



**MAYOR**  
JON MITCHELL

**PLANNING DIRECTOR**  
JENNIFER CARLONI

## City of New Bedford Department of City Planning

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

### ZONING BOARD OF APPEALS

**ZONING BOARD OF APPEALS  
VIRTUAL MEETING  
Thursday, October 20, 2022**

#### MINUTES

**PRESENT:** Laura Parrish, (*Chairperson*)  
Celeste Paleologos, (*Vice Chairperson*)  
Leo Choquette, Jr. (*Clerk*)  
Robert Schilling  
Debra Trahan

**ABSENT:** Stephen Brown

**STAFF:** Laura Ryan, *Staff Planner*  
Jennifer Carloni, *City Planner*  
Danny Romanowicz, *Commissioner of Buildings, and Inspectional Services*

CITY CLERK

2022 MAR 29 PM 12:53

#### **1. CALL TO ORDER**

Chairperson Parrish called the meeting of the City of New Bedford Zoning Board to order at 6:04 p.m. and provided instructions and procedures for the virtual meeting.

Chairperson Parrish notified all parties that only four board members will be present for this evening's hearings, which would therefore require a unanimous vote to pass. She afforded each petitioner the opportunity to continue their matter for hearing before a full board. Each petitioner elected to go forward this evening.

#### **2. PUBLIC HEARINGS:**

**ITEM 1 – CASE #4501:** Petition of: Tetrault Real Estate LLC (161 Wilbur Avenue, Somerset, MA 02725) & Michael Brier, Recovery Connection Centers of America, Inc., (381 Wickenden Street, Providence, RI 02903) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations – Appendix-A, Commercial: #25 – Medical offices, center, or clinic); relative to the property located at 268-270 Union Street, Assessors' Map 46, Lot 20, in a Mixed Used Business [MUB] zoned district. The petitioner is proposing to operate a medical clinic named "Recovery Connection Centers of America" per plans filed.

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<http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>.*

A motion was made (LC) and seconded (RS) to receive and place on file the communication from the Commissioner of Buildings & Inspectional Services dated 10/13/22; staff comments from the Department of City Planning dated 10/2/22; application cover letter and memorandum of law dated 8/17/22 from Benjamin Fierro; letter in opposition from Att. Michael J. Livingstone dated 10/7/22; written motion in opposition from City Council referred to Zoning Board dates 10/15/22; letter in support from Robert Ransbottom dated 10/16/22; 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 reported they had been alerted to public comments of people wishing to have this meeting in person, which she stated would occur on 11/17/22. She read into the record an e-mail from Att. Benjamin Fierro to the solicitor's office related to a agreeing to the continuance.

A motion was made (LC) and seconded (CP) to receive and place on file the 10/18/22 letter of Benjamin Fierro, along with a motion to continue the hearing of Case #4501 to November 17, 2022, at 6:00 p.m. in person at New Bedford Main Public Library.

Motions passed unopposed.

**ITEM 2 - CASE #4372 - Request for Extension.** Attorney Michael A. Kehoe on behalf of 117 Union Street LLC and Moby Dick LLC (117 Union Street, New Bedford, MA 02740) requests a second extension of the Zoning Board of Appeals decision approving Case #4372 for a Special Permit with conditions recorded May 7, 2019; relative to property located at 115,117,121 Union Street, 7N. Second Street & 127-129 Union Street, Assessors' Map 53, Lot 40,41,215, 216,146 in a Mixed-Use Business [MUB] zoned district. The applicant states that due to the following Covid-19 related issues: requests that had to be acted upon by other City Boards/Commissions, and funding. The applicant has been unable to commence the project as anticipated. The applicant seeks a second extension of the decision for an additional one-year period in order to allow for the project to commence.

A motion was made (LC) and seconded (RS) to receive and place on file the letter of request for extension from Att. Michael Kehoe in Case #4372.

Motion passed unopposed.

David Houghton, City Solicitor, all related business having been heard, requested he be excused from proceedings.

**ITEM 3 - CASE #4459 - Request for Extension.** Attorney Marc R. Deshaies on behalf of Cruz Development (1 John Eliot Square, Roxbury, MA 02119) requests an extension of the Zoning Board of Appeals decision approving Case #4459 for a Special Permit with conditions recorded October 7, 2021; relative to property located at 35 Kearsarge Street, Assessors' Map 112, Lot 3A in a Residential A [RA] zoned district. The applicant states that due to the effects of the Covid-19 Pandemic, the applicant has been unable to commence the project as anticipated. The applicant seeks an extension of the decision for an additional one-year period in order to allow for the project to commence.

A motion was made (LC) and seconded to grant the request of Marc Deshaies for extension in Case #4459.

**ITEM 4 - CASE # 4504 – Petition of: Wendy Tierney (1038 Pequot Street, New Bedford, MA 02745) for a Variance under Chapter 9, Comprehensive Zoning Sections 2000 (use of dimensional regulations), 2700 (Dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-Appendix B, side yard ft.), 2750 (yards in residence district), 2755 (side yard); relative to the property located at 1038 Pequot Street, Assessors' Map 136A, Lot 956, in a Residential A [RA] zoned district. The petitioner is proposing the construction of a two-car garage addition, with a family room and a three-season room on the upper level per plans filed**

A motion was made (LC) and seconded (CP) to receive and place on file the communication from the Commissioner of Buildings & Inspectional Services dated 10/13/22; staff comments from the Department of City Planning dated 10/4/22; 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.

Paul Tierney, Pequot Street, explained to the board their garage plans, noting that by not cutting into their existing foundation they go over the lot requirement by 1'.

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

In response to Chairperson Parris's invitation to speak or be recorded in opposition, neighbor Stacey Macaroco expressed concern that the current plans still have a side window, which they had discussed removing.

Paul Tierney confirmed they had agreed to change the plans to remove the window facing their house.

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

The hearing was declared closed.

With no further board questions or comments, a motion was made (LC) and seconded (CP) to grant a variance relative to the property located at 1038 Pequot Street, Assessors' Map 136A, Lot 956, in a Residential A [RA] zoned district, to allow the petitioner to construct a two-car garage addition, with a family room and a three-season room on the upper level per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 2000, 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

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consideration of the following: The board finds there are circumstances relating to the soil conditions, shape or topography which especially effect the land or structure in question, but which do not effect generally the zoning district in which the land or structure is located. Due to the 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. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning bylaw. And 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.

At Chairperson Parrish's suggestion and Ms. Carloni's clarification, the condition of removing the east side garage window was added to the motion.

**ROLL CALL VOTE:**

Board Member Paleologos - Yes

Board Member Schilling – Yes

Board Member Choquette – Yes

Chairperson Parrish – Yes

**Motion passes 4-0**

Chairperson Parrish recused herself from hearing the following matters.

**ITEM 5 - CASES #4502/#4503**

**CASE # 4502** - Petition of: Community Economic Development Center of SE MA, C/O Corinn Williams (PO Box 63005, New Bedford, MA 02746) for a Variance under Chapter 9, Comprehensive Zoning Sections 3000 (general regulations), 3110 (Applicability), 3130 (table of parking loading requirements-Appendix C, multi family dwelling, business engaged in retail sale of goods and services, not elsewhere enumerated herein); relative to the property located at 1418-1440 Acushnet Avenue, Assessors' Map 99, Lot 29, in a Mixed Use Business [MUB] zoned district. The petitioner is proposing the redevelopment of the Capitol Theater into a commercial and residential building per plans filed.

**CASE #4503** - Petition of: Community Economic Development Center of SE MA, C/O Corinn Williams (PO Box 63005, New Bedford, MA 02746) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2000 (use of dimensional regulations), 2400 (nonconforming uses and structures), 2410 (applicability), 2420 (nonconforming uses), 2421 (change or substantial extension of use), 2422 (change from one nonconforming 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); relative to the property located at 1418-1440 Acushnet Avenue, Assessors' Map 99, Lot 29, in a Mixed Use Business [MUB] zoned district. The

**petitioner is proposing the redevelopment of the Capitol Theater into a commercial and residential building per plans filed.**

A motion was made (LC) and seconded to hold the public hearings on the cases concurrently, as they regard the same property.

Motion passed unopposed.

A motion was made (LS) and seconded (DT) to receive and place on file the communication from the Commissioner of Buildings & Inspectional Services dated 10/13/22; staff comments from the Department of City Planning dated 10/4/22; 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.

Sherry McTigue addressed the board on behalf of the Community Economic Development Center. While screen sharing, she explained the project and services to be offered, such as cooking and retail. She described the landlocked location and surrounding area. She described the plans for change of use to several residential apartments, along with the retail space, and she noted the historic tax credits available and the expected easement.

Steve Gioiosa, Civil & Environmental Consultants, described the project location of this historic building with commercial use. He noted the project creation of a community kitchen and related upgrades, to include a new sewer line for oil/grease removal. He addressed other utilities. He noted a ramp serving the building, which will be converted slightly and include dumpster space. He noted a small green space. He addressed the zoning intent for the area/facility. He addressed storm water management and parking. He welcomed questions.

After technical issues resolved, Mr. Gioiosa revisited his comments, including the community kitchen and other upgrades to the property, such as storm water management, sewer/water, and roof sedum trays/runoff. He noted the enclosed dumpster area that was previously mentioned, as well as the easement green space. He briefly detailed parking and anticipated pedestrian use. He addressed the requirements to be met for granting the variance.

There was no response to Acting Chairperson Paleologos' invitation to speak or be recorded in favor.

There was no response to Acting Chairperson Paleologos' invitation to speak or be recorded in opposition.

In response to Acting Chairperson Paleologos' inquiry as to tenant parking, it was clarified that there is no parking available on the lot.

Board Member Trahan requested information, Ms. McTigue explained the same, including the CEDC offices on site, tenant and retail space, training rooms, the community kitchen, et cetera. She compared it to Riverside Park in the summer. They discussed employment opportunities.

Jen Carloni encouraged the board to discuss their reasons to approve or deny.

Board Member Schilling stated he felt the project was good for the city and he saw no opposition.

Board Member Trahan agreed, as the project saves a historic building and improves the neighborhood. She noted shape and topography needs.

Acting Chairperson Paleologos expressed her support for the project and its benefit, her concerns having been addressed.

Board Member Choquette also expressed agreement for the project.

The hearing was declared closed.

A motion was made (LC) and seconded (DT) to grant a variance under provisions of the City Code of New Bedford, relative to the property located at 1418-1440 Acushnet Avenue, Assessors' Map 99, Lot 29, in a Mixed Use Business [MUB] zoned district, to allow the petitioner to redevelop the Capitol Theater into a commercial and residential building per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 3000, 3110, 3130 - Appendix C.

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 relating to the soil conditions, shape or topography which especially effect the land or structure in question, but which do not effect generally the zoning district in which the land or structure is located. In this instance, the circumstances are that there is no available space on the lot for parking. Due to the 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 they'd be unable to develop the project and serve the community needs. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning bylaw. And 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:**

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Board Member Paleologos - Yes  
Board Member Trahan – Yes

Board Member Schilling – Yes  
Board Member Choquette - Yes

**Motion passes 4-0**

A motion was made (LC) and seconded (DT) to grant a special permit in Case #4503 under provisions of the City Code of New Bedford relative to property located at 1418-1440 Acushnet Avenue, Assessors' Map 99, Lot 29, in a Mixed Use Business [MUB] zoned district, to allow the petitioner to redevelop the Capitol Theater into a commercial and residential building per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 2000, 2400, 2410, 2420, 2421, 2422, 2430, 2431, and 2432. In accordance with the City of New Bedford Code of Ordinances, Chapter 9, Section 5320, the benefit to the city and the neighborhood outweigh the adverse effects 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 or community needs served by the proposal; traffic flow and safety, including parking and loading; adequacy of utilities and other public services; neighborhood character and social structures and impacts 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 Schilling – Yes  
Board Member Trahan – Yes

Acting Chairperson Paleologos – Yes  
Board Member Choquette - Yes

**Motion failed 4-0**

Chairperson Parrish rejoined the meeting.

Jen Carloni reminded the board of the need to vote on two of the previous cases.

Chairperson Parrish revisited Case #4372 for a roll call vote on the request for extension.

**ROLL CALL VOTE:**

Board Member Schilling – Yes  
Board Member Paleologos – Yes

Board Member Choquette - Yes  
Chairperson Parrish – Yes

**Motion passed 4-0**

Chairperson Parrish revisited Case #4459 for a roll call vote on the request for extension.

**ROLL CALL VOTE:**

Board Member Schilling – Yes  
Board Member Paleologos – Yes

Board Member Choquette - Yes  
Chairperson Parrish – Yes

**Motion passed 4-0**

**ITEM 6 - CASE #4505 - Petition of: Vermette Enterprises Inc., (968 Kempton Street, New Bedford, MA 02740) and Nicholas Durant (98 State Street, new Bedford, MA 02740) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 4000 (special regulations), 4200-4260 (body art), 5000 (administration and procedures) 5300-5330 & 5360-5390 (Special Permit); relative to the property located at 982-984 Kempton Street, Assessors' Map 55, Lot 75, in a Mixed use Business [MUB] zoned district. The petitioner is proposing to operate a body art establishment named "Banner and Bone" per plans filed.**

A motion was made (LS) and seconded (CP) to receive and place on file the communication from the Commissioner of Buildings & Inspectional Services dated 10/13/22; staff comments from the Department of City Planning dated 10/4/22; 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.

Nicholas Durant, State Street, co-owner of the tattoo company, introduced James Trachte and his wife also on the call. Mr. Durant shared graphics of the proposed body art facility, a former smoothie shop. He provided some personal history and spoke briefly on his business partner Mr. Trachte and his wife. He spoke on the company goals related to serving the city.

Mr. Durant described the location and surroundings of the proposed shop. He noted street parking and six on-site spaces for the former quick service food establishment. He provided a floor plan for the facility, including handicap restrooms, and explained future employment expansion goals. Mr. Durant went through present photos, detailing the same and their plans. He noted regulations met and invited 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.

Jen Carloni encouraged board discussion, and after board discussion on the project, a motion was made (LS) and seconded (RS) to grant a special permit under provisions of the City Code of New Bedford relative to the property located at 982-984 Kempton Street, Assessors' Map 55, Lot 75, in a Mixed use Business [MUB] zoned district, to allow the petitioner to operate a body art establishment named "Banner and Bone" per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 4000, 4200-4260, 5000, 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 outweigh the adverse effects 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 or community needs served by the proposal; traffic flow and safety, including parking and loading; adequacy of utilities and other public services; neighborhood character and social structures and impacts on the natural environment.

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With the following general conditions: 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 Schilling – Yes  
Board Member Paleologos – Yes

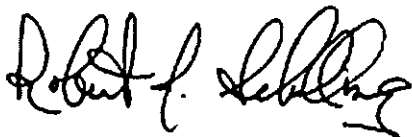
Board Member Choquette - Yes  
Chairperson Parrish – Yes

**Motion passed 4-0**

**3. ADJOURNMENT:**

With no further business to come before the board, Chairperson Parrish declared the meeting adjourned at 7:27 p.m.

**NEXT MEETING SCHEDULED NOVEMBER 17, 2022 – IN-PERSON**



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Robert Schilling, Acting Clerk

3/29/2023

Date