



**ZONING BOARD OF APPEALS**

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 New Bedford, MA 02740  
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CITY OF NEW BEDFORD  
 JONATHAN F. MITCHELL, MAYOR

**NOTICE OF DECISION**

Case Number:		#4179		
Request Type:		Variance		
Address:		NS Tacoma Street		
Zoning:		Mixed Use Business District		
Recorded Owner:		David Pina Fernandes and Rosa Martin Fernandes, Trustees of The Tacoma Street Realty Trust u/d/t dated March 10, 2010		
Applicant:		The Tacoma Street Realty Trust c/o David Pina Fernandes		
Applicant Address:		47 Medeiros Lane Street Dartmouth, MA 02747		
Application Submittal Date		Public Hearing Date		Decision Date
March 27 <sup>th</sup> , 2015		April 23 <sup>rd</sup> , 2015; May 28 <sup>th</sup> , 2015; June 25 <sup>th</sup> , 2015; July 30 <sup>th</sup> , 2015; August 27 <sup>th</sup> , 2015; September 17 <sup>th</sup> , 2015; October 22 <sup>nd</sup> , 2015		October 22, 2015
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
130C	259 & 260	9658	112	

Variance under provisions of Chapter 9 Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements, Appendix-B-Minimum Lot Size, Lot Frontage, Rear Yard), and 2753 (Rear Yards); relative to property located at North Side Tacoma Street, Assessor's Map Plot 130C, Lot 259-260 in a Mixed Use Business District. The petitioner is proposing to build a 44'x45' two family dwelling as plans filed.

Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached Decision with the Conditions as described in the attached Decision. (See Attachment)

A copy of this Decision was filed with the City Clerk of the City of New Bedford on November 4<sup>th</sup>, 2015. Any person aggrieved by this decision has twenty (20) days to appeal the decision in accordance with the procedures set forth in Section 17 of Chapter 40A of the General Laws of Massachusetts.

Nov. 4, 2015  
 Date

Allen Decker  
 Clerk, Zoning Board of Appeals

## **1.) APPLICATION SUMMARY**

The petitioner is proposing to build a 44'x45' two family dwelling as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements, Appendix-B-Minimum Lot Size, Lot Frontage, Rear Yard), and 2753 (Rear Yards); relative to property located at North Side Tacoma Street, Assessor's Map Plot 130C, Lot 259-260 in a Mixed Use Business District.

## **MATERIALS REVIEWED BY THE BOARD**

### **Plans Considered to be Part of the Application**

- Plan Set, drawn by Comprehensive Design-Build Services, Stamped Received by City Clerk's Office March 27<sup>th</sup>, 2015, including:
  - C1.1 - Site Plan
  - A2.1 – First Floor Plan
  - A2.2 – Second Floor Plan
  - A3.1 – Exterior Elevations
- Revised site plan, drawn by Comprehensive Design-Build Services, date stamped received by City Clerk's Office September 15<sup>th</sup>, 2015
- Final revised site plan, received by Zoning Board on October 22<sup>nd</sup>, 2015

### **Other Documents & Supporting Material**

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office March 27<sup>th</sup>, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 30<sup>th</sup>, 2015.
- Letter to ZBA from City Planner, Jill Maclean, dated April 15<sup>th</sup>, 2015.
- Google Earth photo set, submitted by Armando Pereira, received and placed on file April 23<sup>rd</sup>, 2015.
- Communication from Ward Two City Councilor, Steven Martins and At-Large City Councilor Linda Morad, dated May 28<sup>th</sup>, 2015.
- Letter to ZBA with supporting documentation from the Commissioner of Building & Inspectional Services, Danny D. Romanowicz, dated June 23<sup>rd</sup>, 2015.
- Letter to ZBA requesting a continuance from Attorney Medeiros, dated July 23<sup>rd</sup>, 2015.
- Letter to ZBA requesting a continuance from Armando Pereira, dated August 27<sup>th</sup>, 2015.
- Letter to ZBA requests a continuance from Armando Pereira, dated September 17<sup>th</sup>, 2015.
- Letter to ZBA from Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated October 8<sup>th</sup>, 2015.
- Staff Comments to ZBA from the Department of Planning, Housing and Community Development, dated October 9<sup>th</sup>, 2015

## 2.) DISCUSSION

### April 23<sup>rd</sup>, 2015 Hearing.

On the evening of the April 23<sup>rd</sup>, 2015 meeting, board members: Ian Comerford, Allen Decker, Debra Trahan, Robert Schilling, and Leo Schick were present for the public hearing. City of New Bedford Staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

A motion was made (AD) and seconded (DT) that the following documents be received and placed on file: the communication dated March 30<sup>th</sup>, 2015 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated April 15<sup>th</sup>, 2015; the appeal package; 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 is hereby ratified. Motion passed unopposed.

Representative of the petitioner Mr. Armando Pereira (PO Box 578 West Wareham, MA) of Comprehensive Design Build Services of West Wareham addressed the board and provided aerial and street view Google earth photos to the board of the property and surrounding area.

Mr. Pereira presented that the project required dimensional relief for frontage, lot area, and rear yards. The property is two combined lots with 40' of frontage each, for a combined 80' of frontage. The required frontage is 100'. The property has 7,175 sf., where 10,000 is required. The proposed rear yard is 25'8", where 30' is required. He further explained the proposal contained two single car garages and was set back from the front 20' to accommodate the parking scenario and meet the required front yard setback. This caused a reduction of the rear yard setbacks.

Mr. Pereira described the project as a two-story, town house style, two-family dwelling, with living areas on the first floor and bedrooms on the second floor. Mr. Pereira used the photos submitted to the board to describe the neighborhood as having mixed uses. He explained the petitioner rather the lot be used for residential than a commercial use. Mr. Pereira indicated the petitioner would keep in the character of the neighborhood as the trustees own two lots abutting this parcel, on the corner of Tacoma Street and Acushnet Avenue. Mr. Pereira indicated the petitioner had made improvements on his other properties and wished to do so here as well to improve the neighborhood.

Chairman Comerford asked how long the petitioner owned the property and the status of the lots when purchased. It was stated the trustee has owned it since 2010 and that it was purchased as two empty lots together.

It was noted by Ms. Trahan that the petitioner was not present this evening. A discussion of whether or not the representative of the petitioner could identify the hardship for the Board. Mr. Pereira explained the hardship was that lot was undersized and had limited frontage and the petitioner had stopped working on the property due to changes in economic conditions

since 2010. He explained the petitioner had explored using the property for a retail space but a residential use would fit better in the neighborhood. The Board briefly discussed what can be considered a hardship. Mr. Schilling asked if there was any resistance to the proposal from the neighborhood. Mr. Pereira stated he could not speak on that question; he had not spoken to the neighbors and was unaware whether the owner had.

Chairperson Comerford invited anyone wishing to speak in favor of the application to address the board. Ms. Vera Vadeboncour (3 Kendall Lane East Freetown, MA), stated the applicant is her brother, and he was unable to attend as he was on a flight at this time. She apologized for the applicant's absence and hoped the board would grant the special permit. At Large City Councilor Linda Morad (4162 Acushnet Avenue New Bedford, MA) spoke in favor of the petition. Councilor Morad spoke favorably about the petitioner's rehabilitation of the properties abutting the property in question. She also noted there are several multi-family facilities in the area and a rooming house in close proximity to the proposal. Councilor Morad asked the board to work with the petitioner to grant approval to build something on the vacant lot. Chairperson Comerford asked Councilor Morad if she thought this was a necessity in the area. Councilor Morad stated there is a need for housing in the northend, it is an area people want to move into. No one else spoke in favor or wished to be recorded in favor.

Chairperson Comerford invited anyone wishing to speak in opposition to address the board. Mr. Gary Medeiros and Mrs. Jeanne Medeiros (1023 Tacoma Street New Bedford, MA) spoke in opposition. Mr. and Mrs. Medeiros as direct abutters living next to the property stated concerns for parking and the size of the proposed townhouse on the lot. Mrs. Medeiros spoke about the rehabilitated home and business by the petitioner on the corner. Mrs. Medeiros stated there is an existing lack of parking for the hair salon's six beauticians and their clients. The business' parking already creates a parking problem on their street. Mrs. Medeiros felt the subject lot should be a parking lot. Mrs. Medeiros stated concerns for the height of the building and storm water runoff from the roof to her property. Mrs. Medeiros felt a two-family was crowding the area. No one else spoke or wished to be recorded in opposition.

Chairperson Comerford offered an opportunity for rebuttal to the representative of the petitioner. Mr. Pereira explained the square footage could be the same for a single family home as the duplex. He stated parking was a consideration and resulted in pushing structure back to provide for the 10'x20' parking spots required under City of New Bedford code.

Ms. Trahan raised questions about ownership of the land as the deed included all four lots. Ms. Trahan wished to know if the land was bought together and was then separated by the owner. This was a concern for her with the hardship.

Mr. Pereira was unable to address the history of the properties held by the petitioner. A board had a brief conversation about hardships, lot/land divisions, and combinations. There was some confusion about the lots in question in relation to the abutting lots also owned by the petitioner; therefore the Board asked if the petitioner would like to postpone to answer the

questions raised about the lots. Mr. Pereira agreed to postpone the matter to the next hearing and asked for an extension to get the questions answered.

Chairperson Comerford declared the hearing left open and postponed to May 28<sup>th</sup>, 2015 meeting of the Board. Mr. Pereira and Chairperson Comerford signed an agreement to extend time limits.

**May 28<sup>th</sup>, 2015 Hearing.**

On the evening of the May 28<sup>th</sup>, 2015 meeting, board members: Ian Comerford, Allen Decker, James Mathes, Robert Schilling, and Leo Schick were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) Kreg Espinola (Assistant City Solicitor), and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

A motion was made by Mr. Decker, seconded by Mr. Mathes to remove from the table Case #4179 and proceed; as well as, to receive and place on file correspondence dated May 28<sup>th</sup>, 2015 from City Councilor Martins and Councilor Morad. With all in favor the motion carried.

Representative of the Petitioner: Mr. Pereira stated there were questions at the last hearing that were beyond his ability to respond and answer about how the lots were segregated. Since, he had spoken with the petitioner and legal counsel, both who were present this evening. Mr. Pereira turned comments over to Attorney Michael Medeiros (286 Union Street New Bedford, MA) to address the board on behalf of Mr. David Fernandes.

Attorney Medeiros explained Mr. Fernandes and his wife own the property in the capacity as trustees of Tacoma Street Realty Trust. Attorney Medeiros stated his understanding was that the board may have had a question on whether there was a lot created on the part of his client to actually come before this board. He stated he was the attorney who represented Mr. Fernandes in the acquisition of the property and had conducted a full title examination, as required under title standards for representation in a real estate transaction. He stated the title exam he had conducted revealed that as far back 1933 these two parcels were actually held separately; in that they were in the deed described separately. Lots 259 and 260 were described as Parcel 1 in the 1933 deed, and in the very same deed Parcels 261 and 262 are a second parcel separately described.

Attorney Medeiros stated he had the title examination before him and noted there were approximately 3-4 different conveyances that were always a first parcel and a second parcel. He stated the first parcel was consistently described from 1933 on as being Lots 259 and 260. The second parcel being described as Lots 262 and 261. He offered to show the board and counsel the documents.

Chairperson Comerford invited anyone wishing to speak in favor of the application to address the board. Ward Six City Councilor Joseph Lopes (133 William Street New Bedford, MA) wished to be recorded in favor. Mr. David Fernandes (47 Medeiros Land Dartmouth, MA), the property owner stated he is trying to invest in something on the lots as he pays taxes on the lots. Mr.

Fernandes noted that his lawyer has stated the lots have been separate for a long time, and they did not create the lots. Mr. David Fernandes Jr. (47 Medeiros Lane Dartmouth, MA), son of the petitioner, stated the lots have been separated since the property was originally purchased by them, they did not divide the lots. No one else spoke or wished to be recorded in favor.

Chairperson Comerford invited anyone wishing to speak in opposition to address the board. Mr. Ron Rego (1014 Tacoma Street New Bedford, MA) owner of the property across the street stated his primary concern is for parking in the neighborhood. Mr. Rego stated Mr. Fernandes had done a nice job fixing up the properties that were in bad repair, but the parking situation has become horrendous. He felt a two-family house will only worsen the parking situation. Mr. Gary and Jeanne Medeiros (1023 Tacoma Street New Bedford, MA), expressed concerns for the size of the building, parking concerns, and a two-family use. Mr. Joshua St. Gelais (1024 Tacoma Street New Bedford, MA) stated he has lived in the neighborhood since 2006 and with the new businesses on the corners a lot of parking spills onto Tacoma Street. He stated the curb cut for the driveway will cause the neighborhood to lose spots on the street. A two-family will probably cause more problems with parking, especially when it snows. He stated it was a quiet street when he bought his property, now it is a busy street. He stated it will be a nuisance with more families living there and their guests.

Chairperson Comerford offered an opportunity for rebuttal to the petitioner. Mr. Pereira explained the petition provides the required parking under city code. The petition provides a garage parking space and a one driveway space for each unit, a total of four off-street parking spaces. Mr. Pereira indicated the petition is for rear yard setbacks.

Attorney Medeiros offered the deeds for the board to review. Attorney Espinola asked to see the examination. Attorney Medeiros stated the two lots in question are taxed separately from the other two lots and show separately on the assessor's map for at least the last 2-3 years.

Mr. Decker made a motion, seconded by Mr. Mathes, to receive the title examination provided by Attorney Medeiros as part of the case. With all in favor the motion passed.

The Board and Attorney Espinola had a brief conversation about the title examination and the lots division question. Attorney Espinola advised the board it would take some time and analysis by the solicitor's office in order to advise the board on the issue. There was discussion of the time requirements for the Board to make a decision. Attorney Espinola further explained that under ordinance it could be a merger of the lots. If the lots were held in common ownership for an extended period of time, there has to be a determination that the lots were held separate and distinct, not just on the deed. The existence and maintenance of wall or fences along original lot lines for example. Attorney Espinola explained the zoning enforcement officer has to make a determination of whether the lots are held separately.

The board discussed continuing the hearing so the finding could be made by the zoning enforcement officer. There was a brief discussion amongst the Board, Attorney Espinola, and Attorney Medeiros in regards to the definition of a self-created hardship.

Mr. Mathes inquired if the property owner had spoken with the people in the neighborhood. Mr. Fernandes stated he knew he had two lots and wants to put something there, he explained the property is for his son and daughter.

Mr. Comerford offered a last opportunity for discussion before the matter was to be postponed. He stated the case would be postponed to the June 25<sup>th</sup>, 2015 meeting. A motion was made by Mr. Decker, seconded by Mr. Mathes to table Case #4179 until the June meeting of the Zoning Board of Appeals. With all in favor the motion passed.

**June 25<sup>th</sup>, 2015 Hearing.**

On the evening of the June 25<sup>th</sup>, 2015 meeting, board members: Ian Comerford, Allen Decker, John Walsh, Robert Schilling, and Horatio Tavares were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) Kreg Espinola (Assistant City Solicitor), Jill Maclean (City Planner), and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Commissioner of Inspectional Services, Danny D. Romanowicz, as the Zoning Enforcement Officer, provided the Board and the Attorney for the petitioner his finding on the lots merging question at the start of the meeting.

Mr. Decker informed the board and those present that the attorney for the petitioner, Tacoma Street Realty Trust, had requested a continuance of the case to the next meeting. Mr. Decker made a motion, seconded by Mr. Walsh to continue Case #4179 to the next scheduled meeting of July 30<sup>th</sup>, 2015. With all in favor the motion passed.

Attorney Medeiros and Chairman Comerford signed an agreement to extend time limits.

**July 30<sup>th</sup>, 2015 Hearing.**

On the evening of the July 30<sup>th</sup>, 2015 meeting, board members: Ian Comerford, Allen Decker, Robert Schilling, Horatio Tavares, and Leo Schick were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) Kreg Espinola (Assistant City Solicitor) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Mr. Decker informed the board that the attorney for the petitioner, Tacoma Street Realty Trust, had requested a continuance of the case to the next meeting. Mr. Decker made a motion, seconded by Mr. Schick to continue Case #4179 to the next scheduled meeting of August 27<sup>th</sup>, 2015. With all in favor the motion passed.

On the evening of the August 27<sup>th</sup>, 2015 meeting, board members: James Mathes, Allen Decker, Robert Schilling, John Walsh, and Leo Schick were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) Kreg Espinola (Assistant City Solicitor) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Acting Chairperson Mathes informed the board that the Mr. Pereira, representative for the petitioner, Tacoma Street Realty Trust, had requested a continuance of the case to the next meeting. Mr. Decker made a motion, seconded by Mr. Schick to continue Case #4179 to the next schedule meeting of September 17<sup>th</sup>, 2015. Motion passed unopposed.

Mr. Gary Medeiros, stated abutter to Case #4179, requested to address the Board. Acting Chairman Mathes allowed the request to address the board. Mr. Medeiros stated he has come to every meeting since April and cannot make it to the September 17<sup>th</sup> meeting. Mr. Mathes explained the petitioner can request the continuance.

Acting Chairperson Mathes and Mr. Pereira signed an agreement to extend time limits.

**September 17<sup>th</sup>, 2015 Hearing.**

On the evening of the September 17<sup>th</sup>, 2015 meeting, board members: Leo Schick, John Walsh, Robert Schilling, and Horatio Tavares were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) Kreg Espinola (Assistant City Solicitor), and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Acting Chairperson Schick explained to all petitioners for the evening that due to the lack of a quorum, a petitioner's case would require a unanimous vote to pass. Mr. Schick offered petitioners the opportunity to reschedule their matters before the board.

The board was in receipt of a communication from Mr. Pereira requesting a continuance so that the case may be heard by a five member board. Mr. Schick made a motion, seconded by Mr. Walsh to continue Case #4179. With all in favor the motion passed.

**October 22<sup>nd</sup>, 2015 Hearing.**

On the evening of the October 22<sup>nd</sup>, 2015 meeting board members: James Mathes, John Walsh, Allen Decker, Sherry McTigue, and Robert Schilling were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Mr. Decker made a motion, seconded by Mr. Walsh, to receive and place on file the following: letter from the City of New Bedford Department of Inspectional Services dated October 8<sup>th</sup>, 2015, correspondence from the City of New Bedford Department of Planning, Housing, and



Community Development dated October 9<sup>th</sup>, 2015, and a revised plan received by the Planning Department September 15<sup>th</sup>, 2015.

Representative of the petitioner: Mr. Armando Pereira addressed the board. Mr. Pereira presented a new plan to the board which showed the building slightly adjusted as it was slightly askew previously, also the plan showed additional parking spaces added to the parking area on the abutting lot (map 130C, lot 261). Mr. Pereira explained the petition had four parking spaces on site, two in the garage bays and two in the driveway. Three additional spaces were added to the abutting property for use by this property, providing a total of five spaces for parking. He noted the request for relief is for the rear yard setbacks of 26' 1" and 26' 2", where 30' is required and the lot size of 7175± sq. ft, where 10,000 sq. ft is required. Mr. Pereira explained, an easement would be granted between the two properties for visitors to the subject lot to be able to park at the abutting lot.

Mr. Decker made a motion, seconded by Mr. Walsh to receive the revised plan handed up by the petitioner at the meeting October 22<sup>nd</sup>, 2015. With all in favor the motion carried.

Ms. McTigue asked if there would be a fence around the property. Mr. Pereira stated there could be if the board requests it.

Mr. Pereira then turned the presentation over to Attorney Medeiros (286 Union Street New Bedford, MA). Attorney Medeiros explained an issue was raised in a report by Commissioner Romanowicz and a letter sent by the City Planning department is essentially moot at this time. Initially there was a claim that there had been a lot merger between lots 259, 260, and 262; however, there was a zoning variance previously granted for lot 262 and that has been isolated as a separate parcel, he explained. Attorney Medeiros also added that that parcel has a two family dwelling and is also undersized, which is not unusual given the character of the neighborhood. Attorney Medeiros indicated the passage of time has helped to improve the project as the concerns of the neighbors for parking were able to be addressed. Attorney Medeiros explained that utilizing the adjacent lot for parking can be made a condition of approval. He suggested the condition of approval be made that an easement be granted where lots 259 and 260 be the dominant tenant and lot 261 be the servant tenant, granting non-exclusive use of the three parking spaces on the west side of lot 261. He reiterated that the two garage units, two spaces in the driveway, and the additional three spaces by easement for a total of seven parking spaces alleviates the concerns raised for parking. He furthered, that a two-family use is in keeping with the neighborhood character and would be an improvement on the site. Attorney Medeiros stated the hardship in this case is the undersized lot, which is not usable under zoning requirements. By granting the variance it makes the land useable and it would increase the tax value of the property. Attorney Medeiros indicated the petitioner Mr. Fernandes and his family were present and available to answer any questions of the board.

Acting Chairperson Mathes offered an opportunity for anyone wishing to speak in favor of the proposal to address the board. Mr. John Saunders (344 Cornell Street New Bedford, MA), Mr. Nelson DeGouveia (landlord at 1014 Victoria Street New Bedford, MA), Ward 2 City Councilor

Steve Martins (200 Riverside Avenue New Bedford, MA), Stephanie Fernandes (2805 Acushnet Avenue New Bedford, MA), and Scott Resendes (2805 Acushnet Avenue New Bedford, MA) spoke in favor of the petition. Those in favor spoke positively about the petitioner as a property owner and developer in the city, how the proposal fit in with the character of the neighborhood, and the increase tax revenue from the project. No one else in attendance wished to speak or be recorded in favor of the proposal.

Acting Chairperson Mathes offered an opportunity for anyone wishing to speak in opposition to the proposal to address the board. Mrs. Jeanne Medeiros and Mr. Gary Medeiros (1023 Tacoma Street New Bedford, MA) spoke in opposition to the proposal. They expressed opposition to the size of the building on the undersized lot, the loss of parking on the street from the curb cut, and existing parking problems and the increase demand for parking on the street as a result of the proposal. They expressed they agree with the current zoning code as is.

Acting Chairperson Mathes offered an opportunity for rebuttal to the petitioner. Representative of the petitioner, Attorney Medeiros addressed the board. Attorney Medeiros rebutted a comment about parking problems due to the hair salon business, property owned by the petitioner. He rebutted there are other multi-families in the neighborhood, the tenants of which park on the street after the business hours of the salon. He furthered, stating the proposed amount of parking far exceeds any requirements of the city.

Acting Chairperson Mathes offered an opportunity for rebuttal to those in opposition. Ms. Medeiros explained the hair salon has six hairdressers and believes parking will still be a problem in the neighborhood. Mr. Decker asked if the abutters had a chance to review the revised plan and the concessions made about parking. Ms. Medeiros stated they had not.

Ms. Gonet offered a point of information that a copy of the plan was available on a table in the room if anyone present wished to view it.

With no further stated questions or concerns, Acting Chairperson Mathes closed the hearing and opened the floor for discussion amongst the board members.

Mr. Walsh expressed the only issue he had was whether or not there was a merger of the lots. Based on what was presented he felt there was not a merger. He expressed it is an undersized lot and provided the easement for parking on the adjacent lot, he felt the request was reasonable.

There was a brief inquiry by Mr. Decker to ascertain the communication between the petitioner and the abutting neighbors in regards to the proposed parking accommodations made to address their concerns. Comments were made by both sides indicating uncertainty of information being relayed. Mr. Schilling clarified that there was a net increase of three dedicated off-street parking spaces for the two-family.

Attorney Medeiros displayed the site plan and aerial view on a presentation board to the board members. Acting Chairperson Mathes asked the representatives of the petitioner to show and explain the plan to Mr. and Mrs. Medeiros. Attorney Medeiros and Mr. Pereira used the site plan and aerial view to explain the proposed parking areas to the board and Mr. and Mrs. Medeiros. A brief conversation ensued. Acting Chairperson Mathes expressed the importance of communication to abutters potentially impacted by request to the board. He also commented that the petitioner had in this case made an effort to address the concerns raised by the abutters.

#### **4.) FINDINGS**

##### **Criteria for Approval of Dimensional Variation (Ch. 9, Sect. 2730)**

The Board of Appeals may vary otherwise applicable dimensional requirements pertaining to frontage, lot area, building height and sidelines upon finding the following:

- a.) *That owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;*

The Board found that the shape of the lots is such that the zoning setbacks, frontage, and lot size make development difficult without a variance. The Board found the hardship to be that the existing lots are undersized under current zoning.

- b.) *That desirable relief may be granted without substantial detriment to the public good;*

The Board found that sufficient information and testimony had been given to determine that granting the required relief would not result in substantial negative impact to the public good.

- c.) *And, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*

The Board found that the impact of the dimensional relief would be minimal, and would not substantially derogate from the intent of the zoning ordinance.

### 5.) RELIEF

With respect to the relief requested by the Applicant, the Board has been presented with sufficient information at the hearing to justify the relief described below, subject to the conditions set forth below in Section 6.

The Board grants the Applicant's request for relief from Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements, Appendix-B-Minimum Lot Size, Lot Frontage, Rear Yard), and 2753 (Rear Yards) relative to property located at North Side Tacoma Street, Assessor's Map Plot 130C, Lot 259-260 in a Mixed Use Business District. To allow the petitioner to build a 44'x45' two family dwelling as plans filed.

### 6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. A non-exclusive use easement be granted from Lot 261 to both lots 259 and 260, and be recorded at the Registry of Deeds.
- b. The project shall be set forth according to plans submitted with the application as submitted revised at the public hearing;
- c. That the applicant shall ensure that a copy of this decision, bearing the certification of the City of New Bedford Clerk's Office, is recorded in the Registry of Deeds;
- d. And that the rights authorized by the granted Variances must be exercised, by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date they were granted or they will lapse.

### 7.) DECISION

Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby **GRANTS, WITH CONDITIONS**, the requested Variance.

On a motion by A. Decker, seconded by J. Walsh to grant the requested Variance, the vote carried 5-0 with members R. Schilling, S. McTigue, J. Mathes, and J. Walsh voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

Nov. 4, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals