



## ***Zoning Board of Appeals***

March 27, 2014 - **Minutes**

Brooklawn Park Senior Center, 1997 Acushnet Avenue

### **PRESENT:**

**Chairman Ian Comerford**

**Allen Decker**

**Donald Gomes**

**James Mathes**

### **ALSO IN ATTENDANCE:**

**Dan Romanowicz, Inspectional Services**

**Blaire Bailey**

MEETING CALLED TO ORDER by Chairman Ian Comerford at 6:07 p.m. Mr. Comerford explained procedures and noted that only four board members were present, thereby requiring a unanimous vote. He invited response from petitioners who wished to postpone their hearings. No response was noted.

### **CASE #4120** – Petition for variance

After reading into the record the communication from the Commissioner/Inspector of Buildings, a motion was made (AD) and seconded (DG) that the communication be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the appeal be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the plan be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the owners of the lot as indicated are the ones deemed by the board to be those affected.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the action of the clerk in giving notice of the hearing is hereby ratified.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the communication from the office of the city planner be received and placed on file.

Motion passed unopposed.

Mr. Comerford opened the hearing.

Raul Espinal addressed the board regarding his father-in-law's request to install a driveway. He stated that having had his own driveway installed, he recommended the same person to his father-in-law. He stated after meeting this installer, his father-in-law drew up plans and requested the permit, which was ultimately acquired, and the job was done.

Mr. Espinal stated that once inspected, the driveway was larger than the 18' permitted, which has resulted in the application for a variance. Mr. Espinal could not state the current size of the driveway. He stated his father-in-law owns three lots with the house on the middle lot, the driveway being in the empty business zoned lot.

In response to a question by Mr. Decker about a rejection notation, Mr. Espinal stated the permit was issued but they did not note the 18' restriction.

Mr. Comerford clarified the applicant's claim that he had no knowledge of the requirements issued and instead built a driveway 30% larger than allowed. He reiterated the notation at the bottom of the building permit stating the driveway could be no larger than 18'.

Mr. Espinal represented that, in spite in picking up the building permit, they had not seen it and simply gave it to the contractor.

Mr. Gomes clarified that the applicant had first applied for a permit before doing the work. Mr. Comerford reiterated that while that was true, the applicant then built outside of the requirements. Mr. Gomes expressed the work was done incorrectly.

In response to a question by Mr. Gomes on the adverse effects to a 32' driveway, Mr. Romanowicz stated he did not know if there were abutters present who were against it.

There was no response to Mr. Comerford's invitation to speak in favor of the petition.  
There was no response to Mr. Comerford's invitation to speak in opposition.

Mr. Comerford expressed a difficulty in believing that a contractor doing work in the city would build a driveway double what is required by the building code, and that he did not believe a driveway of this size looks good. I don't think it's fair to say I just picked it up and handed it to somebody.

Mr. Gomes stated he did not want to penalize the man who got the permit and then gave it to the contractor who did the job wrong. He noted that no neighbors were present to complain.

In rebuttal, Mr. Espinal stated the driveway is not as big as it seems. He had the contractor go from the existing curb cut to the walkway of the home. He stated his father-in-law has made many improvements and takes care of the property. He expressed they were sorry for the mistake. He expressed this was their first permit experience and they thought where the permit was granted, everything was all set or it would have been denied. He stated the contractor works with the city and should have known better.

There being no opposition, the hearing was closed.

Mr. Mathes also noted there was no one present in opposition and he did not believe there was any ill intention and it was an honest mistake. He expressed that he would support a motion to approve the variance.

Mr. Comerford agreed that with no one present in opposition, he would support the present application, but noted that one day someone is going to have to tear out their driveway for not complying.

A motion was made (AD) and seconded (DG) to grant a variance under provisions of the city code of New Bedford to Amadeu F. & Albertina G. Mendes, 166 Morris Street, New Bedford MA 02745, relative to property located at 61 Carlisle Street, Assessor's Map Plot 113 Lot 427 in a Residential B Zoned District; and to allow the petitioner to install a driveway over 18' wide, which will require a variance under Chapter 9, Comprehensive Zoning Sections 3100, 3110, 3130 and 3145 with the following conditions: that the project be set forth

according to the plans submitted with the application and that it 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.

Motion passed 4-0

**CASE #4121** – Petition for variance

After reading into the record the communication from the Commissioner/Inspector of Buildings, a motion was made (AD) and seconded (DG) that the communication be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the appeal be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the plan be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the owners of the lot as indicated are the ones deemed by the board to be those affected.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the action of the clerk in giving notice of the hearing is hereby ratified.

Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the communication from the office of the city planner be received and placed on file.

Motion passed unopposed.

Mr. Comerford opened the hearing.

Christian Farland, engineer with Thompson Farland, addressed the board on behalf of the petitioners. He stated the subject property on Shaw Street contains 14,192 sf. He noted the two tan structures on the property, the one closest to the street being a 5 family residential dwelling, and the second being a garage in the back.

He stated the majority of parcels in the area are 4,800 sf grandfathered lots. An aerial photo was submitted.

A motion was made (AD) and seconded (DG) to accept the photo as part of the record.

Motion passed unopposed.

Mr. Farland noted that out of the 24 lots shown, 21 have garages running from property line to property line. The lot directly behind the petitioner has a garage similar to that proposed running from property line to property line.

Mr. Farland stated the applicant is looking to construct a 1,223 sf one stall garage as shown. He stated the applicant needs it for storage space for himself and his tenants. He is therefore seeking a variance for the 26.5' height in lieu of 18', lot coverage of 33% in lieu of 30%, a rear setback from 3.7' in lieu of the 4' required, and then a side setback of 3' in lieu of 12'.

Mr. Farland stated the hardship is the shape of the lot and the financial burden to the applicant if he has to build a conforming garage. He believe the facts support the applicant will be able to build and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating the

purpose of the city's zoning by-laws. He noted the aerial photo showing the character of the neighborhood. He invited board questions.

In response to any inquiry from Mr. Decker, Mr. Farland stated the height is because of storage on the second floor. In response to a question from Mr. Comerford, Mr. Farland indicated he believe the current garage was an eight stall unit.

There was no response to Mr. Comerford's invitation to speak in favor of the petition.

Upon request from Mr. Farland, a March 27, 2014 letter from Steve Martins and Linda Morad was read into the record.

A motion was made (AD) and seconded (DG) to accept the letter as part of the record. Motion passed unopposed.

There was no response to Mr. Comerford's further invitation to speak in favor.

In response to Mr. Comerford's invitation to speak in opposition, ??? of 213 Shaw Street addressed the board. He stated he lives kitty-corner to the proposed building. He stated the applicant already has seven garages. Having lived there 68 years and planning to live there another 20, he does not want to see it. He feels the applicant has plenty of room already.

In response to Mr. Comerford's invitation to speak in opposition, Connie and Donald Viera of 210 Shaw Street, addressed the board. She stated she was a 40 year resident of her one family home. She stated she has four garages and a rental property, and she does not store her stuff in her rental property. She stated she doesn't understand how someone with 8 garages cannot find 2 to accommodate his needs. In addition, she stated a second story would be an eyesore, not only to her but the entire neighborhood. She stated it would reduce property value and she does not agree with the project. Mrs. Viera stated she had already erected a fence between the properties.

Mr. Donald Viera stated reiterated his wife's statements about the applicant already having eight garages, most especially with a proposal to put something on top. He believes the applicant will use the second story as an office down the line.

In response to Mr. Comerford's invitation to speak in opposition, Mike Correia of 219 Shaw Street addressed the board. He stated that the applicant will take up parking spaces. He said the people living in the apartment building are supposed to park in the garage but park in the street. He stated he does not have a driveway, but these tenants are putting their vehicles in the street when they have a driveway. He stated the garage doors open out and people with the driveway put their cars on the street, and when he comes homes at 4:00 a.m., he can't find parking within the block. He stated it is not fair to him and this petition will eliminate even more parking spaces.

In response to Mr. Comerford's invitation to speak in opposition, James Wahnnon of 207 Shaw Street, addressed the board. A forty-one year resident, he is also opposed at a second story. He believes the applicant already has ample space.

In response to Mr. Comerford's invitation to speak in opposition, a male on behalf of Teo Carvalho of 215 Shaw Street, addressed the board. He stated his father-in-law Mr. Carvalho lives across the street from the property and opposes the building. He also stated the residents park in the street and not in their garages.

In response to Mr. Comerford's invitation to speak in opposition, a gentleman resident of 213 Shaw Street addressed the board. A 65 year resident of the area, he raised the parking issue. He stated he puts 3 cars in his

yard. He feels they will suffer and the applicant should use one of the garages he already has. He expressed his opposition.

In response to Mr. Comerford's invitation to speak in opposition, Mia Correia of 219 Shaw Street addressed the board. She stated the applicant told her it was for his personal use, not his tenants'. She agrees with those who have spoken in opposition.

There was no response to Mr. Comerford's further invitation to speak in opposition.

In rebuttal, Mr. Araujo stated he is not looking to make much change to the property and most of the area properties have garages in them. He stated he has an empty parcel of land along the side of the house. He stated since he pays taxes on it, he should be able to use it. He wants to put storage on his property. He stated he will eliminate the second floor if necessary. As the property is Residential C, he should be allowed to do a bit more than a Residential A. He stated he plans to take the grass area on the right side and make parking. He stated he does not understand why his tenants would park in the street. He stated at 1, 200 sf it is not that big and is just a box like all the other houses have. He stated he is trying to utilize his land.

In response to an inquiry by Mr. Comerford, Mr. Araujo stated he does not own dump trucks or excavators. He stated he has a business in Acushnet. He stated it is a partnership with his brother and he cannot do what he wants.

Mr. Comerford stated the storage of construction equipment in a residential neighborhood would not sit well with him. Mr. Araujo guaranteed that would not be the case and no business would be run out of there; that it would be strictly personal storage.

Mr. Farland stated the purpose of the zoning bylaw is to allow such variance requests as fit the neighborhood and that can be granted without substantial detriment to the public good. The whole entire neighborhood has garages that go from property line to property line. He stated he could understand the elevation opposition and the applicant is willing to reduce it down to 18'.

Mr. Mathes inquired as to how many cars were currently in the garages from his five unit building. Applicant stated there are four cars all belonging to him, one tenant using one, and one former tenant renting three stalls to store staging. Mr. Mathes noted the cars belonging to people in the units do not appear to be in the garages. Applicant noted they have six free parking spaces and only four of the tenants have cars.

Mr. Mathes stated raising the argument that part of his property is currently empty and he wants to put something on it is not persuasive to him. The applicant stated he can put something on the property without a variance, but he is trying to put something nice and not have wasted space.

Mr. Gomes noted to the applicant that there is a difference between a three decker residence and a two story garage.

In response to a question by Mr. Mathes, Mr. Araujo stated he had approached the abutting neighbors, but the second floor was not brought up. Applicant again stated he can live without the second floor.

The floor was reopened for opposition. Mr. Mathes explained he was interested in opposition to a one story structure as opposed to a two story.

Connie Viera stated she does not like an additional garage, stating it is forward from his original garages; where the back of the proposed garage does not meet the back of the old one. She stated she should have a right to live the way she wants, the way she's been living the last 45 years. She again stated he personal items are not in

her rental property, and the applicant should find storage in his home. She confirmed she is opposed to any structure.

Mike Correia stated regardless of it being a two story structure, it will still cut out parking. He stated he and his neighbor both have handicap a child and they cannot utilize street parking because the applicant's tenants refuse to park in their own driveway already. He stated he is opposed even to a one story structure there.

Mia Correia, 219 Shaw Street, stated that she also has a handicapped child and that living across the street she knows the applicant has more than four people with cars. She stated it is not fair, and she has trouble every day because of all the people parked there.

Mr. Comerford closed the public hearing.

Mr. Comerford expressed his thanks for the people who came out and spoke. He stated the applicant already has an eight car garage and he believes it will create a parking issue.

There being no further discussion, a motion was made (AD) and seconded (JM) to grant a variance under the provisions of the city code of New Bedford to Natalia F. Araujo "Trustee", Shaw Realty Trust, 123 Nyes Lane, Acushnet, MA 02743, relative to property located at 220-222 Shaw Street, Assessor's Map Plot 110 Lot 471 in a Residential C District. And to allow the petitioner to erect a 1,023 sf two-story one stall garage which would require a variance under Chapter 9, Comprehensive Zoning Sections 2000, 2300, 2310, 2330, 2333, 2700, 2710, 2720, 2750, 2753 and 2755, with the following conditions: that the project be set forth according to plans submitted with the application, and that it 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.

Motion failed unanimously.

#### **CASE #4122** – Special permit

After reading into the record the March 10, 2014 communication from the Commissioner/Inspector of Buildings, a motion was made (AD) and seconded (DG) that the communication be received and placed on file. Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the appeal be received and placed on file. Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the plan be received and placed on file. Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the owners of the lot as indicated are the ones deemed by the board to be those affected. Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the action of the clerk in giving notice of the hearing is hereby ratified. Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the communication from the office of the city planner be received and placed on file. Motion passed unopposed.

Mr. Comerford opened the hearing.

Christian Farland, principal engineer with Thompson Farland, addressed the board on behalf of the applicant John Barbosa. He stated the 4900 sf subject property is at 135 Summer Street in a Resident B Zoning District. Currently a two-family dwelling, 3-car garage and shed on the parcel. Applicant is seeking a permit for an in-home business in one 132 sf office in the home, which should have negligible impact to the abutting property owners. At the most, the applicant would see three customers a day present one at a time. This type of business would be an asset to the City of New Bedford and presents no detriment to the public good. He invited questions from the board.

There was no response to Mr. Comerford's invitation to speak in favor.

There was no response to Mr. Comerford's to speak in opposition.

Mr. Decker inquired as to the discrepancy of the file information, which stated 5 appointments in a month, and the presentation which represented 3 daily appointments.

Mr. Farland expressed that at peak it would be three appointments per day, but may have only one appointment in a month. He also stated there are no walk-ins.

With regard to an inquiry by Mr. Decker, applicant stated there would be no sign.

After a further invitation to be heard in opposition, to which there was no response, Mr. Comerford closed the hearing.

Mr. Decker raised the issue that similar to last month's change in use application, such a change needs handicap accessibility, and confirmed the same with Mr. Romanowicz.

Mr. Farland stated the applicant will need to meet ADA compliance with a building permit. He noted the plan needed to go before the planning board as well due to parking.

Mr. Romanowicz elaborated for Mr. Comerford that lacking a handicap ramp, the applicant would need a variance or an alternate place to provide the service.

Mr. Farland expressed that the planned office is on the second floor and applicant would likely have to seek an ADA variance and acquire an off-site location for such appointments.

A motion was made (AD) and seconded (JM) to grant a special permit under the provisions of the city code of New Bedford, to John Barbosa of 135 Summer Street, New Bedford, MA relative to property located at 135 Summer Street, Assessor's Map Plot 58 Lot 137 in a Residential B District, and to allow the petitioner to operate a part-time hypnosis practice (Life Enriching Hypnosis) out of his home at 135 Summer Street, which would require a Special Permit under Chapter 9, Comprehensive Zoning Sections 2500, 2520-2528, 5300-5330, 5360-5390 with the following conditions: : that the project be set forth according to plans submitted with the application, and that it 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.

Motion passed 4-0.

The meeting suspended briefly and resumed at 7:32 pm

#### **CASE #4119-** Administrative appeal

After reading into the record the February 13, 2014 communication from the Commissioner/Inspector of Buildings, a motion was made (AD) and seconded (JM) that the communication be received and placed on file. Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the appeal be received and placed on file.  
Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the plan be received and placed on file.  
Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the owners of the lot as indicated are the ones deemed by the board to be those affected.  
Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the action of the clerk in giving notice of the hearing is hereby ratified.  
Motion passed unopposed.

A motion was made (AD) and seconded (DG) that the communication from the office of the city planner be received and placed on file.  
Motion passed unopposed.

Mr. Comerford opened the hearing.

Att. Michael Kehoe of Partridge Snow & Hahn, New Bedford, addressed the board on behalf of the appellant GC CF New England, LLC. Mr. Kehoe stated the applicant had been before this board for a sign variance which was granted. The proposal is for a Cumberland Farms store with fuel islands on the current Shawmut dinner site.

Att. Kehoe noted this as of right construction had eight conditions placed upon it as a result of site plan review approval. The applicant is taking appeal on three of those conditions; numbered 2, 4, and 7 in the planning board decision.

Number 2 being a limitation of right-hand only turns from Hathaway Road onto the site and no left-hand exits from the site onto Hathaway Road, along with the installation of curbing islands on the Hathaway road curb cut to direct traffic in that regard.

Number 4 addressed hours of operation.

Number 7 represented as an incorporation of DPI memorandums of 11/6/13 and 1/7/14.

Att. Kehoe stated there was a lot of field work done addressing precisely what was requested of the applicant. Att. Kehoe referenced a letter from Mr. Labelle, Commissioner Department of Public Infrastructure, recognizing as a result of the work done, Condition #2 was no longer needed as to the left-hand turn onto site from Hathaway Road limitation. The no-left-hand site exit remains and is agreeable to the applicant. He stated Mr. Labelle was in agreement with a concrete rumble island as opposed to curbed island due to trucks servicing the facility. Therefore Planning Board Condition #2 is no longer appropriate under the circumstances and in light of what is going to be at the intersection, as detailed in the Mr. Kehoe's letter to Commissioner Labelle, and should be amended to a left-hand turn out restriction only and the change in the so-called island at the curb cut.

Att. Kehoe referenced the tremendous amount of infrastructure site work planned for the intersection of which Cumberland Farms is contributing up to \$100,000.00 toward the cost.



Att. Kehoe submitted the basis of the appeal is that a traffic expert produced two traffic reports at the planning board meeting stage in which he testified that the current signalization at the intersection was satisfactory and would operate properly not only for the applicant's proposal but five years into the future as well, as asked to do by the board. Att. Kehoe stated there was no evidence presented to indicate the traffic expert was wrong; not one report and no testimony. The applicant, however, still agreed to the modifications outlined in Commissioner Labelle's letter to this board.

Att. Kehoe stated the lack of any refute of the traffic expert calls into question whether the decision of the planning board was arbitrary and capricious. Noting with respect to Condition #2 that two planning board members, one who is a traffic engineer, agreed with the applicant's engineer, that there was no reason to make the changes and the money would be wasted. Still the vote was to impose the condition. Such action being the definition of arbitrary and capricious.

Att. Kehoe stated the discussion of the turn in occurred only after the public hearing was closed; stating that the prohibition of the left-hand turn in was discussed for the first time at the last meeting after the public hearing was closed. He submitted that was a procedural due process defect, having never been allowed an opportunity to rebut or describe the fact that trucks cannot make a turn in if the island is granite curbed. Att. Kehoe represented Mr. Labelle concurred in his letter.

With regard to hours of operation, Att. Kehoe stated that while Commissioner Labelle was silent on that issue, the Shawmut Diner was operation in instances of 24 hours a day. Reiterating that the site has had operational uses of 24 hours a day for commercial purposes with patrons coming in and out. As such, the applicant respectfully requests they be allowed the same. Att. Kehoe stated the applicant would agree to an amended limitation of 5:00 am to 12:00 am for retail sales allowing normal shifts, recognizing city ordinances regarding the outdoor consumption of food. He stated that if only allowed the 5:00 am to 12:00am operational hours, the applicant may come back at a later date to seek the 24/7 operation hours.

Att. Kehoe requests the board strongly consider the recommendations of Commissioner Labelle and change/amend conditions 2, 4 and 7 from the planning board.

There was no response to Mr. Comerford's invitation to speak in favor.

In response to Mr. Comerford's invitation to speak in opposition, Att. Matthew Thomas, 4 Park Place, Suite 101, New Bedford, addressed the board on behalf of the Kenyon family of 207 Hathaway Road.

Att. Thomas represented that he had appeared at all three planning board hearings and supports the planning board decision, which he believes is neither arbitrary nor capricious.

Att. Thomas reiterated his planning board statements that, as an "as of right use" no one opposes the construction of the Cumberland Farms. The as of right site plan review does allow the planning board to look at things never looked at prior to the adoption of site plan review; internal circulation, neighbor impact.

Att. Thomas took issue at the petitioner's statement that the construction of a berm preventing anything but a left-hand turn was not discussed earlier. He stated he had discussed that issue at all three meetings. He represented conversation was never about a left-hand turn into Cumberland Farms from vehicles westbound on Hathaway Road, but was always a concern about vehicles exiting the site and making a left-hand turn. He stated as we stand here, there is a no left-hand turn sign opposite the Hathaway Road driveway, but suggested you are likely to see people making left-hand turns out regularly. As such the concern all along was to stop the left-hand turn out of the site, which is ignored even with signage. He stated the goal discussed at all three meetings of the planning board was to restrict that behavior, and the island restriction does so. Att. Thomas stated he does not recall any opposition to a left-hand turn into the site.

He stated clearly the issue was discussed, as the December meeting was continued to January to acquire an analysis of the intersection to look at the impact on the intersection prohibiting left-hand turns out of the site.

Att. Thomas stated there was a lot of conversation about traffic signalization as well, and his clients have pushed for an upgrade to intersection signalization. He stated once Cumberland Farms is there, there will be development at the Sunshine Plaza, Building 19 and Central Plaza, all of which were concerns of DPI and the planning board as to the effect on this traffic corridor leading to Nauset Street and Nash Road.

Att. Thomas stated his client does not oppose the hours of operation of 5:00 am to 12:00 midnight, but is concerned about 24 hour use, stating the volume of visitors to the former Shawmut Diner is vastly different than what is expected by the applicant.

Att. Thomas stated he is grateful for all the hard work done by the planning board. He suggests a rumble strip is not sufficient enough to successfully accomplish preventing the left-hand turn out. He stated his client has observed near accidents with people making the illegal left-hand out turn onto Hathaway Road.

He believes the DPI upgrade of traffic signalization is conservative with the city's limited funds.

There was no response to Mr. Comerford's further invitation to speak in opposition, and as such the floor was opened for five minute rebuttal.

Mr. Christian Farland, principal engineer, addressed the board exhibiting revisions made to the entrance/exit in question. He stated that in addition to the rumble strip, the entrance is angled forcing motorist to go right and a no-left-turn sign will be installed. After meeting with the DPI, there was an agreement that this would be suitable and adequate. The City Council expressed the same concerns, and Councilor Gomes found the revisions acceptable.

Mr. Farland reiterated that this is the entrance for the fuel trucks, and a vertical design would prevent them access to the site.

Att. Kehoe clarified his indication of the lack of prior discussion was with regard to a left turn in; that the prohibition of a left turn out had been discussed nearly since the first meeting and the applicant is in agreement with that.

Att. Kehoe stated the applicant has done all it can do to encourage no-left turn out. Though the applicant's traffic study showed no problems, in response to a request by the planning board the applicant then looked at traffic five years out, incorporating their expected traffic increase, and any approved future businesses in their projection and still the intersection was fine. He felt this again went to the issue of arbitrary and capricious. Att. Kehoe clarified the applicant is not requesting an annulment of requirements of the intersection. Again, stating they have worked with DPI and agreed to contribute \$100,000.00 to what DPI wants done there and Mr. Labelle is satisfied, in spite of the opinion of their traffic engineer that it is not necessary, providing for businesses that have not yet even come in.

Mr. Kehoe stated their proposal gets the city where they want to be and puts the applicant in a position to be a good corporate neighbor and serve the citizens with what they need and want, improving this intersection.

Mr. Comerford open the floor for rebuttal.

Att. Thomas on behalf of the Kenyons stated the traffic study requested between the December and January meetings was clearly to study the effects of a no left-hand turn. Regarding this prohibition of left-hand turns out of the site, he again suggested a rumble strip will not do it, and there may be a less cost effective way to being in their oil trucks since this is such a severe issue. He stated there will be a dramatic traffic increase taking the

intersection from a Level B to a C or D based on their own study. He suggests the concern is sufficient enough to warrant the applicant deal with their fuel truck concern in another way. The planning board has considered the issue and has elected to do something to make sure it was enforced.

Att. Thomas stated the \$100,000.00 contribution is nice, but is akin to Warren Buffet giving New Bedford \$100 and telling them to be happy. Other cities exact far more traffic improvements on a multi-million dollar project such as this. He stated this is in the applicant's budget and is not unusual. He feels the planning requirements are not unreasonable and are clearly not arbitrary and capricious or without substantial evidence.

In response to Mr. Comerford's invitation to be recorded in opposition, the following responded:  
??? Faria, 7 Upton Street, abutter.

There was no response to Mr. Comerford's further invitation to be recorded in opposition.

There being no response to Mr. Comerford's invitation to be recorded in favor, the public hearing was closed.

Mr. Mathes stated he had read the letter/memo from Commissioner LaBelle. He suggested has observed other properties where no left turns are posted, but feels the angling, signage and rumble strip sufficiently deters motorists from an illegal left turn, and if a problem develops the city would place a police officer on scene. He is satisfied with the applicant's presentation with regard to the no left turn. He feels the plan is a good use for the property and is pleased with the solutions that have been worked out.

Mr. Mathes referred to the Cumberland Farms at Dartmouth and Rockdale and noted that heavy traffic intersection works fine.

Mr. Mathes thanked the Paleogos family for all they have done for the City of New Bedford.

Mr. Comerford feels the petitioner has exhibited good faith in their compromises.

Mr. Decker suggested entering the Labelle correspondence into the file and made a motion to accept the March 25, 2014 correspondence from Commissioner LaBelle incorporating March 13, 2014 correspondence from Att. Kehoe as part of the record, which was seconded by Mr. Gomes.  
Motion passed unopposed.

Mr. Decker sought clarification on whether the zoning board was being asked to overturn the three conditions.

Mr. Comerford suggested the change in hours was not unreasonable.

The board clarified the three issues were hours of operation, no left turn, and signalization improvements.

Att. Bailey explained if the board's intent was to adopt what had been presented, they would uphold the decision of the planning board as it related to site plan conditions not contested. And as it relates to the three conditions raised, it would be an adoption of the revised plan indicating in place of the three condition, the changes adopted by Mr. LaBelle; a, the no-left turn prohibition onto Hathaway is no longer necessary because of intersection improvements; b, the \$100,000.00 noted in the letters of Mr. Labelle and Att. Kehoe would substitute for Condition 7; and the hours of retail operation would be changed from 5:00-11:00 pm to 5:00 - 12:00 am.

Mr. Mathes inquired as to the prepared motion, and whether the zoning board needs to affirm the uncontested portions of the planning board decision. Mr. Bailey stated they would need affirmation procedurally because the decision sits in itself and cannot be parsed out in sections. In effect the entire decision is under appeal to

this board, though they appellant does not disagree with the entire decision. He stated he believed the revised plans were submitted to the planning board and could be incorporated in this board's decision.

An amended motion was made (AD) and seconded (JM) to grant the following decision on a filed administrative appeal under provisions of the city code of New Bedford to GC CF New England, LLC, (600 East 96<sup>th</sup> Street, Suite 150, Indianapolis, IN, 46240), c/o Partridge Snow & Hahn LLP, 128 Union Street, New Bedford, MA, 02740, relative to property located at 943 Shawmut Avenue, Assessor's Map Plot 95 Lots 233 & 303 in a Mixed Use Business Zoned District to set aside the following conditions of approval included as part of a site plan review decision of the New Bedford Planning Board identified as Case #35-13, reached January 8, 2014, for a Fueling Station & Convenience Store at the subject property and subsequently appealed by the petitioner with the following conditions:

1. That the business hours of operation be amended to not exceed 5:00 am to 12:00 am, otherwise known as midnight
2. That the project be constructed in accordance with the revised plan submitted to the zoning board and in accordance with the correspondence from Commissioner Ron Labelle and Att. Kehoe
3. That the Hathaway Road curb cut allow only right turn in egress and right turn out egress with a curbed island installed that channelizes traffic to prohibit left turns in from or out to Hathaway Road.
4. That the petitioner replace the controller conflict monitor and traffic signal equipment at the Hathaway Road and Shawmut Avenue intersection
5. That the project be set forth according to plans submitted with the application and as resubmitted as part of the site plan review, and that it 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.

Motion passed 4-0

A motion was made (AD) and seconded (DG) to approve the meeting minutes as submitted for February 27, 2014 involving cases 4115, 4116, 4117 and 4118.

Motion passed unopposed.

There being no further business, meeting was adjourned at 8:25 p.m.