



MAYOR
JON MITCHELL

City of New Bedford Department of City Planning

133 William Street • Room 303 • New Bedford, Massachusetts 02740
Telephone: (508) 979.1488 • Facsimile: (508) 979.1576

ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS
VIRTUAL MEETING
Thursday, February 18, 2021

MINUTES

PRESENT: Laura Parrish, *(Chairperson)*
Celeste Paleologos, *(Vice Chairperson)*
Stephen Brown, *(Clerk)*
Allen Decker
Robert Schilling

ABSENT: None

STAFF: Angela Goncalves, *Assistant Project Manager*
Danny Romanowicz, *Commissioner of Buildings, and Inspectional Services*
Elizabeth Lydon, *City Solicitor*

2021 MAR 24 AM 8:59
CITY CLERK
CITY CLERK OFFICE
NEW BEDFORD, MA

Ms. Goncalves confirmed participants and petitioners that were present and provided all participants with remote meeting guidelines and protocols.

1. CALL TO ORDER

Chairperson Parrish called the meeting of the City of New Bedford Zoning Board to order at 6:03 p.m. Chairperson Parrish then explained the meeting process, protocols, and requirements.

2. PUBLIC HEARINGS:

ITEM 1 – CASE #4434/#4435:

A motion was made (SB) and seconded (RS) to hold the hearing concurrently.

A motion was made (SB) and seconded (RS) to receive and place on file communication from the Commissioner of Buildings & Inspectional Services dated 12/30/20; staff comments from the Department of City Planning dated 1/8/21; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the board to be the lots affected; and, that the action of the clerk in giving notice of the hearing as stated shall be and is hereby ratified.

Motion passed unopposed.

The hearing for Cases #4434/#4435 were declared open.

Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>

Michael King, 405 John St., owner of 148 Greenwood St., addressed the board explaining his reasons for seeking the variance, providing details on the porch. Mr. King then explained his reasons for seeking the special permit for the driveway, providing details on the project.

Chairperson Parrish requested available documents.

Board Member Brown confirmed that this is a brand new home. In response to Board Member Brown's inquiry on non-permitted construction, Mr. King stated there was no ancillary garage, but a garage under. Board Member Brown inquired as to access of the garage absent a permit. Mr. King stated it would become part of the cellar if the relief was denied. There was further discussion on the same. In response to Board Member Brown's inquiry on the porch and setbacks, Mr. King provided and confirmed details on the original modular home. Board Member Brown inquired as to the hardship that would result were the variance denied. Mr. King noted snow accumulation and safety. Board Member Brown inquired as to the unique loss that would occur to Mr. King were the special permit denied. Mr. King responded to the same.

Board Member Decker confirmed whether the applicant was aware of the setback upon construction of the foundation. Which he acknowledged, further discussing the same, including his construction of the roof and its comparison with others in the neighborhood. Board Member Decker consulted with Commissioner Romanowicz clarifying the issue.

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

Board Member Paleologos clarified the location of the driveway entrance.

The hearing was declared closed.

After brief board discussion, a motion was made (SB) and seconded (RS) related to Case #4434 to grant a special permit under provisions of the City Code of New Bedford, relative to property located at the Corner of Greenwood & Summit Street, Assessors' map 69 lot 11 in a Residential A [RA] zoned district, to allow the petitioner to construct a driveway entrance at the rear/side yard of the property on Summit Street and not on Greenwood Street per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 1200, 3100, 3110, 3149 and 5300-5330 & 5360-5390. In accordance with the City of New Bedford Code of Ordinances Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effect of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. Including consideration of the following: social, economic and community needs which are served by the proposal, traffic flow and safety, including parking and loading, adequacy of utilities and other public services, neighborhood character and social structure, and impact on the natural environment.

With no specific conditions, the general conditions are as follows: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of the special permit must be exercised

Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>

by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted or they will lapse.

ROLL CALL VOTE:

Board Member Parrish - Yes

Board Member Paleologos - Yes

Board Member Brown - Yes

Board Member Schilling - Yes

Board Member Decker - Yes

Motion passed 5-0

A motion was made (SB) and seconded (RS) related to Case #4435 to grant a variance under provisions of the City Code of New Bedford, relative to property located at the Corner of Greenwood & Summit Street, Assessors' map 69 lot 11 in a Residential A [RA] zoned district, to allow the petitioner to construct a front covered porch per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720-Appendix B, 2750 and 2751. Having reviewed this petition, including materials submitted and testimony heard, in accordance with the City of New Bedford Code of Ordinances and M.G.L. Chapter 40A, §10, the board finds that the applicable requirements have been addressed and met. This determination includes consideration of the following:

The board finds there are circumstances related to the soil conditions, shape or topography specifically effecting the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. In this instance, circumstances are that the shape of the lot with regard to the location of the existing structure render a variance necessary to construct a covered porch. Two, due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, the hardship is that without the porch inclement weather would present a substantial hardship. Three, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. Four, the desirable relief may be granted without substantial detriment to the public good.

With no specific conditions, the following general conditions apply: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of the special permit must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted or they will lapse.

ROLL CALL VOTE:

Board Member Parrish - Yes

Board Member Paleologos - Yes

Board Member Brown - Yes

Board Member Decker - No

Board Member Schilling - Yes

Motion passed 4-1

ITEM 2 – CASE #4436:

A motion was made (SB) and seconded (CP) to receive and place on file the communication from the Commissioner of Building & Inspectional Services dated 2/5/21; staff comments from the

Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>

Department of City Planning dated 2/5/21; a letter in opposition from Att. Michael Kehoe dated 2/16/21; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the board to be the lots affected; and, that the action of the clerk in giving notice of the hearing as stated shall be and is hereby ratified.

Motion passed unopposed.

The hearing was declared open, and the petitioner was invited to address the board.

Tracey Wallace, 75 Stephanie Place, referred the Board to her notice of appeal and presentation regarding Planning Board Case #20-26. She stated that on behalf of Southcoast Neighbors United she argues it fails to meet several objectives within City Ordinance 5470. She spoke on the conditions included in the 12/23/20 approval, including the landscaping plan. She stated the applicant seeks a more stringent condition, especially in light of the condition rendered of Case #32-17 on 9/27/17. She stated that they also request that employees residing at those residences be prohibited from walking through the buffer zone, as it would deter any vegetation growth. She asked for stipulation of the condition to require mature plantings to prevent pass-thru. She spoke with regard to Condition #9, related to traffic in the 12/23/20 approval commenting on the reasons, therefore. She stated that a training plan with repercussion to be determined is insufficient to maximize and minimize damage. She stated the company contracts with several other companies and the condition is unenforceable. She stated the company was found in violation of glass dumping in the buffer zone and as evidenced in the pictures presented, along with other violations. She commented that company should not be left to self-police related to traffic. She requested strict conditions in the form of a moratorium on Phillips Road along with company fines and a potential cease and desist. She then spoke on Condition #8 and hours of operation and the created nuisance to the abutting neighborhood. She discussed the matter further, stating no need for 24/7 hours of operation. She referred to City Ordinance 5470. She then referenced the 9/13/17 staff report and discussed the same. She requested a condition be set to include baseline ground water and site soil samples.

Board Member Brown clarified as to the applicant on the matter. Ms. Wallace, a member of Southcoast United, represented she filed the notice of appeal to the Planning Board's approval. Board Member Brown clarified the "organization". Wendy Graca, 26 Elizabeth Street, President of Southcoast Neighbors United, stated the organization is a Massachusetts non-profit organization, noting Ms. Wallace is a directly impacted resident and vice-president of the organization. Board Member Brown clarified the status of Ms. Wallace as a non-direct abutter. Board Member Brown continued with questions, including questions of specific distinct harm.

Board Member Paleologos clarified Ms. Wallace's 1,000 meter distance to the operation. There was then discussion on the personal effect to Ms. Wallace. Ms. Wallace commented on safety. Board Member Paleologos further clarified direct abutters with Ms. Graca.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Wendy Graca, 26 Elizabeth Street, stated she supports the application for appeal and opposes the Parallel Products project.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Irene Dupree, 1940 Phillips Road, stated she supports the appeal and absolutely opposes the Parallel Products project.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Cidalia Tavares, 1052 Pequot St., stated she supports the appeal and absolutely opposes Parallel Products. She described the traffic in the area and long-term effects of the proposed operation.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Jim Nyland, 47 Stephanie Place, stated he supports the appeal and opposes the Parallel Products plan.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Donna Poyant, 39 Ridgewood Rd., discussed her neighborhood and stated she is in favor of the appeal and opposes the Parallel Products project. She listed negative impacts she has experienced.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Councilor Brad Markey discussed his involvement with the neighborhood group. He raised the quality of life issues, including noise and traffic.

Board Member Brown clarified with Ms. Graca, on behalf of the organization, the matter before the board, including the previous hearing held. Ms. Graca spoke on the company's reputation and the conditions previously approved at the Planning Board. She explained their position in acting in opposition to this matter.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Councilor Naomi Carney requested she be recorded in support.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Councilor Morad noted several callers, including herself, wishing to be heard.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Zeb Arruda, 103 Longview Road, spoke in support of the appeal, including the residential neighborhood impacts, hours of operation and safety.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, Councilor Maria Giesta asked to be recorded in favor of the appeal and of the residents' and their quality of life.

In response to Chairperson Parrish's invitation to speak or be recorded in favor or opposition, State Representative Paul Schmid spoke in favor of the appeal. He noted the two recycling plants in his district and the resulting property value decrease.

Board Member Brown noted for the record that he had read Att. Kehoe's motion to dismiss and noted they had heard from three city councilors and the state rep, not counting the residents, and that was enough for him. Chairperson Parrish acknowledged his comments.

Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>

Councilor Linda Morad, after requesting an opportunity to speak, requested the board acknowledge that, absent an opportunity to speak, there are many people on the call in support of this appeal and opposed to the project. She implored the board to listen to the community and send the decision back, explaining her reasons, therefore.

Chairperson Parrish noted that the board had heard ½ hour worth of helpful and compelling comments on the matter. She suggested moving forward, and invited participants to speak or be recorded in opposition.

In response, Att. Michael Kehoe addressed the board on behalf of the owner SMRE 100 LLC, stating that his client opposed the appeal. He explained his grounds for the same, by way of substantive and procedural deficiencies, et cetera. He raised confusion in who exactly is bringing the appeal and referred to his written objection within the record. He visited substantive issues, qualifying without waiver of procedural defects. He also visited his procedural grounds for the opposition, including that neither the individual nor the entity are an abutter. He then continued to discuss other reasons why the request for appeal, under standards, is fatal. He revisited his argument on substantive standards, listing materials presented that the Planning Board possessed. He noted the Zoning Board of Appeals purview and duties by law. He also represented the extent of the Planning Board's consideration already exhibited with this matter and provided case law citations. He stated they had fallen short of meeting their burden.

There was no response to Chairperson Parrish's invitation to speak, be recorded or ask questions in opposition.

By way of rebuttal, Wendy Graca, Southcoast Neighbors United, spoke to Att. Kehoe's comments and statements of previous hearings. She noted the concerns at this point are far more informed. She took offense at the description of neighbor comment as anecdotal. She addressed the organization's mailing address and community purpose.

Tracy Wallace addressed comments on the procedural issues raised and read excerpts of the approval into the record.

By way of rebuttal, Att. Kehoe explained his previous comments. He added further reasoning for his position.

Board Member Paleologos inquired as to any further evidence from actual abutters and their impacts.

In response, Donna Poyant, 39 Ridgewood Rd., stating she is an abutter, expressed her concerns related to her property value, as well as the traffic and noise.

Wendy Graca noted that houses recently built, which are direct abutters, are owned by the same construction company working for that company. They are not longstanding residential homeowners.

With permission, Tim Cusson, Parallel Products, expressed confusion as to who the applicant is; be it Wendy Graca, Neighborhood United or Tracy Wallace. He requested clarification on the issue. He stated the homes Ms. Graca just referred to are owned by Parallel Products.

With permission, Tracy Wallace re-addressed the “anecdotal” comment, and referred the board to a study related to city ordinances regarding ground water contamination.

The hearing was declared closed.

There was board discussion amongst the members, including the members’ role in determining whether site plan review made an error, the change in the area traffic, quality of life issues expressed, the SMRE 100 LLC case presentation, standing, further opportunity to be heard, deference to other boards’ determinations, clarification on the requested action for this board.

City Solicitor Elizabeth Lydon provided comment on standing to appeal, site plan review statutes and standings/standards. She noted the board is being asked to modify a decision, which is outside of its authority, unless for clerical errors, et cetera. The Planning Board is the authority for the issues at hand. She suggested the board state the appeal did not provide sufficient grounds for basis of appeal, or that they did and that the Planning Board should take another look at it meeting all criteria under site plan review. Mrs. Lydon read the same into the record and added further comment on the board members’ task before them.

There being no further discussion, a motion was made (SB) and seconded (CP) to grant Appeal #4436 motion to grant administrative appeal under provisions of the City Code of New Bedford relative to property located at 100 Duchaine Boulevard, Assessors’ Map 134 Lots 5 & 462; & Map: 133 Lot: 67 in an Industrial C [IC], Mixed Use Business [MUB], and Residential A [RA] zoned districts, to grant the petitioner to overturn the Planning Boards’ (December 23, 2020) decision approving the Site Plan for expansion of an existing glass and plastics recycling and processing facility; including two building additions, at 23,050+ and 22,819+ respectively, solar canopies, a railroad line spur, and associated site improvements per plans filed. Motion to approve the Administrative Appeal: that the appeal of the petitioner be granted per the Administrative Appeal Process under provisions of Chapter 9, Comprehensive Zoning Sections 5220, 5220 and 5223. Having reviewed this petition in light of the City of New Bedford Code of Ordinances under Chapter 9, Sections 5220 and 5223, the board finds the following facts:

- Approval does not meet the objectives stated by the City of New Bedford Planning Board Site Plan Review Ordinance, Section 5471 and outlines Section 5471-5479A.

ROLL CALL VOTE: (after clarification)

Board Member Parrish - No

Board Member Paleologos - No

Board Member Brown - Yes

Board Member Decker - No

Board Member Schilling - Yes

Motion Failed 3-2

ITEM 3 – CASE #4437:

A motion was made (SB) and seconded (CP) to receive and place on file the communication from the Commissioner of Building & Inspectional Services dated 2/5/21; staff comments from the Department of City Planning dated 2/5/21; a letter of support from War 6 Councilor, Joseph D.

Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>

Lopes dated 2/5/21; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the board to be the lots affected; and, that the action of the clerk in giving notice of the hearing as stated shall be and is hereby ratified. Motion passed unopposed.

The hearing was declared open, and the petitioner was invited to address the board.

Peter Andrade, 284 Clifford Street, building/property manager of 95-127 West Rodney French Blvd, LLC, discussed the building's present zoning and their special permit request to accommodate a future tenant in medical use.

In response to Board Member Decker, Mr. Andrade stated there had been no prior medical use in the building.

Chairperson Parrish inquired as to the nature of the medical use, which Mr. Andrade agreed was typical chiropractic medical use.

Board Member Decker inquired as to building/tenant operations, such as hours of operation. Mr. Andrade explained the varying hours of some of the tenants, as well as the location of the proposed tenant.

In response to Chairperson Parrish's invitation to speak or be recorded in favor, Jeff Sanders, Winslow & Sanders introduced Dr. Crabbe, who detailed his years of practice and excitement for his proposed tenancy. He discussed his planned business and employees.

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

The hearing was declared closed.

After brief board discussion, including utilization of the business space, a consultation by Board Member Decker with Commissioner Romanowicz related to the medical use application being specific to the operator, not the building space, a motion was made (SB) and seconded (RS) to grant a special permit under provisions of the City Code of New Bedford, relative to property located at 95-127 W. Rodney French Blvd, Assessors' map 15 lot 280 in an Industrial B [IB] zoned district, to allow the petitioner to operate a medical office known as "Crabbe Chiropractic" per plans filed, which requires a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230 -Appendix A, 2400, 2410, 2420, 2421, 2422, 2430, 2431, 2432, 4600A-4370A, 5300-5330 & 5360-5390. In accordance with the City of New Bedford Code of Ordinances Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effect of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. Including consideration of the following: social, economic and community needs which are served by the proposal, traffic flow and safety, including parking and loading, adequacy of utilities and other public services, neighborhood character and social structure, and impact on the natural environment.

With no specific conditions, the general conditions are as follows: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of the special permit must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted or they will lapse.

ROLL CALL VOTE:

Chairperson Parrish - Yes

Board Member Paleologos - Yes

Board Member Brown - Yes

Board Member Schilling - Yes

Board Member Decker - Yes

Motion passed 5-0

3. ACCEPTANCE OF MINUTES:

A motion was made (AD) and seconded (RS) to approve the minutes of the January 21, 2021 meeting, related to cases #4400; #4432; #4433 and other continued cases.

Motion passed unopposed.

4. ADJOURNMENT

The meeting was adjourned at 8:01p.m.

NEXT MEETING IS SCHEDULED FOR THURSDAY, MARCH 18, 2021



Stephen Brown, Clerk

2/23/21

Date