

A motion was made (AD) and seconded (RS) relative to Case #4297 that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 8/29/17; communication from the Office of the City Planner dated 10/19/17; the appeal package as submitted; the plan as submitted; and, that 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.

A motion was made (AD) and seconded (RS) relative to Case #4298 that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated

8/29/17; communication from the Office of the City Planner dated 10/19/17; the appeal package as submitted; the plan as submitted; and, that 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.

Stephanie Moran, Poyant Signs, addressed the board regarding the administrative appeal. She stated the request is for a non-permitted sign in reference to an electronic message center. She noted it was a flag-mounted projecting sign off the corner of the building. She described that it would be located toward the northwest corner on Union Street.

Ms. Moran stated the building, originally constructed for a single occupant, has been purchased with the intent to transform it into multi-tenant occupancy. She stated a key component of the transition success is to provide a vehicle to identify the tenants to the general public. She stated the proposed sign will provide all tenants identification using a single efficient visual platform. She stated a denial of the request would put the transition's success in jeopardy.

Ms. Moran stated the applicant has already created a multi-cultural center within in the building, which prior to purchase had been half vacant for some five years. She stated that currently there are 25-30 tenants in the building, employing over 250 individuals. Ms. Moran highlighted some of the building tenants, including United Way and New Bedford Housing Authority, et cetera. Ms. Moran explained the challenge to identify tenants on the building exterior in an aesthetically pleasing way, yet conservative.

Ms. Moran explained that the building owner has been approached by at least six of the tenants seeking to put exterior illuminated signs on the building, which would be within code. She stated this request for just one sign effectively keeps the building clean and professional, while providing the tenants an ability to announce their presence to the public. She noted that one tenant, Santander, was allowed to keep their sign as part of the purchase agreement. She stated that this type of proposed signage has been allowed in other locations across the city, such as CVS Pharmacy, and she feels it is a good fit for this building.

Board Member Walsh confirmed there were currently some 25 building tenants and Santander is the only tenant with signage. He noted that allowed public service signs would provide time and temperature. Ms. Moran was agreeable to having the sign display any public messaging as part of the change sequence. Ms. Moran noted that the owner, Mr. DeMello is in favor of using the sign to also announce city events.

Board Member Schilling expressed that, as a downtown resident, his hope was that there would be more activity in the building, such as a market, than there is presently.

Board Member Decker confirmed that individual interior illuminated tenant signs could be installed on the building under the code. Ms. Moran confirmed that, but noted that it is not the applicant's preference to cover the building with signage.

Ms. Moran stated the sign requested is 7'10" overall height with a 20.5" visual opening. She stated the overall cabinet width is 5'11" but projects to 6' 5.5" off the building, and is 20.25" depth. She stated the sign is 9'7" from grade to bottom of the sign.

Board Member Decker stated he is bothered by illuminated electronic lights in signs on Union Street alerting tenancy.

Ms. Moran informed the board of a Poyant truck equipped with message centers which has been requested by the city on several occasions to park near Rte.18 within the historic district to provide advertising for upcoming events by non-profits in the city. She wanted to illustrate that that use in the downtown area has had benefits and enhanced the events. Ms. Moran reiterated that they do not want to have to add two more times the amount of exterior signs than now exists. She did not feel that was a better alternative, and felt this proposal was far more professional looking.

In response to Acting Chairperson Walsh's invitation to speak in favor of the petition, Pam Cruz, 337 Cedar Street, New Bedford noted her affiliation with the United Way of New Bedford. She felt that signage was an issue for her organization. She expressed that the proposal works for her organization to eliminate the existing confusion and highlight their presence. She stated she was in support.

Board Member Decker inquired as to how clients were now directed to the location.

In response to Acting Chairperson Walsh's further invitation to speak in favor of the petition, Anthony Peone, 8 Beetle Street, a member of Luzo American Financial a building tenant, stated they had moved their office from Lexington, MA. He stated the signage would help them, especially with walking traffic on Union Street, to let people know there is more in the building than just the international center or bank. He agreed that one sign is a cleaner look than multiple signs on the building. He explained the activities of the business and the promotional help the sign would be.

In response to Acting Chairperson Walsh's further invitation to speak in favor of the petition, Dylan Fergundes, 38 Plainsville Dr., South Dartmouth, stated he was the facility project manager. He let the board know about various events conducted in the center, including with tenants. He stated the space of the main lobby and downstairs lobby have been offered as places where job fairs, Christmas parties, et cetera, could be conducted and opened to the public. He stated a directory sign would help notify and invite the public to such events.

In response to Acting Chairperson Walsh's further invitation to speak in favor of the petition, Michael McGlone, a building tenant, expressed that the building is not in the historic district. He stated there are neighboring businesses with lit signs, such as the Garden, Brick Pizza and the larger YMCA sign, et cetera. He noted the area is a business district. He stated the sign is appropriate to the building it is appurtenant to, and is far better than 25 signs. He drew the board's attention to Planning Board notes of 10/19 regarding circumstances related to the soil conditions and shape, as well as literal enforcement of zoning ordinances due to the unique circumstances in this situation, as an incorporation to his argument for the variance.

In response to Acting Chairperson Walsh's further invitation to speak in favor of the petition, James DeMello, 117 Hathaway Road, North Dartmouth, owner of the subject building, stated the building was purchased to be an economic engine for downtown and an educational center. He stated that upon his purchase there were about 20 people within the building, and now there are over 150 employees. He stated there are two training schools within the building bringing in some 190 students. He reiterated the events that have occurred, to include the Chamber of Commerce. Mr. DeMello assured Board Member Schilling that he continues to work hard to being a marketplace into the building. He noted that both trash and security are privatized, and cameras help the police force. He added that the taxes on the building exceeds \$300,000 per year. He stated he is asking for help to attract additional tenants, and he thanked the board.

There was no response to Acting Chairperson Walsh's further invitation to speak or be recorded in favor of the petition.

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

The hearing was closed.

At ACP Walsh's request, Mr. Romanowicz wanted to hear more about the sign's message delivery. Ms. Moran stated the sign's hold time would be four seconds. She stated the main sign purpose is the directory, but added that any messaging for city events or non-profits they are happy to include. Ms. Moran stated it will not be used for video, but may include a company logo next to the text. She added the proposed time parameters asked for are 6:00 a.m. to 9:00 p.m..

Mr. Romanowicz acknowledged that a four second hold sign has been accepted by the state. He expressed he was pleased that the applicant is not proposing a 24/7 lit sign.

Acting Chairperson Walsh said he has voted against such a sign once in the past because it contained no public messaging. He stated he did not believe a public service sign was prohibited, and stated he could think of no other effective way for tenants to get their name on the building.

Ms. Moran stated there is no intent to use the sign for animation. Perhaps a flag on the 4th of July or a Santa's sleigh at Christmas, but nothing more. She stated the applicant does not have a need for animation.

Board Member Brown stated he felt the Santander building was more modern, and that had he rented an office there, he would want his name somewhere on the building. He felt it was exciting.

In response to bright light concerns, Ms. Moran stated the sign's message center will adjust down due to built-in sensors. Ms. Moran again confirmed there would be public service messaging.

After brief board discussion, a motion was made (AD) and seconded (RS) relative to Case #4297, petitioner 128 Union Street, LLC, relative to property at 128 Union Street, Assessors Map 47, Lot 5, in a mixed use business (MUB) zoned district to allows the petitioner to install a digital sign as per plans

filed for the administrative process under Chapter 9, Comprehensive Zoning Sections 5100, 5110, 5120, 5220, and Sections 5223.

Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, and under the provisions of M.G.L. Chapter 40A, Sections 7, 8 and 15, the board finds the following facts:

- The sign will provide public service, such as time, temperature and community events;
- The proposed sign will provide tenants exposure to the public as to their tenancy in that location.

Roll-call vote as follows:

Acting Chairperson Walsh – Yes
Clerk Decker - Yes

Board Member Schilling – Yes
Board Member Brown – Yes

Motion passed 4-0

After brief board discussion, to include hold time and sign size, a motion was made (AD) and seconded (RS) relative to Case #4298, concerning property at 128 Union Street, Assessors Map 47, Lot 5, in a mixed use business (MUB) zoned district to install a digital sign as per the plans filed, which requires a variance under Chapter 9, Comprehensive Zoning Sections 3200, 3201, 3220, 3228, 3275AA, and 3276AA.

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, there are circumstances relating to the soil condition, shape or topography especially affecting the land or structure in question. In this case, the shape and location of the building limit the location of the signage to that as proposed. Due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise. In this case, not allowing the variance, jeopardizes the success of the building's long-term chances and the economic transformation, thereby causing a substantial financial hardship for the applicant. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. Granting the variance will allow for public service messaging, which does not nullify or substantially derogate from the intent of the zoning ordinance. The desirable relief may be granted without substantial detriment to the public good. In fact, no substantial detriment and actually a public benefit would occur.

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 those 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 following specific conditions:

- That the operation of the sign is limited to 6:00a.m. to 9:00 p.m. daily;
- That the message hold time will be at least four seconds in duration.

And with the following general conditions: 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 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 Walsh – Yes Board Member Schilling – Yes
Clerk Decker - Yes
Board Member Brown – Yes

Motion passed 4-0

ITEM 4: Cases #4299 - Petition of: J. Thomas Jones and Kevin J. Jones, Trustees of CC&C of New Bedford Nominee Trust (429 Church Street New Bedford, MA), and Hayes Group Inc. c/o Tom Moreira (385 West Street West Bridgewater, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2300 (accessory building and uses), 2310 (general), 2330 (accessory structure), 2333 (accessory buildings or structure shall not be erected over eighteen (18) feet in height), 2700 (dimensional regulations), 2710 (general), and 2720 (table of dimensional requirements-appendix B, green space); relative to property located at 429 Church Street assessor's map 114, lot 3 in a Industrial-B zoned [IB] district. The petitioner proposes to erect a three (3) sided storage shed 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 9/29/17; communication from the Office of the City Planner dated 10/19/17; 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.

Eric Dias, Strong Point Engineering, for Plumber Supply Company. He stated the company has done business in New Bedford since the 1800's and a city resident since 1977. He stated, in short, that this thriving business needs more room. Mr. Diaz then described the proposed accessory structure, on which they are requesting the variance for a green space requirement and building height.

Mr. Dias stated the current site is some 2% shy of required green space and the proposed structure will impact the green space due to the necessary location for the same. He stated the applicant proposes to return some of the parking to a green area. He explained the plan to install a curb, seed the area and relocate arborvitae screening.

Mr. Dias stated, with regard to height, that the existing building is 26' and the proposal is that the accessory shed will match the existing building in height and appearance. He noted that other facilities in the site have far less green space. He stated that he saw no detriment and added the only thing behind the site is railroad tracks.

Board Member Brown noted that no abutters were appearing. He also confirmed that the applicant intends to add green space.

In response to Board Member Decker, Mr. Dias stated that his office as well as his colleague's office had received no phone calls regarding the proposal.

There being no members of the public present, there was no inquiry as to those in favor or opposition.

After brief board discussion, a motion was made (AD) and seconded (RS) relative to Case #4299, concerning property at 429 Church Street, Assessors Map 114, Lot 3, in an industrial B zoned district to erect a three-sided storage shed as per the plans filed, which requires a variance under Chapter 9, Comprehensive Zoning Sections 2300, 2310, 2330, 2333, 2700, 2710 and 2720 – Appendix B.

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 proposed location is the only one that works given the existing improvement and the business operation on the property. And that without the additional storage, the applicant's use of the property is compromised to the point that the business would seriously need to think about relocating. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. Reduction in green space and increase in accessory height does not substantially derogate from the intent of the zoning ordinance in an Industrial B zoned district. The desirable relief may be granted without substantial detriment to the public good. In that, allowing the variance keeps a long-term New Bedford business located on Church Street, which is a public benefit 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 those 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 no specific conditions, but with the following general conditions: 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 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 Walsh – Yes

Board Member Schilling – Yes

Clerk Decker - Yes

Board Member Brown – Yes

Motion passed 4-0

3. OLD/NEW BUSINESS:

None


4. ADJOURNMENT:

Minutes
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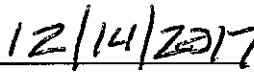
A motion was made (AD) and seconded (RS) to adjourn.
Motion passed unopposed.
Whereupon the meeting was adjourned at 8:55 p.m..

NEXT ZONING BOARD MEETING - NOVEMBER 16, 2017

ATTEST.



Allen Decker, Clerk



Date