

**ZONING BOARD OF APPEALS  
NEW BEDFORD MAIN PUBLIC LIBRARY  
PLEASANT STREET  
NEW BEDFORD, MA  
Thursday, December 14, 2017**

CITY CLERKS OFFICE  
NEW BEDFORD, MA  
2018 JAN 24 A 8:58  
CITY CLERK

**MINUTES**

**PRESENT:** Debra Trahan (*Chairperson*)  
Allen Decker (*Clerk*)  
Steve Brown  
John Walsh  
Leo Schick

**ABSENT:** Robert Schilling

**STAFF:** Dan Romanowicz, *Commissioner Inspectional Services*  
Gloria McPherson, *City Planner*  
Jennifer Carloni

**1. CALL TO ORDER**

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

**2. PUBLIC HEARINGS**

**ITEM 1: Case #4303** – Petition of: H.A. Sports, Inc. (78 Covell Street New Bedford, MA) c/o Haldo Arriaga (43 Irene Street New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2400 (Nonconforming Uses and Structures), 2410 (Applicability), 2420 (nonconforming uses), 2421 (change or substantial extension of the use), 2430 (nonconforming structures, other than single and two-family structure), 2431 (reconstructed, extended or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent; the reconstruction, extension or structural change of such nonconforming, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the insurance of a variance from the board of appeals), 2700 (dimensional regulations), 2710 (general), 2720 (Table of Dimensional Requirements-Appendix-B, Side Yard), 2750 (Yards in Residence District), and 2755 (Side Yard); relative to property located at 78 Covell Street, assessors' map 112, lot 185 in a Residential-C [RC]zoned district. The petitioners propose to build a 20'x22' addition with improvements to the existing kitchen 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 11/22/17; communication from the Office of the City Planner dated 12/14/17; 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.

The hearing was declared open.

Haldo Arriaga, 78 Covell Street, stated he wants to upgrade the kitchen area and add four feet to the right and left-hand sides of the building. He stated the wall will move four feet to the front area, as shown in the drawings. He stated this area is an empty space, and he is trying to make the kitchen larger and more convenient for the staff.

In response to Board Member Decker, Mr. Arriaga stated the building inspector told him he had to apply for a permit and be approved.

In response to Board Member Decker, Mr. Arriaga stated the kitchen is presently very small, and he seeks to add a bathroom for the staff, who now have to walk outside to use the bathroom, as well as a sink. He stated this has been this way for more than twenty years, and there is a need for the expansion.

In response to Chairperson Trahan, Mr. Arriaga stated there are three employees right now.

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

The hearing was declared closed.

After brief board discussion, including the hardship laid out in the application, a motion was made (AD) and seconded (JW) relative to the property at 78 Covell Street, assessors' map 112, lot 185 in a Residential-C [RC]zoned district, to build a 20'x22' addition with improvements to the existing kitchen as per plans filed, which requires a variance under Chapter 9 Comprehensive Zoning Sections 2400, 2410, 2420, 2421, 2430, 2431, 2432, 2700, 2710, 2720-Appendix-B, 2750, 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, the applicable sections have been addressed and in addition to the foregoing section, 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 the location of the existing kitchen would not work elsewhere on the property and that the expansion is needed for the business's success, and that relocating the kitchen would entail substantial financial hardship to the applicant, and that the extension of the wall on the western side of the building would not substantially derogate from

the intent or 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.

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:

Chairperson Trahan – Yes

Board Member Walsh – Yes

Clerk Decker - Yes

Board Member Schick - Yes

Board Member Brown – Yes

Motion passes 5-0

**ITEM 2: Case #4304** - Petition of: Logal LLC c/o Eric DeCosta (100 Duchaine Boulevard New Bedford, MA), SMRE 100 LLC C/O Ruberto, Israel & Weiner, P.C. (255 State Street, 7th floor Boston, MA), Parallel Products c/o of Timothy Cusson (969 Shawmut Avenue New Bedford, MA) and Poyant Signs, Inc. (125 Samuel Barnet Boulevard New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3201 (purpose), 3210 (general regulations), 3250 (regulations governing particular signs), and 3255 (area restrictions for ground signs); relative to property located at 100 Duchaine Boulevard, assessors' map 134 lot 5 in an Industrial-C [IC] zoned district. The petitioners propose to erect a ground sign with a 20'x 15'-8 ½" cabinet and overall height of 24' as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: correspondence dated 12/13/17 wherein a representative for the applicant has asked that the application be withdraw. In effect, the application was filed seeking a variance, when in fact a variance is not needed for the work proposed.

Motion passed unopposed.

A motion was made (AD) and seconded (LS) relative to property located at 100 Duchaine Boulevard, assessors' map 134, lot 5, that the application for a variance is withdraw without prejudice.

Motion passed unopposed.

**ITEM 3: Case # 4305 – Petition of Daniel S. and Gloria Goulart (39 Byron Street New Bedford, MA) for a Variance under provisions of Chapter 9 Comprehensive Zoning 2700 (dimensional regulations), 2710 (general), 2720 (Table of Dimensional Requirements-Appendix-B, Height of buildings # of stories); relative to property located at 39-41 Byron Street, assessors' map 38, lot 226 in a residential-A [RA] zoned district. The petitioner proposes to open the floor plan on the second floor by removing several walls and moving two bedrooms on the second floor to the renovated attic space with a dormer 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 11/22/17; communication from the Office of the City Planner dated 12/14/17; 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.

The hearing was declared open.

Daniel Goulart, 39 Byron Street, stated they are trying to create two bedroom spaces in their attic in order to free up some of the second floor living area. He stated that after returning from Guam, they occupied the upstairs above his mother-in-law and found the space very constrained and restricted for his family, including a 14 year old boy and 8 year old girl, as the apartment had only two bedrooms. He stated there are four two-story, two-family houses in the neighborhood, but the zoning was subsequently changed to single-family only. He stated they are before the board as their request technically creates a third story.

Mr. Goulart stated the creation of this third story is the only practical option they have and maintains the current profile of the structure. He stated this proposal really is only creating a two and half story, which will be maintained within the sloped roofline, with a south side dormer. He suggests the plan will maintain the appearance of a two-story with a cottage renovation. He stated they had explored the option of a ground level renovation, but given their second floor occupancy and the lot constraints on the front and side setbacks, as well as a south side driveway and spiral stairway, it would be very difficult and cost prohibitive.

Mr. Goulart stated their hardships are having adequate living space for a family of four, with two kids of different genders and a significant age gap, as well co-habiting with his wife's sick mother who requires assistance. He stated that he did not feel the variance request undermines the current zoning laws, in that the use of the structure will not change from a two-family structure. He stated the only access to the proposed two attic bedrooms originates in their second floor living room, and as such it will not be used as a third apartment in the future. He noted that this will not create any additional parking burden or trash barrels in the neighborhood.

Mr. Goulart stated the structure will be returned to a classic New England-style house, which will add value to the neighborhood. He stated they had consulted their neighbors and believe they have unanimous support.

Chairperson Trahan consulted Mr. Romanowicz, who stated the applicant will need one means of egress along with escape windows for the bedrooms.

Mr. Goulart added that there is a second staircase in the back of the house that goes into the attic. He stated they are short some one inch on the pie stairs, which makes it a non-conforming staircase, but it does serve as an emergency egress. He added that the staircase in their living room will be code conforming.

Both Board Member Brown and Walsh commented on how well delivered the applicant's presentation was.

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

The hearing was closed.

There being no further board discussion, a motion was made (AD) and seconded (JW) relative to Case #4305, concerning property located at 39-41 Byron Street, assessors' map 38, lot 226 in a residential-A [RA] zoned district, to open the floor plan on the second floor by removing several walls and moving two bedrooms on the second floor to a renovated attic space with a dormer as per plans filed, which requires a variance under provisions of Chapter 9 Comprehensive Zoning Sections 2700, 2710, 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 application sufficiently addresses them. 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, because the board has found that the footprint of the existing structure precludes expansion on first level due to existing setbacks, an existing driveway, and an existing exterior stairway. 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, the additional living space is needed to adequately house existing family members. The applicant will face financial hardship otherwise with family dynamics and harmony.

The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. The desirable relief may be granted without substantial derogation from the zoning ordinance, as, in this case, the property remains a two-family property and within the height limitations allowed per the zoning ordinance. 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 careful 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 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:

|                          |                           |
|--------------------------|---------------------------|
| Chairperson Trahan – Yes | Board Member Walsh – Yes  |
| Clerk Decker - Yes       | Board Member Schick - Yes |
| Board Member Brown – Yes |                           |

Motion passed 5-0

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

A motion was made (LS) and seconded (JW) accept the meeting minutes of the October 17, 2017, Cases #4294; #4296; #4297; #4298; and #4299.

Motion passed unopposed.

A motion was made (LS) and seconded (JW) accept the meeting minutes of the November 16, 2017, Cases #4254; #4300; #4301; and #4302.

Motion passed unopposed.

### **4. OLD/NEW BUSINESS:**

Ms. Carloni informed the board about their new city e-mails. Board questions were addressed.

Ms. Carloni raised the election of officers for 2018. Chairperson Trahan requested information on the open slots for permanent members, as well as whether alternates can vote on election of officers. A motion was made (JW) and seconded (AD) to postpone the matter to the next meeting. Motion passed unopposed.

Ms. Carloni informed Board Members Decker, Schick and Walsh of the necessity for an executive session meeting in January 2018 for updates. She noted that former Board Member McTigue also sat on the matter, as did Board Member Schilling.


Ms. Carloni introduced new city planner, Gloria McPherson.

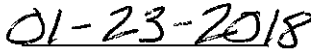
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**5. ADJOURNMENT:**

A motion was made (JW) and seconded (AD) to adjourn.  
Motion passed unopposed.  
Whereupon the meeting was adjourned at 6:45 p.m..

ATTEST.

  
\_\_\_\_\_  
Allen Decker, Clerk

  
\_\_\_\_\_  
Date

