



Zoning Board of Appeals

November 17 , 2016 – 6:06 PM - **Minutes**
New Bedford City Hall, Charles Ashley Meeting Room-1st Floor
133 William Street

MEETING MINUTES

PRESENT: **Leo Schick** (*Acting Chairperson*)

Allen Decker (*Clerk*)

Sherry McTigue

John Walsh

Horatio Tavares

ABSENT: Debra Trahan

Robert Schilling

STAFF: Danny Romanowicz, *Commissioner of 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 6:06 p.m.

Acting Chairperson Schick explained that with only four board members present, any vote must be unanimous to succeed. He offered the applicants the option to continue their cases to a hearing before the full board. All applicants declined this offer.

Acting Chairperson Schick explained the process and required findings necessary to those present.

2. OLD/NEW BUSINESS

Allen Decker announced that Case #4236 will be continued to December 6, 2016.

3. SCHEDULED PUBLIC HEARINGS:

ITEM 1 Cases # 4250/#4251 – A public hearing continued from October 20, 2016 on the petition of: Mario and Kristinal Amaral (208 Tarkiln Hill Road New Bedford, MA 02745) and Steven D. Gioiosa for SITEC, Inc. (449 Faunce Corner Road Dartmouth, MA 02747) for a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2711 (lot change), 2720 (table of dimensional requirements-appendix B- minimum lot size, lot frontage, front yard, side yard), 2750 (yards in residence district), 2751 (front yard), 2755 (side yard); relative to property located at 208 Tarkiln Hill Road, assessor's map 118 lot 202 in a residential B [RB] zoned district. The petitioner proposes to subdivide existing single family dwelling on one lot and construct a new single family dwelling on the second lot as plans filed.

Petition of: Mario and Kristinal Amaral (208 Tarkiln Hill Road New Bedford, MA 02745) and Steven D. Gioiosa for SITEC, Inc. (449 Faunce Corner Road Dartmouth, MA 02747) for a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2711 (lot change), 2720 (table of dimensional requirements-appendix B- minimum lot size, rear yard-ft.) 2750 (yards in residence district), and 2753 (rear yards); relative to property located at NS Holden Street, assessor's map 118, lot 223 in a residential B [RB] zoned district. The petitioner proposes to construct a 32'x28' single family dwelling with a 24'x24' attached garage as plans filed.

In regard to Cases #4250, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 10/3/16 from the Commissioner of Buildings & Inspectional Services; communication from the Department of Planning, Housing & Community Development dated 10/20/16; two letters submitted by the petitioners dated 10/18/16; 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.

In regard to Cases #4251, a motion was made (AD) and seconded (JW) that the following be received and placed on file: the communication dated 10/3/16 from the Commissioner of Buildings & Inspectional Services; communication from the Department of Planning, Housing & Community Development dated 10/17/16; two letters submitted by the petitioners dated 10/18/16; 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.

Acting Chairperson Schick opened the public hearing.

Steve Gioiosa of SITEC Engineering, representing the petitioners, explained that the first request is to divide the property into two separate parcels. He displayed the overall parcel, purchased by the Amarals in 2013, showing the existing home closest to the Tarklin Hill Road side of the property. He stated the Amarals receive two separate tax bills, and the dividing line on the bills is essentially the division proposal this evening. He stated the Amarals have long planned to use the second parcel as a separate buildable parcel for a family member. He stated the result of the division would make the lots more compatible with many of the adjacent lots. He stated that without the requested relief, it will present a substantial financial hardship to the Amarals. Mr. Gioiosa stated that the petitioner has submitted a letter of support from the neighbors.

Mr. Gioiosa stated the second petitioner relates to the lot that will be created with frontage of Holden Street. He displayed a highlighted plan and explained the petitioners seek to create a single-family home with an attached garage on the parcel, which will require rear yard setback relief. He stated that placement of the proposed dwelling further back on the lot, thereby necessitating the setback relief, impacts only the petitioner themselves and provides more off-street parking. Mr. Gioiosa invited questions.

Ms. McTigue inquired as to the proposed parking space, which Mr. Gioiosa stated had to be at least twenty feet from the layout line from Tarklin Hill into the lot, a typical city parking space. He further responded that it would be paved.

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

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

Acting Chairperson Schick closed the public hearing.

There being brief discussion on the relocation of accessory items now present, a motion as to Case #4250 was made (AD) and seconded (JW) to approve the variance to allow the petitioner to subdivide an existing parcel with an existing single family dwelling into two lots, one with the existing house and the construction of a new single family dwelling on the second lot as per plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2700, 2710, 2711, 2720 Appendix B, 2750, 2751 and 2755, all relative to property located at 208 Tarklin Hill Road, Assessor's Map 118 Lot 202 in a residential B [RB] 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 board grants the requested relief. In addition to the foregoing sections, this petition has also 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 first 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. In this case, the lot shape fronts on two streets, making it unique in the neighborhood, and it was purchased and taxed as two lots. 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, preventing the subdivision of the property would present a financial hardship, as the petitioner anticipates building a house for a family member needing the family's direct care. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. And fourth, that desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics noted within this motion, the board finds that the material presented is complete, and after its 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 is made and includes the following conditions: that the project be set forth according to plans submitted with the application, and 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.

Roll-call vote as follows:

Board Member Walsh - Yes

Board Member McTigue – Yes

Acting Chairperson Schick – Yes

Clerk Decker– Yes

Passed 4-0

A motion as to Case #4251 was made (AD) and seconded (JW) to approve the variance to allow the petitioner to construct a 32'x28' single family dwelling with a 24'x24' attached garage as per plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2700, 2710, 2711, 2720 Appendix B, 2750, and 2753 relative to property located at NS Holden Street, Assessor's map 118, Lot 223 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 that in respect to these sections, the requested relief is granted. In addition to the foregoing sections, this petition has also 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 first 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. In this case, the shape of the newly created lot is not permitted necessary lot size and rear yard setbacks for the placement of the proposed residence. 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, the petitioner would not be able to proceed with the plans for the residence, resulting in a financial hardship, as the petitioner has a family member needing direct family care. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. And fourth, that desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics noted within this motion, the board finds that the material presented is complete, and after its 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 is made and includes the following conditions: that the project be set forth according to plans submitted with the application, and 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.

Zoning Board of Appeals

9/22/16

Page 5 of 13

Roll-call vote as follows:

Board Member Walsh - Yes

Board Member McTigue – Yes

Acting Chairperson Schick – Yes

Clerk Decker– Yes

Passed 4-0

Board Member Horatio Tavares enters meeting at 6:35 pm.

ITEM 2 – Case #4253 - Petition of: Nicki E. and Nitza N. LaRoca (11 Nautilus Street New Bedford, MA 02744) for a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-B-side yard), 2750 (yards in residence district), and 2775 (side yard); relative to property located at 11 Nautilus Street, assessor’s map 5 lot 197 in a residential A [RA] zoned district. The petitioners seek approval of the location of a generator installed as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication dated 10/28/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 11/17/16; 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.

Mr. LaRoca stated they are seeking a generating system on the left or south side of their home, which was installed without a permit. He stated they had hired someone they believed knew what they were doing, and he apologized that the permits had not been gotten. He stated the generator is placed where the utilities enter the house and it is barely visible from the street, and it not able to be located in the back of the home due to existing stairs.

In response to Board Member Decker, the applicant was amenable to installing shrubbery to screen the generator, which would be used in emergencies.

Board Member McTigue confirmed that the applicant was not in a flood plain.

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

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

Acting Chairperson Schick closed the public hearing.

There being no further questions, a motion as to Case #4253 was made (AD) and seconded (JW) to approve the variance to allow the petitioner to locate a generator installed as per plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2700, 2710, 2720 Appendix-B, 2750, and 2775 all relative to property located at 11 Nautilus Street, Assessor's map 5 Lot 197 in a residential A [RA] 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 that in respect to these sections, the board grants the relief requested. In addition to the foregoing sections, this petition has also 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 first 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. In this case, the placement of the house necessitates the generator's location as proposed. 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, literal enforcement would require removal of the generator and the concrete pad, resulting in a financial hardship to the petitioner. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. And fourth, that desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics noted within this motion, the board finds that the material presented is complete, and after its 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 is made and includes the following conditions: that the project be set forth according to plans submitted with the application, and 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.

Roll-call vote as follows:

Board Member Walsh - Yes

Board Member McTigue – Yes

Board Member Tavares – Yes

Acting Chairperson Schick – Yes

Clerk Decker– Yes

Passed 4-0

ITEM 4 – Case # 4254 - Petition of: Francisco M.O. Rocha (4441 Edinbridge Circle Sarasota, FL 34235) and Joseph E. Swift (25 Nelson Avenue Fairhaven, MA 02719) for a Special Permit under Chapter 9 comprehensive zoning sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430-2437 (nonconforming structures, other than single and two family structure), and 5300-5330 & 5360-5390 (special permit); relative to property located at 87 Lawrence Street, assessor's map 127A lot 179 in a residential A [RA] zoned district. The petitioners propose to change the use from an office/garage to a single family dwelling as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication dated 10/28/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 11/17/16; communication from Cassandra Courtney received 11/16/16; communication dated 11/10/16 from Maria Quann of 28 Mansfield Street; 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.

Att. Chris Saunders, representing Joseph Swift, who is a perspective purchaser of the subject property. Mr. Swift has entered into a Purchase & Sales Agreement contingent upon his obtaining the special permit. He stated that though situated on a Residential A zoning district, the property is currently used for commercial purposes. He stated his client wishes to take this non-conforming structure of approximately 1,000 s.f., one floor building, with a two stall garage, and change it to a conforming single family home with a conforming use. He stated this is consistent with much of the Residence A zoned neighborhood.

Att. Saunders stated the applicant simply seeks to add a second story. He stated the lot is unique, in that going up with a second story would bring the building to grade level. He drew the board's attention to staff comments and highlighted the landscaping currently present, as well as the ample off-street parking. He noted that the southern stall of the garage would be converted into livable space. He stated that, in harmony with the by-laws, this would take a commercial use out of a residential district. Att. Saunders elaborated on the criteria necessary to grant the permit. He noted he believed this would be a betterment to the neighborhood, the zoning district, and the City of New Bedford. He invited questions.

Chairperson Schick noted that the first floor contained only three windows on one side and no windows on the other sides.

Att. Saunders noted the first floor rear of the structure is below grade, and only the building first floor front is above ground.

Board Member McTigue confirmed the first floor has a bedroom with no possible window. Mr. Romanowicz confirmed that a bedroom needs an escape present by state code. Att. Saunders stated that in that event that room will become a family room.

Board Member Walsh noted that is not really an issue that concerns this board.

Board Member McTigue clarified that at one point this property was an accessory to adjacent property to the north. Att. Saunders stated that he had noted the lot was held in common ownership, but he had not run the title. He stated the side setbacks are presently 7' and 11'. He noted it is skewed, being a corner lot with 40' in front, and he suggested the northern neighbor likely has a greater non-conformity.

Att. Saunders addressed the site plan with Board Member McTigue.

Board Member Walsh noted that while there is a proposed structural change, there is no change to the footprint.

In response to Board Member Decker, Att. Saunders stated he was not aware of the filed objection. Board Member Decker stated the owners of 92 Lawrence were very much opposed to the change, but did not elaborate on why. Att. Saunders noted that 92 Lawrence was across the street, one house up from the corner lot.

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

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

Acting Chairperson Schick closed the public hearing.

Board Member Tavares stated he would rather see a house there, instead of a non-operating business.

Board Member Decker supported the removal of a non-conforming to a conforming use.

Board Member McTigue did not feel height was being added comparatively to other structures.

Board Member Walsh stated he felt it was a change for the better.

There being no further discussion, a motion was made (AD) and seconded (SM) to approve the special permit to allow the petitioner to change the use from an office/garage to a single family dwelling as per

plans filed, which requires a special permit under Chapter 9 comprehensive zoning sections 2400, 2410, 2430-2432, and 5300-5330 & 5360-5390 all relative to property located at 87 Lawrence Street, Assessor's map 127A Lot 179 in a residential A [RA] 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 that in respect to these sections, the petition is in compliance. In addition to the foregoing sections, this petition has also been found to be in accordance with City of New Bedford Code of Ordinances Chapter 9, Sections 5300-5330, and 5360-5390 relative to the granting of special permits, because the board has found that the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site of the proposal in relation to that site.

After consideration of the following sections, the board found that concerning the social, economic and community needs served by the proposal, the board found that a non-conforming use is being removed in the conversion from a commercial use to a residential use. With respect to traffic flow and safety, including parking and loading, the board finds that the required parking is available and the new use will result in less traffic and less general coming and going. With respect to the adequacy of utilities and other public services, the board has found this petition neutral, as the property is already adequately served and no new utilities are necessary. With respect to the neighborhood character and social structures, the board finds that the removal of a commercial use in a residentially zoned district is positive for the neighborhood character. With respect to impacts on the natural environment, the board finds this proposal neutral as there are no changes to the environment effecting the lot. With respect to the potential fiscal impact, including impact on the city services, tax base and employment, the board finds a substantial financial investment in the conversion of use of this property will potentially raise the property's value and thereby increase the tax base.

In light of the 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:

Board Member Walsh - Yes

Board Member Tavares - Yes

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Clerk Decker – Yes

Motion passed 5-0

4. NEW BUSINESS:

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 8/25/16, concerning cases #4242 and #4243. Board Member Decker abstained. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 9/1/16, concerning cases #4236. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 9/22/16, lacking quorum. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 10/13/16, concerning cases #4244, #4245, #4246 and #4236. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 10/20/16, concerning cases #4247, #4248, #4252, #4249, #4250 and #4251. Motion passed unopposed.

A motion was made (AD) and seconded (SM) to approve the meeting minutes of 10/27/16, wherein no cases were heard, but continued. Board Member Decker again abstained. Motion passed unopposed.

Board Member Decker noted the information provided by the City Planner with regard to the requested update on the Form Based Zoning Initiative.

Board Member Decker noted the proposed 2017 calendar of meeting dates and submission deadlines.

A motion was made (AD) and seconded (JW) to accept the 2017 meeting schedule as amended this evening, and adding the note that the Zoning Officer requests applications be submitted a minimum of five working days prior to the submittal deadline.

Motion passed unopposed.

5. ADJOURNMENT:

There being no further business to come before the board, a motion was made (AD) and seconded (SM) to adjourn. Motion passed unopposed.

Meeting was adjourned at 7:23 p.m..

The next regularly scheduled Zoning Board of Appeals Meeting is December 15th, 2016.