



Zoning Board of Appeals

August 25, 2016 – 6:05 PM - **Minutes**

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

PRESENT: Leo Schick (*Acting Chairperson*)
John Walsh (*Acting Clerk*)
Robert Schilling
Horatio Tavares

ABSENT: Debra Trahan
Allen Decker
Sherry McTigue

STAFF: Dan Romanwicz, *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 6:05 p.m.

2. ROLL CALL

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

Acting Chairperson Schick explained the process and procedures for those in attendance. He advised petitioners that with four board members present, a unanimous vote would be needed for their petition. He offered petitioners the opportunity to postpone their hearings. Each petitioner declined the offer.

SCHEDULED HEARINGS

ITEM 1 – Case #4242 – Petition of: 813 Real Estate, LLC (813 Purchase Street New Bedford, MA) and Jeff St. Pierre (367 Main Street Fairhaven, MA 02719) for a Variance under provisions of Chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (Applicability), and 3130 (Table of Parking and Loading Requirements, Appendix-C); relative to property located at 801-803 Purchase Street and 98 William Street, assessor's map 52, lot 289 in a mixed-use-business [MUB] zoned district. The petitioners propose to operate a barber shop as plans filed.

With respect to Case #4242, a motion was made (JW) and seconded (HT) that the following be received and placed on file: the communication dated 7/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 8/17/16; 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.

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Motion passed unopposed.

Acting Chairperson Schick opened the public hearing.

Jeff St. Pierre addressed the board regarding parking for his business, and stated that a church up the street is allowing the use of their lot for parking. He provided a letter to the board.

A motion was made (JW) and seconded (HT) to receive and place the same on file.
Motion passed unopposed.

In response to Mr. Walsh, Mr. St. Pierre indicated they needed only five of the church parking lot spaces.

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 was made (JW) and seconded (RS) to approve the variance to allow the petitioners 813 Real Estate, LLC and Jeff St. Pierre to operate a barber shop as plans filed, requiring a variance under provisions of Chapter 9 comprehensive zoning sections 3000, 3100, 3110 and 3130 relative to property located at 801-803 Purchase Street and 98 William Street, assessor's map 52, lot 289 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 in respect to these sections, the criteria for relief has been met. In addition to the foregoing sections, the 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 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 the building takes up the entire lot, leaving no room for additional parking spaces. 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 hardship that literal enforcement would effectively prevent any new business from operating on that property. 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 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 as made 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:

Acting Chairperson Schick - Yes

Board Member Schilling - Yes

Acting Clerk Walsh – Yes

Associate Board Member Tavares - Yes

Passed 4-0

ITEM 2 – Case #4243 - Petition of: Santo P. Rodriguez (332 Belair Street New Bedford, MA) and Pedro Rodriguez (401 Ashley Boulevard-Apt.1N New Bedford, MA) for a Variance under provisions of Chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (Applicability), and 3130 (Table of Parking and Loading Requirements, Appendix-C); relative to property located at 401 Ashley Boulevard, assessor's map 108, lot 314 in a mixed-use-business [MUB] zoned district. The petitioners propose to operate a barber shop as plans filed.

In regard to Case #4243, a motion was made (JW) and seconded (HT) that the following be received and placed on file: the communication dated 7/29/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 8/17/16; 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.

Gary Langevin, 229 Nye's Lane, Acushnet, addressed the board on behalf of Pedro Rodriguez. He stated they are seeking a variance for an additional parking spot for a pre-existing barber shop they hope to re-open and add an additional chair. He stated there is an existing spot present from the 1960s.

In response to Mr. Walsh, Mr. Langevin stated the designated parking spot is on Ashley Boulevard.

Mr. Walsh clarified that his understanding was that there are no existing parking spaces related to the building, and you're looking for a variance for two parking spaces.

Mr. Langevin agreed, adding again that there is already one designated parking space. He stated there is no off-street parking for residents or the business.

Mr. Walsh again inquired as to the location of the designated parking space. Mr. Langevin stated it was on the street right in front of the barber shop on Ashley Boulevard. He expressed confusion at Mr. Walsh's question.

Mr. Walsh clarified that it was on street parking where anybody can park. Mr. Langevin agreed, but stated there was a sign reading one hour parking, which he assumes was put there for the previous barber shop.

Mr. Walsh stated that to his understanding there are no designated parking spots.

Mr. Langevin stated he cannot say that space is designated for the existing barber shop without examining the files.

Mr. Tavares explained that the board does not designate parking spaces for business.

Mr. Langevin stated he may be using the wrong words and was perhaps looking for an additional one hour parking spot.

Mr. Tavares again explained that any parking spot would not be just for the barber shop business.

Mr. Langevin expressed they were looking for parking for their customers.

Mr. Walsh reiterated to Mr. Langevin that the board does not designate parking spots, and again suggested he may be looking for relief from the lack of parking spaces required.

Acting chairperson Schick clarified that Mr. Langevin was looking for the board to okay an additional section for one hour parking. Mr. Langevin affirmed.

Mr. Tavares confirmed for the board that the petition was for relief from parking.

In response to Mr. Schilling, Mr. Langevin stated he believed the last time the property was used as a barber shop was within the last six years. He stated the property is currently vacant.

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 in opposition, Jose Torres, of Ashley Boulevard, stated he has been a resident for four years. He stated that what Mr. Langevin said was not correct. He stated that there is an auto sales business next door and the petitioner wants to put in an additional business and take another parking space. Mr. Torres admitted to a previous assault charge relating to a neighboring business as to a parking dispute. He stated there is no parking for the residents because Nuno has all the spots taken. He added that due to his investigation, the most recent barber shop was not supposed to be there because it was allowed to open without city hall knowing about it. He stated there has been a car parking in front of his house for 6-7 months and the city has done nothing about.

Mr. Torres stated it is fine to open a business but he does not agree with a designated spot. He stated Mr. Langevin is not handicapped, and it is not fair.

Mr. Walsh again stated that the board would not designate parking. Mr. Schilling added that the board cannot designate the parking space out in front.

Mr. Torres stated he had not gotten any notice in the mail and would not have known about it. He stated he is not against Pedro or Pedro opening a business, but when he arrives home from work he wants a parking spot. He stated that a judge had told Nuno not to have his customers park in front of Mr. Torres' building.

Mr. Walsh again reassured Mr. Torres that the board would not designate any parking spots for the barber shop. He inquired as to whether Mr. Torres would be more comfortable if the proposed barber shop only operated for certain hours. Mr. Torres stated that Nuno's auto shop is supposed to operate from 8:00 – 6:00 Monday thru Friday, and Saturday 8:00 – 4:00, and he knows because he worked there. He stated cars are on the side walk and music blares till 2:00 in the morning. He was concerned that the barber shop will do the same thing. He stated he lives on second floor and sees everything, and when he complains he is the snitch, the rat and the bad guy. He stated he is tired, but if he does something against them he will lose everything, because he is Section 8, so he can't "go smack them up", but they can smack him up. He stated he had come seven times and was told they can't do nothing. He stated two months from now, he and Nuno are going to go at it.

He stated no one knew this was going on and that's not fair to them at all. He again stated he does not object to Pedro's business, but at a certain time or a certain day he better not catch nobody outside, because he's got kids and they can't ride a bike.

In response to Mr. Schilling, Mr. Torres stated his concern is with the parking and any more problems from the barber shop. Mr. Torres stated that he knows what goes on in society and the board members don't. He stated there was prostitution downstairs and he stopped it because there were "dudes knocking at his door".

Mr. Walsh asked Mr. Torres to confine his comments to the parking and the business before the board. Mr. Torres stated that was with the parking too and that's why he's here.

Mr. Torres stated that from the pole to the bus stop is no parking, and Nuno took out the sign and it's behind his shed. He stated he does not care about Mr. Rodriguez business, but pays rent and does not want designated parking.

Ms. Gonet explained that the street sign is from a different board.

Mr. Torres stated he had already spoken to the traffic board. When reminded that was not this board, Mr. Torres stated that everything leads to something and no one will tell him where he is going to park.

The board again assured Mr. Torres that this board will only determine whether Mr. Rodriguez can operate a business without having the required parking spaces.

Mr. Torres stated he has no problem with that.

In response to Mr. Torres, Mr. Walsh stated the board may be able to address the hours of operation.

In response to Acting Chairperson Schick's further invitation to speak or be recorded in opposition, Tammy Cummings stated she does not want any sign that says they can't park there. She stated they had gone through it with a massage parlor located at the property and had the cops at the house for parking when she had just gotten out of work. She stated Mr. Rodriguez can use the parking in front of Nuno's for his business.

In response to Mr. Schilling, Mr. Langevin suggested operating hours of 8:00 – 5:00, closed Monday and Sunday.

Mr. Torres stated Mr. Rodriguez is his neighbor and he wants him to succeed in life, but he does not want customers parked in front of his house when he gets out of work.

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

Acting Chairperson Schick closed the public hearing.

After brief discussion on the motion contents, a motion was made (JW) and seconded (HT) to approve the variance to allow the petitioner Santo P. Rodriguez and Pedro Rodriguez to operate a barber shop as plans filed, requiring a variance under provisions of Chapter 9 comprehensive zoning sections 3000, 3100, 3110 and 3130 relative to property located at 401 Ashley Boulevard assessor's map 108, lot 314 in a mixed use business 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 criteria for relief has been met. In addition to the foregoing sections, the 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 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 the building takes up the entire lot, leaving no room for additional parking on the lot. 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 hardship that literal enforcement would effectively prevent the petitioner from operating a business out of that location. 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.

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 criteria on the basis of the requested relief. Therefore, this motion is made and includes the following conditions: that the hours of operation be limited to Tuesday through Saturday, 8:00 a.m. to 5:00 p.m., and 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 from the date of the decision.

After input from Mr. Romanowicz, the motion was amended (JW) and seconded (RS) to include the condition that the business operation is limited to a two chair barber shop.

Roll-call vote as follows:

Acting Chairperson Schick - Yes

Board Member Schilling - Yes

Acting Clerk Walsh – Yes

Associate Board Member Tavares - Yes

Passed 4-0

3. ADJOURNMENT:

There being no further business to come before the board Acting Chairperson Schick Adjourned these proceedings at 6:40 p.m..

PLEASE NOTE:

Agenda Item #1 Case #4236, petition of: Anthony R. DeCosta (1861 Shawmut Avenue New Bedford, MA), continued from a public hearing held on July 21, 2016 which is scheduled to be heard at a Special Meeting on September 1st, 2016, was not addressed on the record.