

**ZONING BOARD OF APPEALS
NEW BEDFORD MAIN PUBLIC LIBRARY
PLEASANT STREET
NEW BEDFORD, MA
Thursday, May 18, 2017**

MINUTES

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

ABSENT: Debra Trahan

STAFF: Dan Romanowicz, *Commissioner Inspectional Services*
Jennifer Clarke, *Acting City Planner*

1. CALL TO ORDER

Acting Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:00 p.m. and explained the process and protocols to those in attendance.

2. APPROVAL OF MINUTES

None

At Acting Chairperson Schick's request, a motion to have Case # 4273 heard directly after Case #4269 was made (JW) and seconded (SB).
Motion passed unopposed.

3. CONTINUED PUBLIC HEARINGS

ITEM 1: Case #4269- Petition of: Raymundo Juarez Ramos and Lidia A. Escobar Juarez (24-26 DeWolf Street New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, Height of buildings, (# of stories), residential); relative to property located at 24-26 DeWolf Street, assessor's map 76 lot 11 in a Residential B zoned district. The petitioners propose to finish the basement by adding a family room, bath, kitchen, bedroom, and storage room as plans filed.

A motion was made (JW) and seconded (AD) for the following addition to be made to the case file: Communication from the Office of the City Planner, dated 5/18/17.

Motion passed unopposed.

Board Member Walsh commented that he had reviewed the tape of the last meeting wherein the applicant was seeking a variance regarding height and number of stories regarding a basement renovation. He stated he did not believe that a basement was a story under the city code, according to Chapter 9, §1200. Mr. Walsh read the definition into the record. He stated a story is the first level fully above grade, and a basement is not fully above grade. He stated, therefore, from his point of view no variance is required.

Mr. Romanowicz noted this would not be the first time a variance was required for a story below grade. He stated that according to the building code, habitable space, which this is going to be, is considered a story. He stated any issue not covered in zoning regulations, reverts to the building code. He stated had he known Att. Walsh's position, he would have brought in the appropriate building code paperwork.

Board Member Walsh stated that based upon his reading of the local regulations. He stated he is not sure there is a reversion to the state building code, as this item is defined in the city's code and therefore would not revert to the state building code.

Mr. Romanowicz stated that habitable space is not defined.

Mr. Walsh disagreed that habitable space equates to a story.

Board Member Decker stated that his memory of the previous meeting was that a concern existed in the basement space becoming a separate unit, as there was a plan for a kitchen buildout.

Board Member Schilling agreed, noting Chairperson Trahan had expressed concern over zoning board rulings that could lead to a three unit building versus a two unit building.

Board Member Walsh again disagreed that it becomes a three unit building. He stated he believed it remains a two unit building, noting many people want to put a kitchen in their basement. He also expressed that the board ought not punish people preemptively for what they may do in the future. He stated he believes the applicant has a right to expand their 1st floor living space.

Board Member Decker stated he was under the impression that the basement would be tied to the first floor unit, creating a single two floor unit.

Board Member Brown stated that any condition restricting the applicant from creating a third rentable living space would be moot if Att. Walsh were correct, as the board would have no standing to constrain the resident in the use of his property. He added that any ruling made today would be dependent on whether the applicant needed to come before the board at all.

Ms. Clarke suggested the board take action on what is before it this evening. She stated that as staff they are certainly willing to speak with the zoning enforcement officer and city solicitor to examine the matter for clarification.

Board Member Decker confirmed that Nora Andino from the Department of Community Services would be providing interpreter services to the applicant. Board Member Decker repeated his concern that the basement would be only an extension of the first floor living, and sought verification of the same.

Ms. Andino stated they had met with Jen Gonet on 5/9/17, and wondered if an addendum was filed. Board Member Decker confirmed the board had seen it, but wanted it addressed for the record in this public hearing.

Interpreter Andino related to the board that the applicant stated the basement would be an extension of his first floor. She stated the applicant has no intention of renting the unit.

Board Member Schilling noted that the applicant has indicated that in spite of his preference, he would be willing to forego installation of a stove in the basement. Interpreter Andino confirmed the same.

In response to Acting Chairperson Schick's invitation to speak in favor of the petition, Christian Farland of New Bedford noted the state building code definition of a story, reading the same into the record. He stated that in his professional opinion this would not classify as a story above grade.

In response to Acting Chairperson Schick's further invitation to speak in favor of the petition, Councilor Hugh Dunn stated he was in favor as long as it remained one unit.

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

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

The hearing was closed.

After board discussion, including the concerns of this becoming a third unit within the building, the foregoing of a kitchen/stove, as well restrictions on the installation of the stove, and failure to establish hardship, a motion was made (AD) and seconded (JW) regarding Case #4269, relative property located at 24-26 DeWolf Street (Assessor's map 76, Lot 11) in a Residential B zoned district, to allow the petitioner to finish the basement by adding a family room, bath, kitchen, bedroom, and storage room as per the plans filed, which requires a variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720 Appendix B.

Having reviewed this petition in light of the City of New Bedford Code of Ordinance Chapter 9, section as cited, the board finds that in respect to these sections the petition has 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 related 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. In this case, the location of the existing structure is such that adding exterior space is not

possible. Second, 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, not allowing expansion into the basement presents a hardship for the applicant to adequately house family members on extended visitations. 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.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on those 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. Therefore, this motion as made includes the following specific conditions: use of the basement must remain tied to the first floor unit, with no possibility of use as a separate rental unit. General conditions are as follows: that the project is set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded at the Registry of Deeds, and that the rights authorized by the granting of this 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 of decision or the rights will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker – Yes

Board Member Brown - Yes

Board Member Walsh - Yes

Motion passed 5-0

4. PUBLIC HEARINGS

ITEM 2 – Case #4273 - Petition of: Michael Silva (389 Cottage Street New Bedford, MA) for a Special Permit under Comprehensive Zoning sections 1200 (Definitions-frontage of), and 5300-5330 & 53605390 (Special Permits); relative to property located at 389 Cottage Street, assessor's map 65 lot 247, in a residential-B [RB] zoned district. The petitioner proposes to construct a driveway in the rear of the building as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: the communication dated 5/1/17 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 5/18/17; 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.

Michael Silva stated that crosswalks at Sycamore and Cottage Streets prevent the applicant from installing the driveway on his street address, due to a lack of footage. He is proposing to put an 18' wide x 21' deep driveway on the back of the house. He stated it will 1.5' from the boundary line, accommodating for rain runoff.

Board Member Decker clarified the dimensions stated by the applicant.

A motion was made (AD) and seconded (JW) to accept a plan submitted 5/12/17.
Motion passed unopposed.

In response to Board Member Decker, Mr. Silva stated he currently parks on Sycamore St., and the driveway would eliminate two vehicle and any family members coming over. He stated he will install a bumper if necessary, but he plans to continue his fence.

In response to Board Member Brown, Mr. Silva addressed water runoff, referencing the 1.5' of grass he has planned for.

Florence Blake, of Sycamore Street, didn't understand why she received notice. The board explained. She stated she was not in opposition as long as it didn't interfere with her property.

Acting Chairperson Schick closed the hearing.

After brief board discussion regarding installation of a bumper guard, a motion was made (AD) and seconded (JW) regarding the petition of Michael Silva, relative to property located at 389 Cottage Street, assessor's map 65 lot 247, in a residential-B [RB] zoned district, to construct a driveway in the rear of the building as plans filed, which requires a Special Permit under Comprehensive Zoning sections 1200, and 5300-5330 & 5360-5390.

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, specifically the social economic or community needs served by the proposal, this proposal removes vehicles that are currently parking on the street. Concerning traffic flow and safety, including parking and loading, said application allows for the removal of vehicles, eases traffic flow and makes the street less congested. Regarding adequacy of utilities and other public services, this application is neutral. Regarding the neighborhood character and social structures, adding a driveway to this property fits within the neighborhood's character and social structures as other properties in the immediate area have the same benefit.

Regarding the impacts on the natural environment, while the driveway removes some pervious space on the lot, at least 40% of the lot will remain unbuilt upon. Regarding the potential fiscal impact, including the impact on city services, tax base and employment, the board finds no negative impacts.

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 careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. Therefore, this motion as made includes no specific conditions and the following general conditions: that the project is

set forth according to the plans submitted with the application; that the applicant ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded at the Registry of Deeds, and that the rights authorized by the granting of this special permit must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of decision or the rights will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker– Yes

Board Member Brown - Yes

Board Member Walsh - Yes

Motion passed 5-0

ITEM 3 – Case #4272 - Petition regarding 791-797 Purchase Street, New Bedford.

Board Member Decker recused himself from hearing this case, due to a conflict of interest.

Acting Chairperson Schick informed the applicant he would now need a unanimous vote of the remaining board members and offered the applicant an opportunity to postpone the matter. The applicant elected to proceed.

A motion was made (JW) and seconded (RS) that the following be received and placed on file: the communication from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 5/12/17; the appeal package submitted; 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.

Christian Farland, Farland Corp., also an owner of the subject property, noted for the board that the site is walking distance from the Elm Street and Zeiterion Garages, and reminded the board that all surrounding businesses also have no parking available. He stated the site contains approximately 9,281 S/F. He referenced previous board relief granted for 68 parking spaces for use of the 1st floor and a portion of the 2nd floor. He noted the expanded need for a private function space on the 2nd floor, which requires an additional 18 parking spaces.

In response to Acting Chairperson Schick, Mr. Farland stated currently the majority of parking is utilizing on-street parking during the day, with the parking garage being used at peak hours during lunchtime. He noted the business has valet service Wednesday thru Sunday, which is primarily used during evenings and weekends. He also noted the free city lot available after 5:00 p.m..

Mr. Farland stated he has also had discussions with neighbors regarding parking practices. He estimated that 95% of downtown businesses will appear before the board for the same relief. He stated that as a New Bedford resident, he feels it's a great asset to have. He further stated that until the parking garages are at capacity, there is no reason he sees that the zoning board would not grant relief,

especially for businesses helping to revitalize the downtown area. He stated that without parking relief the properties are valueless. He noted his appearance is due to an expansion of the business, even serving customers from all over the state visiting the City of New Bedford.

He addressed the hardship issues, identical to the July hearing, such as the building occupying the entire lot, et cetera. He referred the board to the staff comments and invited any questions.

In response to Board Member Schilling, Mr. Farland noted the previous proposal originally included 6 residential units and triggered a requirement for 12 additional parking spaces. He stated the event space use has picked up and there is nothing like this unique location.

Board Member Schilling referenced recent news reports regarding lack of residential units in the downtown area.

In response to Board Member Brown, Mr. Farland stated the business as is employs 45 people, with an additional 6 employees planned for this function space expansion. He again referenced the staff review related to any employee parking with the 2nd floor use as a place of assembly. He noted the 12 employee spaces were for the bar/restaurant use. Mr. Farland stated he expects this smaller space will be used by business professionals and has a board room. He stated he believes max capacity to be 48 seats, versus the downstairs function room holding 185 seated. He noted a neighborhood business partner currently has a waiting list for use of their function room, again displaying a need for such space in the city.

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

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

Acting Chair Schick declared the hearing closed.

In response to Board Member Schilling, Mr. Farland was amenable to a condition that valet service not utilize on-street parking, at least early in the evening.

Acting Chairperson Schick reminded the board that a previous petition for a downtown hotel conditioned that valet service use the Elm Street Garage.

After further board discussion concerning parking, especially on-street parking, along with parking availability for downtown residents versus businesses, including input from Commissioner Romanowicz, a motion was made (JW) and seconded (RS) with regard to Case #4272, petitioner 791 Purchase Street, LLC, with an address of 791-797 Purchase Street, assessor's map 52 lot 292 in a Mixed Use Business [MUB] zoned district, to approve the request for an indoor/outdoor bar/restaurant on the 2nd floor, which requires a variance under Comprehensive Zoning Sections, 3000, 3100, 3110 and 3130.

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 these sections have been met. In addition to the foregoing sections, this petition has also been found to be in accordance with the MGL Chapter 48, §10, relative to the granting of variances, because the board has found 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, like most of the downtown buildings, this building occupies the entire lot, so there is no room for additional parking on the property. 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 applicant, because if the petitioner was not granted this relief he couldn't have full use of his business in this building. And that 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 the desirable relief may be granted without substantial detriment to the public good. There is no detriment because there is sufficient off-street parking, in light of parking garages such as the Zeiterion and Elm Street.

In light of its review of the specifics of this case, the applicable section of the city's zoning ordinance, and the findings subsequently made based upon these items, along with the 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. A condition will be set forth that to the extent the business provides valet parking for its customers, the valets shall not use on-street parking for customers' vehicles prior to 10:00 p.m., and after 10:00 p.m. they can use public spaces on the street.

The general conditions are 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 of New Bedford Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of the variance must be exercised by the issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of the decision granted or they will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker – Yes

Board Member Brown - Yes

Board Member Walsh - Yes

Motion passed – 4-0

5. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 7:25 p.m..