



Zoning Board of Appeals

April 10, 2014 - **Minutes**

Brooklawn Park Senior Center, 1997 Acushnet Avenue

PRESENT:

Chairman Ian Comerford

Allen Decker

Leo Schick

James Mathes

Robert Schilling

ALSO IN ATTENDANCE:

Dan Romanowicz, Inspectional Services

MEETING CALLED TO ORDER by Chairman Ian Comerford at 6:05 p.m. Mr. Comerford explained procedures.

CASE #4123 – Petition for variance

After reading into the record the March 10, 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 (JM) that the appeal be received and placed on file. Motion passed unopposed.

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

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

Mr. Comerford opened the hearing.

Bonnie Bill of 184 Rockland Street addressed the board. She stated she was looking to install a simple car port in her driveway.

In response to a question by Mr. Comerford, Ms. Bill indicated she had submitted a picture, and the proposed car port would go over the Volvo and truck shown on the cement part of the driveway not touching the walkway at all.

In response to an issue raised by Mr. Decker concerning a potential discrepancy, Ms. Bill indicated she believed it to be 21' long and 19' wide. Mr. Decker indicated the plan submitted showed a length of 20' allowing for seven feet back from the sidewalk. Applicant confirmed.

Mr. Romanowicz also confirmed 20'. Mr. Comerford indicated the application should read 19' x 20'.

In response to a question from Mr. Decker, Mr. Romanowicz indicated the front setback was the item that triggered the violation and need for variance.

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.

The public hearing was closed.

In response to the applicant Mr. Comerford indicated that by law, the board's decision is due within 100 days, but the current turnaround is usually less than 30 days.

A motion was made (AD) and seconded (JM) to grant Appeal #4123, a motion to grant a variance under the city code of New Bedford to Bonnie M. Bill, 184 Rockland Street, New Bedford MA 02740, relative to property located at 184 Rockland Street, Assessor's Map Plot 29 Lot 74 in a Residential C Zoned District, and to allow the petitioner to install a 19' x 21' carport, which will require a variance under Chapter 9, Comprehensive Zoning Sections 2300, 2310, 2330, 2331-2334, 2334, 2700, 2710, 2720, 2730, 2750 and 2751 with the following conditions: that the carport dimensions not exceed 19' x 20'; and 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 5-0

CASE #4124 – Petition for variance

After reading into the record the March 10, 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 (JM) that the appeal be received and placed on file. Motion passed unopposed.

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

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

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

Motion passed unopposed.

Mr. Comerford opened the hearing.

Widar Sahlin of 202 Campbell Street addressed the board. He stated he wants to build a garage for his truck, motorcycle, snow blower and tools. He indicated in response to Mr. Comerford that he has owned the vacant land next to his property since buying the house, but has now moved into the property and needs the garage. Mr. Sahlin stated that the abutters close by had signed saying they do not mind a garage.

A motion was made (AD) and seconded (JM) that the correspondence from the property abutters be received and placed on file. Mr. Decker read the names of the five abutters.

Motion passed unopposed.

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.

The hearing public was closed.

A motion was made (AD) and seconded (JM) to grant Appeal #4124, a motion to grant a variance under the city code of New Bedford to Widar Sahlin, 202 Campbell Street, New Bedford, MA, 02740, and Erica Sahlin, 479 Old Westport Road, Dartmouth, MA, 02747, relative to property located at 202 Campbell Street, Assessor's Map Plot 64 Lot 239 in a Residential A Zoned District and to allow the petitioner to construct a 30' x 22' garage, which would require a Variance under Chapter 9, Comprehensive Zoning Sections 2000, 2300, 2310, 2330, 2331-2334 and 2334 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 5-0

CASE #4125 – 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 (JM) that the communication be received and placed on file.

Motion passed unopposed.

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

Motion passed unopposed.

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

Motion passed unopposed.

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

Mr. Comerford opened the hearing.

Andrew Pequita addressed the board and indicated that Mr. Lajoie is the landlord. Mr. Pequita indicated he was opening the subject business with Jason Audette.

Mr. Pequita stated he currently co-owns a studio in Swansea and wanted to do something closer to home. He stated he lives on Princeton Street and the travel is arduous. He stated he desires to make a living in the city he lives in. He stated between he and Mr. Audette, they have 32 years' experience and want to bring a level of professionalism to the spot.

In response to Mr. Comerford, Mr. Pequita explained that someone had opened a studio at this location and folded the business within nine months.

In response to a question from Mr. Decker, the applicant indicated his proposed hours of operation would be like those in his Swansea location, 2:00 – 11:00 pm, but would work within the city's parameters. Mr. Decker noted that no body art establishments operate between 10:00 pm to 10:00 am. The applicant was amenable.

Mr. Mathes noted the second person operating in the shop is not listed on the application. The applicant stated the other operators name is within the paperwork. Mr. Mathes was unsure of how such an issue impacts the process with only one artist listed on the application.

Mr. Pequita admitted to a lack of zoning board application experience.

Mr. Mathes was just inquiring if it is problematic if the special permit is granted as he is unsure of the implications should the applicant wish to bring in an additional people.

Mr. Pequita believed the only issue is whether the Board of Health would grant the operator licenses and stated he has dealt with Mary Frier-Kellogg.

Mr. Romanowicz stated that both names were not advertised, only one. The second operator information is only found in a letter and on a diagram indicating a two-man shop.

Mr. Comerford did not believe the naming of the second person in an advertisement for a two-man shop mattered. Mr. Comerford noted that a special permit does not act in the same manner as a variance.

Mr. Mathes suggested conditioning the permit. Mr. Romanowicz stated the special permit application does not provide name and address of manager or number of employees. Mr. Audette indicated they were both owners/partners.

Mr. Pequita apologized for the confusion.

Jason Audette of 28 Mott Street New Bedford MA indicated to the board that his understanding was that the permit merely allowed a tattoo shop to exist there and then they would need to acquire separate permits to actually tattoo there.

Mr. Comerford noted that the board also assesses the impact on the neighborhood, and number of employees would affect that impact.

Mr. Mathes noted that an application for special permit for body art must include the number of employees.

In response to Mr. Comerford's invitation to speak in favor, Mike Pequita of Fairhaven, applicant's father, addressed the board. He stated he grew up in the area and owns a piece of property up the street where his sons live. He stated he operated the Bullpen and Big Jim's Tavern in the area for 33 years. He stated he also sold Antonio's the building and helped them start that business.

Mr. Pequita stated his son is very diligent and works 100 hours a week, and he wanted to let the board know he is a good kid. He invested in his son's business and has been overseeing the business. He assured his son will do a good job.

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

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

Mr. Comerford inquired if the board had any issues other than adding the second name to the petition. He stated the board having voted before on the matter and its previous use as a tattoo shop with no detrimental effect to the neighborhood, he believed that to still be the case.

Mr. Decker reiterated the business hours of 10:00 am - 10:00 pm.

Mr. Mathes noted that Andrew represented himself well in his letter to the board of health and they are experienced individuals. He is pleased to see New Bedford people come back to New Bedford to work here, and is impressed to see his father speak on his son's behalf.

Mr. Comerford clarified Mr. Pequita's questions regarding the twenty day waiting period.

Mr. Comerford closed the public hearing.

A motion was made (AD) and seconded (JM) to grant Appeal #4125, a motion to grant a special permit under provisions of the city code of New Bedford to Michael P Lajoie, 28 Waterfall Road, Acushnet, MA, 02743 and Andrew Pequita, 51 Princeton Street, New Bedford, MA, 02745, relative to property located at 1881 Acushnet Avenue, Assessor's Map Plot 110, Lot 242, also known as 7 Clifford Street, in a Mixed Use Business Zoned District, and to allow the petitioner to operate a Body Art Establishment known as North Atlantic Tattoo, which will require a Special Permit under Chapter 9, Comprehensive Zoning Sections 4200-4267, 5300-5330 and 5360-5390 with the following conditions: that the business hours of operation not begin before 10:00 am and do not go past 10:00 p.m.; that fellow petitioner Jason Audette be added to the special permit; and 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 5-0

CASE #4126 – Administrative Appeal

After reading into the record the March 10, 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 (JM) that the appeal be received and placed on file.

Motion passed unopposed.

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

Motion passed unopposed.

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

Motion passed unopposed.

Mr. Comerford opened the hearing.

Dorena Costa of 78 North Avenue Rochester, MA addressed the board. She stated she was there on behalf of their customer Dan Magalhaes along with a representative from unit maker Daktronic, appealing the decision that prohibits the sign. Ms. Costa indicated they had installed the signs in other districts and is aware of other such New Bedford signs.

Ms. Costa stated they were not increasing the size of the proposed flag mounted sign. She stated there is a larger Costello sign down the street. She provided a packet of other similar signs in New Bedford.

In response to an invitation to be heard in favor, Danny Magalhaes of Fairhaven, MA, owner of Amaral's Market, addressed the board. He stated they were seeking the same opportunity as other area businesses with comparative signs. Mr. Magalhaes stated they are simply looking to update and improve, as the older sign has problems in the weather.

In response to Mr. Decker, Mr. Magalhaes said he was unsure of other signs like this on Bellevue Avenue, but noted one at Walgreens on Sawyer and Ashley Boulevard, along with those submitted in the packet.

In response to Mr. Schilling, Mr. Magalhaes stated the sign was capable of a lot of stuff and invited the sign maker to explain its operation. He stated he was really looking to put up specials or new hours.

Mr. Comerford indicated he was opposed to tickertape or rotating. Mr. Magalhaes again indicated it would not be more than others are doing, and referenced the Costello sign.

In response to an invitation to be heard in favor, Bob Messier of Hanson, MA, Daktronic rep, addressed the board. He stated his company seeks to be community friendly and works with many cities and towns and help write ordinances.

He stated the packet contained the message duration, no flashing, no animation and the brightness. He stated some signs do not have proper dimming levels or automatic dimming levels as night falls. He stated all Daktronic displays have the photocell to dim brightness to a .3 foot candle above ambient light maximum, or 6% of what it is in the daytime.

Mr. Messier indicated a product message can sit for 10 or 20 seconds, or some change only once an hour. He stated Daktronics is a community friendly industry leader, with products in Times Square.

In response to an invitation to be heard in favor, John Saunders, of 344 Cornell Street, addressed the board, stating these signs currently exist in his neighborhood. He stated they scroll, and he expects the advocate

against LED signage is most opposed to those like the one at Rte 195 at Rte 18. Mr. Saunders frequents Amaral's Market and noted that Mr. Magalhaes had a hard time getting a sign that could keep up with Market Basket. Mr. Saunders stated this would help small business in New Bedford to remain here in a changing market. He stated Mr. Magalhaes is an honest man seeking the right to have what others have been allowed to have.

There was no response to a further invitation to be heard in favor.

In response to an invitation to be heard in opposition, Allen Wolstenholme of Whitlow Street, addressed the board, stating he wanted to go on record as opposing the sign unless it can be regulated to make it aesthetically compatible with the City of New Bedford

He stated he prepared an outline showing that electronic message boards are blinking and running all night. Mr. Wolstenholme requested that the board consider his recommendations in Appendix A from cities nationwide with regard to granting this appeal and stated if the sign manufacturer does not agree to the terms it can be bad for the city.

He suggested the maximum brightness in daylight hours not exceed 5,000 candela or nits per square meter and 250 nits at night per the Illumination Engineering Society of North America for brightly lit areas.

He suggested the electronic message board illumination be turned off between 10:00 pm and 6:00 am. unless opened for business, and turned off at cessation of the business operation.

He suggested progressive cities throughout the country have times of change from 5 minutes to 8 hours or more. Fairhaven Massachusetts electronic message boards cannot change more than once an hour.

Minnetonka Minnesota did a study of driver attention/distraction and came up with a value of 20 minutes, which he adopts as a suggested frequency. Time, date and temperature being allowed to change every 30 seconds.

Mr. Wolstenholme suggested each line of copy and graphics in the message board should be a minimum of 7" in height for visual ease of reading for drivers.

He suggested the sign be automatically adjusted in response to ambient conditions.

He noted the signs should have controls and no further signs without regulations and controls should be allowed. He noted the ordinances were written prior to the invention of these signs. And such suggestions would make it compatible with other city signs and aesthetically pleasing.

He encouraged the city to create ordinances to address these signs more clearly, noting that cities like Minnetonka Minnesota and Bellevue Washington are stricter, allowing such signs only on free standing poles like CVS.

He stated that cities with good regulation for electronic on premise signs controls maximum brightness, prohibits video movement and sound and regulates the time of display from 5 minutes to 8 hours or more. Concord New Hampshire prohibits electronic signs entirely.

There was no response to a further invitation to be heard in opposition.

In rebuttal, Mr. Messier of Daktronic addressed the board and commended Mr. Wolstenholme on his work. He expressed that is the sort of research Daktronic does to help cities and towns write ordinances.

He noted Mr. Wolstenholme's brightness suggestions was right. He added the photocell is automatic in all the Daktronic displays dimming to less than 250 nits. Mr. Messier noted that numerous studies have been done for highway signs, which are typically between 8-10 seconds, as in Massachusetts.

Mr. Messier stated Fall River has a 10 second hold time, five seconds in Dartmouth, and 8 seconds in Norton. Norton also requires a manufacturer letter on the automatic dimmer. Mr. Messier offered his assistance.

In opposition rebuttal, Allen Wolstenholme stated he had accompanied Governor Dukakis to the Mass Transportation Department in opposition to electronic billboards. He stated Fairhaven is 1 hour, Bellevue Washington is 8 hours, and Minnetonka is 20 minutes. He stated 10 second is not aesthetically suitable for our city in his opinion. He believes daylight nits will stand out brighter and 5,000 should be the maximum.

Mr. Comerford closed the public hearing.

Mr. Comerford indicated while he felt good points had been raised, he was not a proponent of message boards in signs. He stated he was empathetic toward the applicant, in business for 40 years and trying to compete with a large inexpensive chain. He would advocate conditions that limit scrolling.

Mr. Decker stated he did not see any information on what the electronic message center was proposed to provide or a proposed level of brightness. He found the Daktronic information general as to what the sign can do and not specific to this applicant.

Mr. Messier indicated with the prohibition and absence of guidelines, they are unsure what the city wants the sign to do. He stated they welcome reasonable conditions and hope to work with the city to develop standards.

There was further board discussion on conditions.

The applicant wants any regulations to apply to everyone else in the city as well, but will work with the board. Mr. Comerford clarified the board sets conditions but is not the enforcing authority.

Mr. Mathes noted the strong feelings on the issue, and sees signage as a significant part of running a business. He feels this proposal is a replacement of the means by which messages are made available to people traveling through the neighborhood and sees it as the next step in modernization and evolution of the property and business. He feels brightness is an issue most especially when neighbors voice negative impacts in their home. While against flashing and scrolling, he feels a 10 second change is reasonable, as opposed to the 20 minute suggestion. He supports a condition on brightness, but is not in favor of a total sign shutoff. Mr. Schilling agreed and saw it as an advertising tool for the business to consumers.

Mr. Decker inquired of Mr. Romanowicz whether the deed was present in the file or would require a condition.

A motion was made (AD) and seconded (JM) to grant Appeal #4126, a motion to grant the following decision on filed Administrative Appeal under provisions of the city code of New Bedford to Dana & Dorena Costa, Signature Signs, 634 State Road, Dartmouth, MA, 02747 and Danny Magalhaes, Belleville Realty Group, 482-488 Belleville Avenue, New Bedford, MA, 02746, relative to property located at 482-488 Belleville Avenue, Assessor's Map Plot 100, Lot 7, in a Mixed Use Business Zoned District. The petitioner is appealing the Commissioner of Building and Inspectional Services' Letter of Rejection, dated January 27, 2014, in which a building permit to install a sign with an electronic message center was denied for being a prohibited sign under Section 3200-3222 of the City's Zoning Ordinance, with the following condition: that the electronic messaging

center message change not more frequently than every ten seconds; that the electronic messaging center's message not include animation nor any flashing; and that the electronic message center signage have a maximum brightness not to exceed 250 candela per square meter (a/k/a nits) at night; and 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 5-0

There being no old or new business, the meeting was adjourned at 7:44 p.m.