



# ***Zoning Board of Appeals***

October 20, 2016 – 6:00 PM - **Minutes**

New Bedford City Hall, Charles Ashley Meeting Room-1<sup>st</sup> Floor  
133 William Street

PRESENT: Leo Schick (Acting *Chairperson*)  
Allen Decker (*Clerk*)  
Sherry McTigue  
John Walsh

ABSENT: Debra Trahan  
Robert Schilling

STAFF: Dan Romanowicz, *Commissioner of Buildings and 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 6:00 p.m.

## 2. ROLL CALL

A formal roll call was conducted confirming members present as stated above.

Acting Chairperson Schick noted for those in attendance that with a minimum of four board members present, any vote would need to be unanimous in order for the petition to pass. Acting Chairperson Schick inquired of each party on whether they wished to continue their matter when a full board was present, noting that Cases #4250 and #4251 wish to continue to the next hearing. All other parties declined the offer to continue to the next hearing.

Acting Chairperson Schick explained the process and procedures for those in attendance.

## SCHEDULED HEARINGS

ITEM 1 – Case #4247 - Petition of: Lau Van Luu and Thu-Thuy T. Huynh (310 Park Street New Bedford, MA 02740) for a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations- Appendix B- green space), 2750 (yards in residence districts), 2756 (special driveway side yard requirements); relative to property located at 310 Park Street, assessor's map 57 lot 60 in a mixed use business [MUB]. The petitioner seeks approval of a driveway that was installed without a buffer as plans filed.

In regard to Case #4247, 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 Office of the City Planner dated 10/20/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots

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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.

Lau Luu, 310 Park Street, New Bedford, stated he was present to get his driveway done and get two cars off the street. He stated all his neighbors have driveways, and neighbors on each side of him park in front of his house and he must therefore park blocks away.

In response to Mr. Decker, Mr. Luu confirmed he had already poured the concrete for the driveway, but has not done any curb cut. He stated that he thought since it was within his property he did not need to get a permit. He stated he found out when trying to do the curb. He stated he poured the concrete himself and had no contractor.

In response to Ms. McTigue, Mr. Luu stated there is not any green space on the side, but in the back there is a two foot garden. He confirmed he took down bushes. He confirmed it is a two vehicle driveway, back to back.

In response to Mr. Decker, Mr. Luu confirmed that is the only location on the property for a driveway and all his neighbors have driveways.

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

In response to Acting Chairperson Schick's invitation to speak or be recorded in opposition, Arthur Burton, 318 Park St., two doors down, stated he was curious why this is being done since when Mr. Luu is moving and the house is for sale. He stated that this is the side of the street people have to park on during a snow ban. He stated Mr. Luu has been a good neighbor and he would like to support, but he doesn't understand why this is being done if he's selling property, because he will moves away and the neighborhood will be stuck with another driveway.

In response to Walsh, Mr. Burton stated the parking is like musical chairs and that's why Mr. Luu wants a driveway. He stated that with tenements the parking is very tight with. Mr. Burton stated if Mr. Luu planned to live in the house, he would support him.

In response to Acting Chairperson Schick, Mr. Burton stated he supposes a driveway would take cars off the street, but he is curious and thinks it will be hard to sell the house without a yard.

The petitioner declined the opportunity to respond to the opposition expressed.

Acting Chairperson Schick closed the public hearing.

Board Member Walsh expressed that he was not necessarily in favor of granting variances in instances where people have not applied for permits, although in this particular situation it

sounds as though it may be an innocent mistake and that there is a need for off street parking. He expressed that the green space issue concerned him. He suggested a possible condition to remedy the situation.

There was discussion noting that Mr. Luu was 20% under the required green space regulation, and under on the side setbacks.

In response to the board concerns, Mr. Luu explained the concrete area is already small and cutting it further would make it impossible to put the car on it. The board explained the information given is that the concrete is 40' by 12', and inquired if twelve feet of width was necessary. Mr. Luu stated there was concrete walkway along his foundation, which he did not want to touch.

Ms. McTigue noted a handicap parking space is 10'x'18. She felt it possible for Mr. Luu to cut back two feet.

After further board discussion concerning the same, the board explained to Mr. Luu that the board could condition any approval on him removing 2' of width from the entire length of the concrete area, which would put him in compliance with the side set back and increase his percentage of green space.

Mr. Luu explained that he would need to hire a contractor and any car would be against his foundation.

The board further explained to Mr. Luu that if the request is denied, he would have to pull the entire concrete area out.

Mr. Luu again expressed the space would not fit a car if it is cut smaller and he did not think he had enough money to hire a contractor. He invited the board to come and show him what they want. He stated he made a mistake to think he could do it and did not understand why he has to remove it and does not have the money, further stating the neighborhood would be clean and he could get a car off the street for the city.

Mr. Walsh encouraged the condition be included within the motion. Ms. McTigue noted Mr. Luu was required to go 1'4".

Mr. Luu again asked to meet with the city building commissioner. The board explained that Mr. Romanowicz's decision had been made, and Mr. Luu's concrete area violates two aspects of zoning regulation. Mr. Decker noted Mr. Luu's lack of willingness to do anything that would bring him any closer to being in compliance.

After further brief discussion, a motion was made (AD) and seconded (SM) to approve the variance to allow the petitioner to seek approval of a driveway installed without a buffer as per the plans filed which requires a variance under the provisions of Chapter 9 comprehensive zoning sections 2700, 2710, 2720 Appendix B, Section 2750, and 2756 relative to property

located at 310 Park Street, assessor's map 57, lot 60 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 Comprehensive Zoning Section as cited, the board finds that in respect to these sections, the board grants relief to Sections 2700 et sic. And that 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 location of the existing house on the lot is such that the only location for the driveway is 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 concrete and would be a substantial hardship financially. 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, with the correction that the driveway may be no more than 11' in width, 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

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Clerk Decker– Yes

Passed 4-0

ITEM 2 – Case #4248/#4252 – Petition of Union Fruit Market, Inc. c/o Birgilio Cabral (1437 Acushnet Avenue New Bedford, MA 02745) and Vanessa Marques (362 Pleasant Street New Bedford, MA 02740) for a Variance under provisions of chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability), 3130 (table of parking and loading requirements-appendix C- 12 spaces required); relative to property located at 111 Ruth Street, assessor's map 15 lot 304 in a residential C [RC] zoned district. The petitioner proposes to operate a market as plans filed.

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 Office of the City Planner dated 10/20/16; the appeal package as

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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. Decker noted that this matter is a variance and a special permit with all of the same motioning. Therefore a motion was made (AD) and seconded (JW) to hear the special permit elements simultaneously.

Motion passed unopposed.

Acting Chairperson Schick opened the hearing

Birgillo Cabral stated he was seeking to open a Union Fruit market in the south end. He stated he has a market on Acushnet Avenue.

In response to an inquiry by Mr. Decker, Mr. Cabral stated the building has been closed for almost two years or more. He stated the same kind of business was there as what he wants to open. Mr. Cabral stated it was a small market/grocery store.

Mr. Decker noted that the building takes up the entire lot, and Mr. Cabral has nowhere to put the required parking spaces. Mr. Cabral confirmed that information.

In response to Ms. McTigue, Mr. Cabral confirmed that a lot of foot traffic is expected. He stated his Acushnet Avenue Store has little parking and also has neighborhood people that frequent his store.

Mr. Decker noted he is pleased to have another vacant building become an up and running business.

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 was brief board discussion clarifying the location of the proposed market.

In response to Mr. Decker, Mr. Cabral confirmed that he was not aware of any similar markets in the neighborhood.

Meeting recessed at 6:50 pm

Meeting reconvened at 6:55 pm

There being no further discussion on Case #4248, a motion was made (AD) and seconded (JW) to approve the variance to allow the petitioner to operate a market as per the plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 3000, 3100, 3110, 3130 Appendix C, relative to property located at 111 Ruth Street, assessor's map 15, lot 304 in a residential-C [RC] 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 relief requested is granted. And, that 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 existing building encompasses the entire parcel, leaving no room for the required onsite parking. 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 building and reconfiguring the required parking and a new building, which would be a substantial financial hardship. 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

With regard to Case #4252, a motion was made (AD) and seconded (JW) to approve the special permit to allow the petitioner to operate a market as per the plans filed, which requires a special permit under provisions of Chapter 9 comprehensive zoning sections 2400, 2410, 2430-2432, 5300-5330, and 5360-5390 relative to property located at 111 Ruth Street, assessor's map 15, lot 304 in a residential-C [RC] 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 was in compliance. And, that 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 found that 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.

In consideration of the following sections, the board has found that the social, economic or community needs served by the proposal are that the opening of this market would be filling an unserved need in the immediate neighborhood. Concerning traffic flow and safety, including parking and loading, the board finds that this application is neutral, because the prior use had no parking available either. With respect to the adequacy of utilities and other public services, the board has found that the application is neutral, because they are sufficient and in place.

Concerning the neighborhood character and social structures, the board finds that the market would provide foods that are popular and in demand by the neighborhood's local population.

Concerning impacts on the natural environment, the board finds this petition neutral. Lastly, as to potential fiscal impact, including impact on city services, tax base and employment, the board finds that operating a business versus having a vacant space means employment, improved tax base, without more demand on city services.

In light of the review of the specifics noted within the motion, the board finds the material presented is complete, and in careful consideration of the petitioner's request, the Zoning Board 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 McTigue – Yes

Acting Chairperson Schick – Yes

Clerk Decker – Yes

Motion passed 4-0

*Minutes continue on following page.*

ITEM 3 – Case #4249 - Petition of: New Bedford Counseling Group Inc. (306 Mount Pleasant Street New Bedford, MA 02740) c/o Michael Frias (131 Willis Street New Bedford, MA 02740), and James M. Doherty, Trustee of The Doherty Family Nominee Trust (15 Harbor Road Mattapoisett, MA 02739) for a Special Permit under provisions of chapter 9 comprehensive zoning sections 2400 (nonconforming uses and structures), 2410 (applicability), 2420-2422 (nonconforming uses), 5300-5330 & 5360-5390 (special permit); relative to property located at 306 Mount Pleasant, assessor's map 91 lot 49 in a residential B [RB] zoned district. The petitioner proposes to operate a counseling practice with licensed mental health counselors that will diagnose and treat a variety of clients as plans filed.

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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 Office of the City Planner dated 10/20/16; communication from Mike Frias received 10/11/16; communication from Fernando DaCosta of 167 Buchanan Street dated 10/15/16 and received 10/17/16; 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.

Acting Chairperson Schick opened the public hearing.

Michael Frias, 131 Willis Street, New Bedford introduced himself to the Board.

Kathleen Frias, 131 Willis Street, New Bedford, wanted to note important factors for the board, stating they chose the location at 306 Mt. Pleasant Street because that section of the city does not have other counseling agencies. She stated that over twenty years in counseling she had found many clients have to walk, as they are uncomfortable riding a bus for various reasons, or they have no funds to take the bus with their children. Ms. Frias stated they had located at other properties that were already zoned business, but this location had no service for the community.

Ms. Frias stated they will have 1 billing person, 1 director, and 3-6 counselors over time. She stated they do not intend to have any medication, and have no psychiatric treatment. Such cases would be referred out. She stated their office is to provide counseling, with their main focus on children and families.

Ms. Frias stated they are seeking to have operating hours of 9:00am -7:00pm seven days a week. She stated people work and children are in school, and those hours provide availability. She stated clients will be prearranged for their approximate 45 minute sessions, which lends itself to privacy and traffic flow. She stated that currently there is a 6-9 month wait for a child counseling appointment, illustrating the great need for services.

Ms. Frias stated she is a New Bedford resident and understands community concerns about this location. She stated they want to answer questions and have good relations with the neighborhood.

Ms. Frias stated there are 9 available parking spots. With regard to the driveway being redone, it will be taken care of as soon as they receive approval. She stated the building has been vacant for a year and prior to that an insurance company. She said the area is presently trash ridden and unkempt, which they will remedy. She stated the office is on the SRTA bus route, and they intend to provide community resources to people coming into the office, such as fuel assistance et cetera.

She stated people calling with serious mental health problems would be referred to another agency that could help them, and expressed her career experience in triaging.

Ms. Frias then stated the office would employ 5-8 therapists over the total operation hours, not at all times.

Mr. Frias stated this would leave multiple parking spaces available.

Ms. Frias stated there is a school across the street and their hours are based on school traffic and dismissals.

Acting Chairperson Schick confirmed the operating hours of 7 days a week, 9-7 each day.

In response to an inquiry by Mr. Walsh, Mr. Frias stated there are four closed door offices in the building, with open space area for waiting. He stated an additional downstairs office would be used for files. Mr. Walsh confirmed with Mr. Frias the potential for four clients every 45 minutes.

In response to Mr. Walsh, Ms. Frias stated clientele are expected to be from ages five to geriatric, as well as family counseling for various mental health issues; depression, et cetera. Mr. Frias added that with regard to drug and alcohol counseling, they may provide part of the mental health services. She again stated that is not their specialty and would refer out.

This was further confirmed by Mr. Decker.

Ms. McTigue confirmed that this location was chosen because there are clients within the neighborhood. Mr. Frias noted there are very few counseling agencies in that area.

Acting Chairperson Schick confirmed that of the 6-8 therapists, they will be licensed mental health counselors or licensed independent social workers as required by the insurance companies in Massachusetts. In further response, Ms. Frias stated they are presently part-time.

Ms. McTigue noted the importance of the service.

In response to Acting Chairperson Schick's invitation to speak or be recorded in favor, Barbara Livingston, 34 Jonathan St., New Bedford. She stated for 35 years she has been a LICSW and has known Ms. Farias twenty years and has worked with her in various settings. Ms. Livingston, after consulting with Ms. Farias, stated it will not be services to the homeless, it will not be providing any kind of medication, and there will be no psychiatrist or nurse practitioner. She stated calls and walk-ins will be referred to appropriate services. She confirmed the lack of services for children in this area. She stated she welcomes additional service options and stated the people involved are seasoned professionals. She expressed her support.

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

In response to Acting Chairperson Schick's invitation to speak or be recorded in opposition, Councilor Henry Bousquet stated he had received neighborhood phone calls about this proposed facility in a heavily residential neighborhood across from an elementary school. He did not feel that was the best site for this type of agency. He stated there are already services such as half way houses already in the neighborhood, and he expressed concerns about the location for this facility, particularly one operating 7 days a week. He is concerned about neighborhood parking, and sees a lot of potential for things to go wrong, reading everyday about people with mental health issues toting guns. He stated one neighbor is no more than eighteen inches away, and he has received multiple appeals from neighborhood residents. He asked the board to consider the impact on that community, noting though currently vacant, the project is out of zone for the building use. He feels it brings the wrong element to this neighborhood and is concerned, after reading the submission, that this could progress to doling out medication or methadone.

In response to Acting Chairperson Schick's invitation to speak or be recorded in opposition, Andrew O'Leary, Business Manager for the New Bedford School Department, stated he is hearing about the potential impact in the neighborhood, and after spending time at the 400 student school facility, Grades Pre-K thru 6<sup>th</sup>, and assessing traffic flow and student ingress and egress, they have concluded there would be a negative impact, in terms of increasing area traffic. He stated it is currently a very tightly arranged area with parents picking up and dropping off, buses entering/exiting and students walking.

Mr. Walsh inquired as to how this facility would affect dropping children off at school.

Mr. O'Leary stated he is sharing his assessment based on the documents initially reviewed. He stated it is difficult to predict this facility in operation. He stated given what they know, their initial judgment is it would increase the traffic in the area and have a potential negative effect.

Mr. Walsh expressed some disbelief that four people in a forty-five minute period could affect the traffic to and from the school.

Mr. O'Leary again stated not being stipulated in the documents, they cannot predict the same. He agreed four people in a forty-five minute time period may not, but their assessment on what was initially reviewed. He stated in general they have a positive long-term relationship with residents in establishing safe routes and are eager to ensure a stable relationship continues.

In response to Acting Chairperson Schick's invitation to speak or be recorded in opposition, Fernando DaCosta, 167 Buchanan St., stated he was raised in the area and even worked in the building at one time. He stated he does not agree with the idea and is present for his mom, 302 Mt.

Pleasant, right next door. He stated he is caring for his mom and this is too close. He stated his grandmother house at 171 Buchanan Street has a backyard close to the facility. He stated there will be all types of people from all over the place, and there is already no parking there at all, especially with the staff they list. He is worried he will have no parking space when he comes home from work. He stated he knows it will create a mess. He raised concerns about the long

hours and 30-50 people coming and going in a day. He was concerned that people waiting for their appointment might be sitting on his or his mother's porch. He stated he is worried about his half blind mother's safety. He added this is currently a great neighborhood and this will bring a lot of problems. He stated the neighborhood neaby went crazy with yelling and screaming all hours of the night when the a crisis center was put there, and he does not want that to happen in his neighborhood. He stated the building is too small. He wondered why the application says treatment center/medical center if there are no drugs, and he believes eventually it will be that. He suggested something else should go there.

In response to an inquiry by Mr. Decker, Mr. DaCosta stated that the former insurance agency had people that would go in, pay their bill and leave. This business will have a lot of people there and he thinks it will become a hangout. He stated someone OD'd there not long ago and there are already people sleeping in cars, and this will create a big, big mess.

In response to Acting Chairperson Schick's further invitation to speak or be recorded in opposition, Olivia Cardosa, 161 Buchanan St., stated she has two children walking to that school each day and she is concerned about random people being around and drugs on the premises. She stated once they leave the building, does she have to worry about them, will they be on her porch. She stated it is a bad idea. The facility will be open when the kids leave school at 2:30. There is not enough parking and it is not the place.

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

Proceedings recessed at 7:45 pm at the call of the Chair.  
Proceedings resumed at 7:50 pm.

In rebuttal, Ms. Frias stated the clientele, other than those who walk in, would be triaged when they call, and those looking for medication or substance abuse treatment would be referred to where they can get that. So, she does not feel that will be an issue. She stated those they plan to serve are families; children struggling in school, families going through divorce. Things everyone here could struggle with.

In response to Acting Chairperson Schick, she stated they will take individuals, children and families. She stated she wanted to be clear these are basic life struggles, anxiety, periods of depression.

Ms. McTigue confirmed that this service would not be licensed to distribute any medication. Ms. Frias confirmed the same and stated they would have to come back and get a permit and a doctor.

Barbara Livingston confirmed the same.

Ms. Frias stated she did not want to put anyone at risk, especially children, and they expressed willingness to comply with an order that required them to close at certain times for pick up and

drop-off. She added their appointments start on the hour. Ms. Frias stated the office manager will be looking to make sure people are not hanging around. She stated mentally challenged children would be services at the Schwartz or Kennedy Donovan Centers. Ms. Frias stated the crisis center or New Bedford Police would be called if anyone who came in was yelling.

In opposition rebuttal, Keith Koczera of Acushnet stated the park down the street has a little league field and he was concerned if sex offenders would be there. He stated this is a high “kid” area. He stated that for an area with a lot of kids, more precaution should be put in place.

Acting Chairperson Schick closed the public hearing.

Board Member Walsh inquired of Mr. Romanowicz regarding the notation “medical practice permit”. Mr. Romanowicz stated uses for that area would require a special permit which could not be gotten in a Residential B neighborhood and that is why it’s before the board.

Ms. McTigue stated she thought it was a medical office. Mr. Walsh inquired as to what granting a medical practice permit would entail. Mr. Romanowicz stated they have represented they will operate a counseling practice with licensed mental health counselors who diagnose and treat a variety of clients. Mr. Walsh confirmed they could not prescribe drugs or do anything else.

Mr. Decker expressed he was torn, understanding the character of the neighborhood but being aware of the need for the proposed use. He stated he appreciates the petitioner’s willingness to curtail hours of operation to address concerns for the children at the school. He did not believe a business such as this would add significant concern about the level of traffic.

Mr. Walsh stated he had no problem with the nature of the operation. He stated the legal test to apply is whether this use is more detrimental than the prior use. He stated the only thing he could see that would make it more detrimental is that this facility would be open 7 days a week with hours of 9-7. He encouraged that anyone with concerns about that could suggest conditions curtailing hours.

In response to Mr. Decker, Ms. Frias stated for the reason for Saturday and Sunday hours is so families to come together.

Ms. McTigue inquired as to anything that prevents a sex offender being treated at this facility. They discussed the law that prevents sex offenders from being within a certain distance to a school. Mr. Frias stated she has not had any problems with clients in the past.

Male audience member stated he was bipolar and depressive and this was working him up because the board doesn’t live in that neighborhood. Female audience member began speaking.

Acting Chairperson Schick reminded the audience that the hearing was closed and audience members had a chance to speak during the meeting.

(A member of the audience began yelling, would not stop and was removed from the meeting.)

After further board discussion on hours of operation, a motion was made (AD) and seconded (JW) to approve a special permit to allow the petitioner to operate a counseling practice with licensed mental health counselors that will diagnose and treat a variety of clients as per plans filed, which requires a special permit under provisions of Chapter 9 comprehensive zoning sections 2400, 2410, 2420-2422, 5300-5330, and 5360-5390 relative to property located at 306 Mount Pleasant Street, assessor's map 91 lot 49 in a residential B [RB] zoned district.

Having reviewed this petitioner in light of the City of New Bedford Code of Ordinances, Chapter 9, above cited comprehensive zoning sections, the board finds that in respect to these sections the petition was in compliance.

In addition to the foregoing section, this petition has been found to be in accordance with the 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 found that 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.

In consideration of the following sections, the board has found that the social, economic or community needs served by the proposal are that the proposed use meets an underserved community need for mental health services. Concerning traffic flow and safety, including parking and loading, the board finds that this proposal provides adequate parking onsite for the proposed use. With respect to the adequacy of utilities and other public services, the board has found that the proposal is neutral as to those concerns. Concerning the neighborhood character and social structures, the board finds that the proposed use is not substantially more detrimental to the neighborhood character than the prior non-conforming use. Concerning impacts on the natural environment, the board finds this proposal neutral. Lastly, as to potential fiscal impact, including impact on city services, tax base and employment, the board finds that the proposed use will result in an operating business versus a currently vacant space.

In light of the review of the specifics noted within the motion, the board finds the material presented is complete, and in careful consideration of the petitioner's request, the Zoning Board finds the petition satisfactorily meets the basis of the requested relief. Therefore the with the following conditions: that the project be set forth according to 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, and that the operation is limited to four therapist at any one time in service, that the hours of operation on Saturday are limited to 9:00 a.m. to 5:00 p.m., and that there will be no Sunday operation of the business, and that the parking lot is to be repaired so that it is useable and serviceable.

Roll-call vote as follows:

Board Member Walsh – Yes

Board Member McTigue – Yes

Acting Chairperson Schick – Yes

Clerk Decker – Yes

Motion passed 4-0

ITEM 4 – CASE #4250 – 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 Tarklin 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.

A motion was made (AD) and seconded (JW) to be continued to the regularly scheduled November meeting on 11/17/16.  
Motion passed unopposed.

ITEM 5- CASE #4251 –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.

A motion was made (AD) and seconded (JW) to be continued to the regularly scheduled November meeting on 11/17/16.  
Motion passed unopposed.

### 3. OLD/NEW BUSINESS:

Mr. Decker announced that Case #4236, concerning property at 1861 Shawmut Avenue has been continued several times, and is scheduled to be heard at a special hearing on Thursday, October 27, 2016 at 6:00 p.m.

A motion to approve meeting minutes did not carry.

### 4. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned by Acting Chairperson Schick at 8:20 p.m..

Next meeting – October 27, 2016