



City of New Bedford Department of City Planning

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MAYOR
JON MITCHELL

PLANNING DIRECTOR
JENNIFER CARLONI

ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS
VIRTUAL MEETING
Thursday, May 20, 2021

MINUTES

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

ABSENT: None

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

2021 JUL 27 AM 8:14
CITY CLERK
OFFICE OF THE CITY CLERK
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 – CASES #4438/#4439:

Petition of: St. Lawrence Church Corp Parsonage (PO Box 2577, Fall River, MA 02720) & Charing Cross Realty Trust, C/O William Luster (2 Centennial Drive, Peabody, MA 01960) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2400 (non-conforming uses and structures), 2410 (applicability), 2420 (non-conforming uses), 2421 (change or substantial extension of the use), 2422 (change from one conforming use to another, less detrimental, nonconforming use), 2430 (nonconforming structure, other than single- and two-family structures), 2431 (reconstructed, extended or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to substantially greater extent), 5300-5330 & 5360-5390 (special permit); relative to property located at 563 County Street, Assessors' Map 58 Lot 259, in a Mixed Use Business [MUB] zoned

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district. The petitioner proposes to convert the existing building into fifteen (15) residential units per plans filed.

A motion was made (SB) and seconded (CP) regarding the above-named cases that the public hearing be held concurrently. Motion passed unopposed.

Board Member Decker raised questions on the matter regarding the variance, which he believed had been addressed. Ms. Goncalves confirmed the same, clarifying the board will be hearing Case #4438 only.

A motion was made (SB) and seconded (RS) regarding Case #4438/#4439 to receive and place on file the communication from the Commissioner of Buildings & Inspectional Services dated 3/5/21; staff comments from the Department of City Planning dated 5/7/21; letter in opposition from Pamela Borges and Crisanto Dos Santos, dated 3/16/21; letter in opposition from Jessica Fernandes Gomes, dated 3/18/21; letter in opposition from Mrs. Denault, dated 5/20/21; 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.

Chairperson Parrish declared the hearing open.

Att. Chris Saunders, representing the petitioners, noted the original variance request included parking reduction and green space/density requirements. Att. Saunders inquired as to the present opinion whether a variance for green space/density requirements is needed. Commissioner Romanowicz needed to look into the same.

Att. Saunders stated he would then proceed with both the special permit and variance for a green space/density waiver at this time.

He provided a history of the project for the board related to this 35 year vacant building. He explained their revitalization project, consisting of residential apartments in line with the city master plan. The special permit seeks to change the non-conforming use, as well as the variance related to the single 10,000 s/f unit and the green space.

Att. Saunders explained the process history with the project, including past board appearances by other parties. He noted the additional parking now created and curb cuts revisions, which the planning board approved. Atty. Saunders addressed other issues already brought before boards/departments.

Att. Saunders addressed the letters received, some prior to resubmittal of the revised plan. His comments remarks to include parking, curb cuts, as well as the grammar school impact wherein the pastor is in favor of the project. He spoke on development of a nearby grass area/green space, as well as current criminal activity in the area which would be improved by the project. He spoke on other benefits and improvements to result from the project. He invited questions.

There were no board questions.

In response to Chairperson Parrish's invitation to speak or be recorded in favor, Susan Saulniers, 139 Orchard Street, nearby parishioner, spoke on the improvements made. She inquired as to promised shrubs to screen cars. She sought clarification on pollution concerns, as well as stones present at the new exit to support in and out traffic.

Att. Saunders spoke on the North Street entrance and the stones, as well as pollution impact and landscaping.

In response to Chairperson Parrish's further invitation to speak or be recorded in favor, Ms. Saulniers asked for clarification of the rectory and high school location/address. Att. Saunders provided clarification on the same, noting future action and DPI involvement.

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 discussion, to include re-use of the property, a motion was made (SB) and seconded (AD) to grant a special permit regarding Case #4438 under provisions of the City Code of New Bedford, relative to property located at 563 County Street, Assessors' Map 58 Lot 259, in a Mixed Use Business [MUB] zoned district, to allow the petitioner to convert the existing building into fifteen (15) residential units per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 2400, 2410, 2420, 2421, 2422, 2430, 2431, 2432, 5300-5330 & 5360-5390. In accordance with the City Code 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 the following specific conditions: The proposal requires special permit and site plan review by the Planning Board. Any conditions imposed by the Planning Board decision shall also be conditions of this special permit.

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:

Board Member Parrish – Yes

Board Member Paleologos – In favor

Board Member Brown – In favor

Board Member Decker – In favor

Board Member Schilling – In favor

Motion passed 5-0

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After consultation with Commissioner Romanowicz and Att. Saunders regarding the variance requirements/language. Commissioner Romanowicz stated a variance was not needed.

ITEM 2 – CASE #4444 – Petition of: Robert & Heidi Davis (44 Julie Place, New Bedford, MA 02740) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-Appendix B, side yard-FT), 2750 (yards in residence districts) and 2755 (side yard); relative to property located at 44 Julie Place, Assessors' map 81 lot 142 in a Residential B [RB] zoned district. The petitioner proposes to construct a kitchen renovation per plans filed.

A motion was made (SB) and seconded (CP) to receive and place on file communication from the Commissioner of Buildings & Inspectional Services dated 5/10/21; staff comments from the Department of City Planning dated 5/7/21; 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.

Heidi and Robert Davis, 44 Julie Place, thanked the board for the opportunity. She described the 18"x 90" need to extend their kitchen and explained the reasons for the same.

There were no board questions.

There was no response to Chairperson Parrish's 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.

Board Member Decker consulted with Commissioner Romanowicz on the variance specifics. Board Member Decker inquired of the Davises as to any conversation with their most affected neighbor. Ms. Davis stated they had spoken to all their neighbors, who said it was fine.

There being no further board discussion, a motion was made (SB) and seconded (CP) to grant a Variance under provisions of the City Code of New Bedford, relative to property located at 44 Julie Place, Assessors' map 81 lot 142 in a Residential B [RB] zoned district, to allow the petitioner to construct a kitchen renovation per plans filed, which requires a variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720-Appendix B, 2750 and 2755. 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 affecting 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 existing footprint of the building is close to the property line and relates to the shape of the property. Due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve

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substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, the hardship is that the applicant is a disabled veteran, and a new renovation would better accommodate his disability. 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 variance 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 Schilling – Yes
Board Member Brown - Yes

Board Member Paleologos - Yes
Board Member Decker – In favor

Motion passed 5-0

ITEM 3 – CASE #4445- Petition of: Christos & Phoebe Minias (33 Harold Street, Milton, MA 02186) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 1200 (lot frontage of a lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and actual physical vehicular access to the lot, said line to be measured continuously along a single street for the entire width of the lot. Vehicular access to a building site on the lot shall be exclusively through the legal frontage of the lot), 2400 (non-conforming uses and structures), 2410 (applicability), 2420 (non-conforming uses), 2421 (change or substantial extension of the use), 2422 (change from one conforming use to another, less detrimental, nonconforming use), 2430 (nonconforming structures, other than single- and two-family structures), 2431 (reconstructed, extended or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to substantially greater extent), 3100 (parking and loading), 3110 (applicability), 3140 (location and layout of parking and loading facilities), 3149 (special permit vehicular access to a building accessed from a public way does not constitute frontage of a lot) and 5300-5390 (special permit); relative to property located at 17 Johnny Cake Hill, Assessors' Map 53 Lot 151, in an Industrial A [IA] zoned district. The petitioner proposes to convert the commercial building into a single family residential dwelling per plans filed

A motion was made (SB) and seconded (CP) to receive and place on file communication from the Commissioner of Buildings & Inspectional Services dated 5/5/21; staff comments from the Department of City Planning dated 5/7/21; letter in opposition from Bruce Oliveira dated 5/19/21; letter in opposition from William King dated 5/19/21; letter in opposition from Roy Enoksen dated 5/19/21; letter in opposition Fred Toomey dated 5/20/21; 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.

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Ms. Minias explained the purchase of their property, its uses and rooms, which they have been using as a residential rental unit. They seek to convert the designation from commercial to residential.

Board Member Decker inquired as to the thought process that the property could be designated residential. There was conversation regarding the same, to include marketing and their purchasing intent.

Chairperson Parrish confirmed the current rental status of the property, as well as parking. Board Member Paleologos confirmed that the entire house is included in the rental. There was further discussion after inquiry by Board Member Schilling and Board Member Paleologos.

Board Member Decker inquired as to opposition letters received by the board. The Minias' indicated they were not aware of it. Board Member Decker explained the same related to uses and designations. Mr. Minias stated he spoke to neighbors about residential use.

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

In response to Chairperson Parrish's invitation to speak or be recorded in opposition, Att. Ryan Pavao, representing the owner of the Robeson House, an abutting neighbor, stated opposition to the proposal. Att. Pavao explained the same, including a shared driveway, and any classification change increasing use of the driveway easement as well as traffic and parking. He noted the primary nature of this Industrial A zoned area and noted past and potential issues with the property use as a residential rental unit. He added a note that the owners did not intend to live in the building at this time, and this merely creates a rental property. He directed the board's attention to the last page of the staff report, demonstrating entrance/egress and further commented on the same.

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

By way of rebuttal, Mr. Minias again noted his surprise at the opposition. He summarized the relationship between the neighbors. Regarding access with a family versus a business, he expects a business would generate more traffic. He discussed his own experience with the ingress/egress. He again noted their intent to eventually reside in the property.

By way of rebuttal, Att. Pavao noted congestion caused with only one resident vehicle. He noted the easement area in question is primarily used for their staff.

Board Member Paleologos clarified the number of available parking spaces as two. There being no further board questions, the hearing was declared closed.

Board Member Decker consulted with Commissioner Romanowicz as to the street parking status, as well as whether a residential use falls under the umbrella of an Industrial A zoned district. Commissioner Romanowicz explained the zoning versus use change.

Board Member Brown explained his position, noting no evidence that the easement would be more heavily burdened by the property's tax status change. There was further board discussion, such as any limit to the easement use.

A motion was made (SB) and seconded (CP) to grant a special permit under provisions of the City Code of New Bedford, relative to property located at 17 Johnny Cake Hill, Assessors' Map 53 Lot 151, in an Industrial A [IA] zoned district, to allow the petitioner to convert the commercial building into a single family residential dwelling per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 1200, 2400, 2410, 2420, 2421, 2422, 2430, 2431, 2432, 3100, 3110, 3140, 3149 and 5300-5390. In accordance with the City Code 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 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 Brown – Yes
Board Member Schilling - Yes

Board Member Paleologos - Yes
Board Member Decker – Yes

Motion passed 5-0

ITEM 4 – CASE #4446- Petition of: Matthew & Donna Azevedo (3904 Oasis Blvd, Cape Coral, FL 33914) and Ronaldo S. Gomes de Oliveira & C/O Timothy Walsh, Esq. (50 Homers Wharf, New Bedford, MA 02740) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulation), 2710 (general) and 2720 (table of dimensional requirements-Appendix B, minimum lot size (Sq. Ft.); relative to property located at SS Pequot Street, Assessors' map 136A lot 884 in a Residential A [RA] zoned district. The petitioner proposes to construct a single family dwelling per plans filed.

A motion was made (SB) and seconded (RS) to receive and place on file communication from the Commissioner of Buildings & Inspectional Services dated 5/10/21; staff comments from the Department of City Planning dated 5/7/21; 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.

Att. Tim Walsh, New Bedford, on behalf of the petitioner, stated they are seeking to build a single-family home in the city. He explained the related purchase and sale agreement and described the 7,474 s/f lot, just shy of the 8,000 s/f requirement. Att. Walsh described the planned structure/home, as well as similar dwellings in the neighborhood. He noted no opposition received from himself or the city councilor. He invited questions.

Board Member Decker confirmed that the property sale is contingent on a successful ruling this evening.

In response to Chairperson Parrish's invitation to speak or be recorded in favor, Rose Vieira 1109 Pequot, had questions and concerns about the water table during rainstorms and any potential water in her basement. She also wanted to know if the walking trails would be affected.

Att. Walsh represented that the walking trails will not be blocked off. He discussed the wetlands, being well behind the property line.

In response to Chairperson Parrish's invitation to speak or be recorded in favor, Att. Chris Saunders spoke in favor of the project.

In response to Chairperson Parrish's invitation to speak or be recorded in opposition, Ms. McKay, 1092 Pequot St., spoke of her own planned purchase of the property. She raised concerns about water.

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

By way of an opportunity for rebuttal, Att. Walsh again stated this project would be a nice addition to the neighborhood. He stated their engineers do not believe water will be an issue.

There was no rebuttal in opposition.

The hearing was declared closed.

Board Member Decker consulted with Commissioner Romanowicz regarding the lot square footage.

There being no board discussion, a motion was made (SB) and seconded (CP) to grant a **variance** under provisions of the City Code of New Bedford, relative to property located at SS Pequot Street, Assessors' map 136A lot 884 in a Residential A [RA] zoned district, to allow the petitioner to construct a single family dwelling per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700, 2710 and 2720 – Appendix B. 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 lot is undersized, and frontage is lost due to the unique shape of the

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lot. 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 it would effectively render the lot unbuildable as envisioned. Three, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. And 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 variance 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 Schilling – Yes
Board Member Brown - Yes

Board Member Paleologos - Yes
Board Member Decker – Yes

Motion passed 5-0

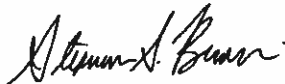
3. APPROVAL OF MINUTES:

A motion was made (AD) and seconded (RS) to approve the meeting minutes of April 22, 2021.
Motion passed unopposed.

4. ADJOURNMENT:

Chairperson Parrish adjourned the meeting at 7:33 p.m.
Whereupon proceedings concluded

NEXT MEETING SCHEDULED FOR THURSDAY, JUNE 17, 2021



Stephen Brown, Clerk

July 26, 2021

Date