

**ZONING BOARD OF APPEALS  
NEW BEDFORD CITY HALL  
WILLIAM STREET  
NEW BEDFORD, MA  
Thursday, January 19, 2017**

**MEETING MINUTES**

**PRESENT:** Leo Schick (*Acting Chairperson*)  
John Walsh (*Acting Clerk*)  
Sherry McTigue  
Robert Schilling

**ABSENT:** Debra Trahan  
Allen Decker

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

**1. CALL TO ORDER**

Acting Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:05 p.m. and explained the process and protocols to those in attendance. Acting Chairperson Schick notified those on the agenda that there were four members present, and as such petitioners would need a unanimous vote. He offered petitioners the opportunity to continue their hearing to a meeting with five board members. All petitioners indicated they would proceed.

**2. PUBLIC HEARINGS**

**ITEM 1: Case #4261- Petition of: Norbeto C. and Lucilia C. Moniz (36 Rogers 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, side yards), 2750 (yards in residence districts) and 2755 (side yards-driveways may extend to four (4') feet of a side yard); relative to property located at 36 Rogers Street, assessor's map 55 lot 187 in a residential B [RB] zoned district. The petitioners seek approval of a driveway that was installed without the required four foot (4') buffer as plans filed.**

A motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 12/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 1/19/17; the appeal package; the plan 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.

Acting Chair Schick declared the hearing open.

Lucilla Moniz stated she was here seeking a driveway.

Acting Chair Schick clarified with Ms. Moniz that she was seeking approval of a driveway installed without the 4' buffer as included in the plans filed, now requiring a variance. Ms. Moniz confirmed.

In response to Mr. Schilling's question about any objection by abutters, Mr. Walsh noted a letter from abutter Patricia Mahoney dated 11/17/16.

Ms. McTigue stated that the water runoff was the main issue, absent the 4' buffer. Lance Moniz stated the slope of the driveway takes the water right to the street. He also noted the abutters land slopes and is higher.

Ms. McTigue noted the plans were filed with knowledge of the required 4' buffer. Mr. Moniz stated the permits were picked up by the contractor and they had no knowledge that it needed a 4' buffer. Mr. Moniz confirmed to Ms. McTigue that there was green space.

In response to Acting Chair Schick's invitation to speak favor, Jessica Pinho spoke on behalf of State Representative Tony Cabral. She stated that Representative Cabral wished to voice his support of Ms. Moniz' petition and is hopeful the board will vote in favor.

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

At Mr. Walsh's invitation, Mr. Romanowicz stated the inspector who went to sign off on the project noted the driveway was absent the required buffer. He stated the requirement is written on the permits to avoid these situations. He noted that the board seems to be seeing this issue more.

Mr. Walsh stated that perhaps the board has been somewhat lenient in the past, but based upon what was submitted by the applicant, he does not believe she meets the requirements to receive a variance. Mr. Walsh noted the petitioner's representation that knowing prior to the work being done that the neighbor's land was higher, and the applicant stated the 4' buffer zone would create a depression for settling water. Mr. Walsh stated he did not believe a buffer would necessarily do that, in light of grading, et cetera. He felt the conditions of the permit were ignored, and the applicant has not met the requirements to grant the variance.

In response to discussion, the result of not granting the variance would require the removal of 4' of the driveway. Ms. McTigue noted that the requirement of the 4' buffer is for the ground to absorb some of the ground water to avoid overtaxing the city storm water system.

Mr. Schilling added that had the neighbor been silent on the issue that would be one thing. But with the neighbor's letter being received, it is different. Mr. Schilling stated he appreciates the enforcement of the requirements, but feels it's a high price for Ms. Moniz to pay for a mistake made by Reis Asphalt. Mr. Moniz stated that after receiving the letter that the work did not meet code, the contractor reviewed the drawings and discovered he had made the error.

Mr. Schilling stated the removal of the four feet would likely result in suing the contractor. He felt there was adequate runoff even absent the 4' buffer. Ms. McTigue noted the space was not buildable.

In response to Acting Chair Schick, Ms. Moniz explained that she had changed contractors from Morgado to Reis and was told she did not need another permit. Mr. Moniz stated that after speaking with the contractor's secretary they admitted they would remove it if necessary.

Acting Chair Schick closed the hearing.

After further board discussion, a motion is made (JW) and seconded (RS) to approve the variance to allow the petitioner approval of a driveway installed without the required four foot (4') buffer as plans filed, which requires a variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720, 2750 and 2755 relative to property located at 36 Rogers Street, assessor's map 55 lot 187 in a residential B [RB] zoned district. 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 with respect to these sections that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. These circumstances are that according to the applicant before the work was done the neighbor's grass was higher in elevation than the applicant's and that a 4' buffer zone would create a depression for water to settle. And that due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, that hardship, according to the petitioner, is that a 4' buffer would create a depression that would allow ice and water to accumulate. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. And that desirable relief may be granted without substantial detriment to the public good. Therefore, this motion as made includes the following conditions: that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of decision.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Acting Clerk Walsh – No

Board Member Schilling - Yes

Fails – 3-1

**ITEM 2 – Case #4262 - Petition of: Robert J. and Pauline A. Bowcock (290 Maple 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 yards), 2750 (yards in residence districts), and 2753 (rear yard); relative to property located at 290 Maple Street, assessor's map 44 lot 79 in a residential A [RA] zoned district. The petitioner proposes to erect an addition and a 20'x20' deck as plans filed.**

A motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 12/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 1/19/17; the appeal package; the plan 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.

Acting Clerk Walsh noted a letter dated 1/5/17 received from City Councilor Winterson, which then was motioned (JW) and seconded (SM) to be received and placed on file. Motion passed unopposed.

The letter was read into the record.

Acting Chair Schick declared the hearing open.

Robert Bowcock of 290 Maple Street stated that he and his wife have lived in this 100 year old house since 1984. He stated he is proposing to put a one-story addition onto the west side of the house located on this unique piece of property. He stated the way the house currently sits on the lot encroaches within the 30' buffer required by current zoning, but does meet the side and front yard requirements.

Mr. Bowcock stated they only found out about the encroachment after having the plans drawn and the lot surveyed. He stated the need to do this is from his wife becoming handicapped. He stated she could also access their above-ground pool without climbing stairs and ladders per their plan to install a deck on the rear of the house. He explained the height of the deck and stated it is consistent with other decks in the same block.

Mr. Walsh inquired regarding the application section requiring the applicant to list any circumstances related to soil conditions, et cetera, which Mr. Bowcock did not fill out. After direction from Ms. McTigue, Mr. Walsh apologized for not seeing the attachment addressing the same.

Ms. McTigue discussed the height above grade for the deck. Mr. Bowcock noted the granite foundation is 3'-4' above ground level, explaining they would exit the back of the house with one step down to the deck.

There was no response to Acting Chair Schick's invitation to speak or be record in favor.

There was no response to Acting Chair Schick's invitation to speak or be record in opposition.

Mr. Schilling confirmed that all abutters were notified and they provided no response.

Acting Chair Schick closed the hearing.

There being no further discussion, a motion was made (JW) and seconded (SM) to approve the variance to allow the petitioner to erect an addition and a 20'x20' deck as plans filed which requires a variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720, 2750 and 2753, relative to property located at 290 Maple Street, assessor's map 44 lot 79 in a residential A [RA] zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9, above cited sections, the board finds that in respect to these sections, the requirements are met. In addition to the foregoing sections, this petition has also been found to be in accordance with MGL Chapter 40A, §10 relative to the granting of variances, because the board has found that there are circumstances relating to the soil condition, shape or topography which especially affect the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. These circumstances are that the lot was established prior to any zoning requirements, and that the house was situated in the lot such that if a variance was not granted the homeowner would have to incur significant expense to design a structure addition that would comply with zoning requirements. The previous statement explains the hardship, which is the expense involved. The board finds there are circumstances relating to the soil conditions which effect the land but not the district. Due to those circumstances we find that literal enforcement would have a substantial financial hardship to the applicant. Also, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. And that desirable relief may be granted without substantial detriment to the public good. Therefore, in light of its review of the specifics noted in this motion, the board finds the material presented is complete, and after its' careful consideration of the petitioner's request, the Zoning Board of Appeals finds the petitioner satisfactorily meets the basis of the requested relief. Therefore, this motion is made and includes the following conditions: that the project be set forth according to the plans submitted with the application, that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of decision.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Acting Clerk Walsh – Yes

Board Member Schilling - Yes

Passes 4–0

**ITEM 3 – Case # #4264 - Petition of: Popes Island Harbor Development Corp. c/o Mark W. White (867 Middle Road Acushnet, MA 02743) and Kenneth Tetrault (74 Willis Street #2 New Bedford, MA) for a Special Permit under Chapter 9 Comprehensive Zoning sections 4200-4267 (Body Art), and 5300-5330 & 5390 (Special Permit); relative to property located at 213 Popes Island, Assessor's map 60, lot 12 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to operate a body art establishment, tattoo and piercing doing business as Flyin Aces Tattoo as plans filed.**

A motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 12/30/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 1/19/17; the appeal package; the plan 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. An additional motion was made (JW) and seconded (SM) to also receive and place on file communication from Brenda Wise dated 1/9/17, an abutter indicating she has no concerns. Motion passed unopposed.

Kenneth Tetrault stated he was here for a special permit to change tenancy. He stated his current tattoo studio is located at 858 Kempton Street, and he would like to relocate it to 213 Popes Island, Lot 12.

Ms. McTigue inquired as to the reason for the move. Mr. Tetrault stated the owner of his current location is planning to sell the property and Mr. Tetrault doesn't want to wait until the last minute to find adequate space. He stated he has looked at other locations, but they did not fall within zoning requirements. He stated that in addition, the new location has great parking and accessibility, as opposed to his current basement location with limited parking which affects his business.

In response to Mr. Walsh, Mr. Tetrault confirmed he is relocating his business to somewhere where he would be surrounded by businesses and not residences, as well as better lighting.

In response to Ms. McTigue, Mr. Tetrault confirmed he would be keeping the same number of booths and discussed his planned changes to the new location.

In response to Ms. Gonet and Ms. McTigue, Mr. Tetrault acknowledged he is presently proposing 3-5 employees servicing 4-8 patrons per day.

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

Acting Chair Schick closed the public hearing.

After brief discussion, a motion was made (JW) and seconded (SM) to approve the special permit to allow the petitioner to operate a body art establishment, with tattoo and piercing, doing business as Flyin Aces Tattoo as plans filed, which requires a special permit under Chapter 9 Comprehensive Zoning Sections 4200-4267, and 5300-5330 & 5390, relative to property located at 213 Popes Island, Assessor's map 60, lot 12 in a Mixed Use Business [MUB] zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9, above cited sections, the board finds that with respect to these sections the conditions have been met. In addition to the foregoing sections, this petition has also been found to be in accordance with the City of New Bedford Code of Ordinances Chapter 9, Section 5300 -5330, 5360-5390, relative to the granting of special permits because the board found 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. After consideration of the following, the board found with respect to social, economic and community needs

served by the proposal, the special permit is servicing an existing need. With regard to traffic flow and safety, the board has found it will have no negative impact at the new location and would likely have a positive impact at the old location, because there would be a traffic decrease there. With respect to the adequacy of utilities and other public services, the business will use existing utilities. With respect to neighborhood character and social structures, the business will now be located in a mixed use business district and is consistent. Impacts on the natural environment are neutral. With regard to potential fiscal impact, including impact on the city services, tax base and employment, this will have a neutral to positive effect, as the business would continue to employ its present employees and may employ additional employees in the future. In light of its review of the specifics noted within the motion, the board finds the material presented is complete, and after careful consideration of the petitioner's request, the Zoning Board of Appeals finds the petition satisfactorily meets the basis of the requested relief. Therefore, with the following conditions: that the project be set forth according to the plans submitted with the application, and that the Notice of Decision be recorded with the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Acting Chairperson Schick – Yes  
Acting Clerk Walsh – Yes  
Board Member Schilling - Yes

Board Member McTigue – Yes

Passes – 4-0

**ITEM 4 - CASE #4265 - Notice is given of a public hearing on the petition of: Ryan W. Pina (42 Briarwood Court New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2300 (Accessory Buildings and Uses) 2330 (accessory structures), 2338 (protection of swimming pools and fish ponds), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-appendix-B-Height of buildings, # of stories); relative to property located at 42 Briarwood Court, assessor's map 136-C, lot 79 in a residential A [RA] zoned district. The petitioner proposes constructing habitable space in the basement and attic and is seeks approval of the existing extension of the deck/structure as plans filed.**

A motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 12/30/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 1/19/17; the appeal package; the plan 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.

Armando Pereira, Comprehensive Design Build Services, passed out photos to the board. He described the 2010 and 2007 Google images.

A motion was made (JW) and seconded (RS) that the photos be received and placed on file. Motion passed unopposed.

Mr. Pereira stated the existing .237 acre parcel consists of a wood framed, single family two-story dwelling with an unfinished attic which is somewhat framed. He stated there is an unfinished basement. He stated the structure was built in 1971 and has a pool installed in 1974, with the second floor addition erected in 2008. He stated there is deck on the east side flush with the interior of a sunroom. He stated the applicant acquired the property through a 2016 foreclosure. Mr. Pereira stated they are seeking to finish the basement for a recreation room area, and to finish the attic space. He stated they are also requesting to keep the existing deck and guardrail.

Mr. Pereira went over drawings, explaining the apparent uses of the previous owner. He went over the first floor, sunroom and deck, as well as the bedrooms. He then went over the second floor of the dwelling. He stated they submitted a first proposal with the first and second floors, and now this subsequent submittal for the basement and attic. He explained the plan for the basement, and went over the changes made to the first floor and second floor.

Mr. Pereira then covered the proposed changes for the attic space. He then referred the board back to the photos, pointing out the pre-existing deck area as well as an addition and the sliding doors.

He stated any potential to add an addition to the house is landlocked.

In response to Mr. Walsh, Mr. Pereira confirmed they cannot expand the building, but can expand the square footage of living space, without creating a detriment to the neighborhood. He noted a dried up creek in the back of the property presenting conservation issues.

Ms. McTigue confirmed there was no room for expansion on the property.  
Mr. Pereira confirmed for Mr. Walsh that the footprint stays the same.

A female audience member spoke and was interrupted from speaking further.

There was no response to Acting Chair Schick's invitation to speak or be record in favor.

In response to Acting Chair Schick's invitation to speak or be record in opposition, abutter Grace Silveira, 39 Briarwood Court, stated she is likely the last of the original persons from when the properties were constructed. She commended Mr. Pina for his excellent job with the property, which she feels adds value to the neighborhood. She stated her concerns were regarding traffic. She stated she is sorry she did not come to the prior hearings regarding construction of homes, because she now has water in her basement. Ms. Silveira stated she is concerned about other people moving into the property, which will create traffic and parking problems. She commented on the activities on the property over the years. She thinks she may be in favor, but is concerned about the number of stories.

Mr. Pereira stated it would be a garrison.

Ms. McTigue stated that parcel look-up will tell what the structure is.

Ms. Silveira stated she was concerned that whatever they do will effect her property when she tries to sell.



Mr. Walsh explained this was a single family residence.

Ms. McTigue stated it is listed as a colonial style.

Ms. Silveira tried to date the erection of the sunroom/deck/railing.

Acting Chair Schick closed the hearing.

A motion was made (JW) and seconded (SM) to approve the variance to allow the petitioner to construct habitable space in the basement and attic and have approval of the existing extension of the deck/structure as plans filed, which requires a variance under Chapter 9 Comprehensive Zoning Sections 2300, 2330, 2338, 2700, 2710, 2720, relative to property located at 42 Briarwood Court, assessor's map 136-C, lot 79 in a residential A [RA] zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9, above cited sections, the board finds that with respect to these sections the criteria has been met. In addition to the foregoing sections, this petition has also been found to be in accordance with MGL Chapter 40A, §10 relative to the granting of variances, because the board has found that there are circumstances relating to the soil condition, shape or topography which especially affect the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. These circumstances are that based upon the size of the existing lot and the size of the building upon it, the homeowner cannot expand the square footage of the building and remain in compliance with zoning ordinances. The proposed plan will increase living space without increasing the footprint. Due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner. The hardship is that if the variance were not granted, the applicant could not maximize the use of his property and the value of his property. Also, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. And the desirable relief may be granted without substantial detriment to the public good. Therefore, in light of its review of the specifics noted in this motion, the board finds the material presented is complete, and after its' careful consideration of the petitioner's request, the Zoning Board of Appeals finds the petitioner satisfactorily meets the basis for the requested relief. Therefore, this motion is made and includes the following conditions: that the project be set forth according to the plans submitted with the application, that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of decision.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Acting Clerk Walsh – Yes

Board Member Schilling - Yes

Passes 4–0

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

Mr. Walsh noted a letter received from Att. Thomas Crotty dated 12/13/16 requesting the board reconsider its decision in Case #4236. A motion was made (JW) and seconded (SM) to receive and place on file. Motion passed unopposed.

A motion was made (JW) and seconded (SM) that given the fact that there is not a full board this evening, nor are all members present who voted on the initial case, he moved that the matter be tabled until the sitting board for the case is reconvened. Motion passed unopposed.

#### **4. APPROVAL OF MINUTES**

A motion was made (JW) and seconded (RS) to approve the minutes from the meetings of November 17, December 6 and December 15.

#### **5. ELECTION OF OFFICERS:**

John Walsh nominated Debra Trahan for Chair, Leo Schick for Vice-chair, and Allen Decker for Clerk. After discussion with Ms. Gonet, John Walsh nominated Debra Trahan for Chair, Sherri McTigue for Vice Chair and Allen Decker for Clerk. Ms. Gonet suggested the matter be tabled to the next meeting.

#### **6. ADJOURNMENT:**

There being no further business to come before the board, the meeting was adjourned at 7:28 p.m..

**Next meeting – February 16, 2017**