



JONATHAN F. MITCHELL
MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

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ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – 3rd Floor
WILLIAM STREET
NEW BEDFORD, MA
Thursday, March 21, 2019

MINUTES

PRESENT: John Walsh (*Vice – Chairperson*)
Stephen Brown, *Clerk*
Allen Decker
Robert Schilling
Laura Parrish

ABSENT: Leo Schick (*Chairperson*)

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

CITY CLERK'S OFFICE
NEW BEDFORD, MA
2019 MAR 24 A 10:34
CITY CLERK

1. CALL TO ORDER

Acting Chairperson Walsh called the meeting of the City of New Bedford Zoning Board to order at 6:00 p.m. He then explained the meeting process and protocol.

The Acting Chairperson explained that with only four board members present, the applicant would need a unanimous vote, and offered the applicants the opportunity to continue their matter to a meeting with a full board.

2. PUBLIC HEARINGS:

A motion was made (AD) and seconded (LP) to take Case #4367 out of order.
Motion passed unopposed.

Board Member Brown recused himself from hearing this matter.

Acting Chairperson Walsh notified the petitioner that being short one board member, she would need a unanimous vote to prevail.

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/>

ITEM 1 - Case # 4367 - Petition of 161 Popes Island LLC (867 Middle Road, Acushnet, MA (02743) and Whisk & Jane LLC, C/O Ericca Kennedy (PO Box 757, Wareham, MA 02571) for a Variance under Chapter 9, Comprehensive Zoning Sections 4100B (marijuana establishments and medical marijuana treatment centers), 4130B (general), 4131B (location requirements and restrictions), (ii) (no marijuana establishment or medical marijuana treatment center shall be located within:) a. (500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church excluding chapels located within a cemetery, substance abuse treatment facility, marijuana establishment, or medical marijuana treatment center). (ii) (the distance under this provision shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment or medical marijuana treatment center will be located); relative to property located at 161 Popes Island, Assessors' map 60 lot 26 in an Industrial A [IA] zoned district. The petitioner proposes to operate a marijuana establishment per plans filed.

A motion was made (AD) and seconded (RS) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 2/14/19; communication from the Office of the City Planner dated 3/1/19; the appeal package as submitted; the plans as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified. In addition, included in the motion were three pieces of correspondence; namely, correspondence of 2/13/19 Martha Worley, 3/21/19 Councilor Naomi Carney, 2/19/19 Mariah. Board Member Decker read the same into the record. Motion passed unopposed.

Ericca Kennedy submitted documents. A motion was made (AD) and seconded (LP) to receive and place on file. Motion passed unopposed.

Ms. Kennedy, 192 North Front Street, Unit 1, owner and founder of Whiskey & Jane, LLC, read an informational statement into the record in conjunction with a media presentation. She detailed various meetings regarding Whisk & Jane's interest in entering into a host community agreement with the city. She explained her requests for relief, including an adjacent park. Still reading into the record, Ms. Kennedy stated that the park is improperly designated.

Ms. Kennedy submitted documents from Danny Romanowicz as well as Attorney McDermott. A motion was made (AD) and seconded (LP) to receive and place on file. Motion passed unopposed.

As her presentation continued, Ms. Kennedy addressed various questions posed about her project and pointed out the conditions in the Popes Island adjacent parking lot.

Ms. Kennedy then explained the details, structural, et cetera, that make the location unique as related to business success, noting the lack of windows that result in no general public view of her business operations. She noted the building as a former strip club.

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Ms. Kennedy opposes the fact that any recreation occurs in the park space.

Ms. Kennedy submitted further documents. A motion was made (AD) and seconded (LP) to receive and place on file.

Motion passed unopposed.

Continuing to read, along with a continuing media presentation, Ms. Kennedy sought to address community concerns about the establishment of a cannabis business. She added that they are addressing parking with a shuttle service both by vehicles and water taxis, bridge closures, and their 750' distance to Noah's Park.

Ms. Kennedy then spoke concerning access, security, purchases and the expulsion of any product smoke. She addressed the business aspects of the business benefits to the city. Ms. Kennedy then addressed their interior building as well as detailed business plans.

Ms. Kennedy thanked the board and members of the community and reiterated her stance that the adjacent property should not be considered a park as relates to their zoning. She then invited questions.

There being no questions from the board, the public meeting was opened.

In response to Acting Chairperson Walsh's invitation to speak in favor, Councilor Dana Ribeiro stated she supports the business. She stated the plan is very well thought out and addresses various concerns. She stated that she has never seen children playing and referred to the area in question as a parking lot, not a park. She requested the board give consideration to this plan.

In response to Acting Chairperson Walsh's invitation to speak in favor, Councilor Brian Gomes asked the board to give real consideration to the matter and the zoning waiver. He stated this proposal is the best in all his years on the city council. He feels it will be a vital part of the city. He agreed that the only land across the street is a parking lot, not a park. He noted the proposed project and the area across the street are separated by a four-lane highway, resulting in no impact to the marina, Noah's Park or the City of New Bedford. He stated it is a retail business that will give back to the community.

In response to Acting Chairperson Walsh's invitation to speak in favor, Ominique Garner, Massachusetts advocate in various fields, stated she is in full support of Ms. Kennedy's proposal.

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

In response to Acting Chairperson Walsh's invitation to speak or be recorded in opposition, Martha Worley, Worley Beds Factory Outlet, Pope's Island, read a prepared statement, including her knowledge of the passing of the zoning ordinance in relation to safety, health and welfare of the community. She stated she and her fellow business owners are opposed to any change in the pertaining zoning restrictions. She stated the park is frequented every day. She stated these

important rules were made for a reason and they regulate land use. She asked the board to enforce the ordinance.

In response to Acting Chairperson Walsh's invitation to speak or be recorded in opposition, Att. Kurt Hagstrom, representing an LLC of entrepreneurs also trying to open a dispensary, stated there are some nine locations in New Bedford where one can open a dispensary not requiring a zoning variance. He commented on the positive presentation and business plan but noted this is the wrong location. He spoke of the thousands of people who cross the bridge daily, and presented the board with the Mass Code of Regulations 935 CMR concerning cannabis.

A motion was made (AD) and seconded (RS) to receive and place on file.
Motion passed unopposed.

Att. Hagstrom directed the board to the second page and spoke on outdoor advertising in relation to Fairhaven High School. He also spoke on the impact to city traffic patterns and local businesses. He noted that Noah's playground is one of the largest handicap accessible parks on the east coast. He stated other entrepreneurs have waited patiently for development in order to have their locations comply.

In response to Acting Chairperson Walsh's invitation to speak or be recorded in opposition, Councilor Linda Morad stated notwithstanding the presentation and business plan, it does not address the issue before the board; namely granting relief. Councilor Morad raised the item of a detriment to public good. She addressed the considerations for the board, such as soil conditions, hardship, et cetera. She stated the need for relief deals solely with the use chosen and is a self-imposed hardship. She noted the ordinance was implemented to protect negative impacts on sensitive land use areas, which includes parks. She explained that the ordinance should not be ignored on a case-by-case basis, as such would derogate from the intent of the same. She again raised use variances, which she stated are not granted in the city since zoning classification was done, and stated the request is not properly before the board. She asked the board to consider her concerns and deny the request.

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

By way of rebuttal, Ms. Kennedy stated the building was designed to be inconspicuous to passersby, including signage. She stated the Town of Fairhaven had been presented with the newspaper ad and expressed no opposition. She stated another similar business had expressed their support. Ms. Kennedy stated the particular building is imperative to them in order to place their businesses in one space and is necessary for their future harbor side plans.

In further opposition comments, Ms. Worley stated she has never been spoken to by Ms. Kennedy, and as an abutter she stated that the representation that all abutters were contacted is not entirely accurate.

Upon request of the city's attorney, a motion was made (JW) and seconded (RS) to close the hearing.

Motion passed unopposed.

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After board discussion including the thoroughness of the presentation, the narrow parameters for the board to consider, the deed and designation of the park, the prohibition instituted by the city council, essentially the petition being a use variance, and the impact on children/teens, a motion was made in the affirmative (AD) and seconded (LP) to grant a variance under provisions of the City Code of New Bedford to 161 Popes Island LLC/Whisk & Jane LLC, relative to property located at 161 Popes Island, Assessors' map 60 lot 26 in an Industrial A [IA] zoned district, to allow the petitioner to operate a marijuana establishment per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 4100B, 4130B, 4131B.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that with respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances. This determination includes consideration of the following findings:

First, that there are circumstances related to the soil conditions, shape or topography especially 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, the circumstances are the existing structure cannot be located on the property so as to comply with the setback for parks. Second, 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 literal enforcement would involve substantial financial hardship upon the petitioner. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinances, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no specific conditions, but with general conditions 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 granted 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 as follows:

Acting Chairperson Walsh - No

Board Member Parrish - No

Board Member Schilling - No

Board Member Decker - No

Motion failed 0-4

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Board Member Brown rejoined the meeting

ITEM 2 – Cases #4363/#4364 –

Case # 4363 - Petition of Lee Miguel, D/B/A Miguel's Electric (3 North Street Fairhaven, MA 02719) and SITEC, Inc. (449 Faunce Corner Road, Dartmouth, MA 02747) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of principal use regulations - Appendix A, commercial - #23 restaurant, fast food) and 5300 - 5330 & 5360- 5390 (special permit); relative to property located at 1353 Purchase Street, Assessors' map 66 lot 11 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to convert the building into a fast food pizza restaurant per plans filed.

Continued agenda item from February 14, 2019.

Case #4364 - Petition of Lee Miguel, D/B/A Miguel's Electric (3 North Street Fairhaven, MA 02719) and SITEC, Inc. (449 Faunce Corner Road, Dartmouth, MA 02747) for a Variance under Chapter 9, Comprehensive Zoning Sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability) and 3130 (table of parking and loading requirements, Appendix C-fast food drive- in, carry out restaurants); relative to property located at 1353 Purchase Street, Assessors' map 66 lot 11 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to convert the building into a fast food pizza restaurant per plans filed.

Continued agenda item from February 14, 2019.

Acting Chairperson Walsh recused himself from hearing this matter

A motion was made (SB) and seconded (LP) that the above-named cases be combined for hearing. Motion passed unopposed.

A motion was made (SB) and seconded (LP) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 1/25/19; communication from the Office of the City Planner dated 3/5/19; the appeal package as submitted; the plans as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Board Member Decker (acting as chairperson) notified the petitioner that there being only four board members a unanimous vote is required to prevail, and therefore can postpone hearing until the next meeting.

John Powel, SITEC, displayed an aerial view of the purchased tax possession parcel with the stipulation that the owner rehabilitate the building and obtain a use for the building. He displayed the rehabilitation work done. Mr. Powel stated the petitioner needs a special permit and variance so that the owner can finish the retro fit to service the tenant. Mr. Powel addressed the considerations for the special permit, noting the rehabilitation and potential restaurant use, and traffic flow and safety in relation to the limited size and room on the site, et cetera. Mr. Powel then addressed considerations for the variance, noting the age and irregularity of the lot, the stipulation to provide a tenant, and parking, et cetera.

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In response to Board Member Decker, Mr. Powel stated the proposed restaurant will be predominantly take-out, with counters inside. Mr. Powel also advised there'd be no exterior structural changes.

In response to Board Member Decker's invitation to speak or be recorded in favor, Att. Bailey, for the city, not in favor or opposition, provided background for the board on this tax possessed/abandoned property and the associated stipulations. He noted the city's informal extension of the standard deadline.

There was no response to Board Member Decker's further invitation to speak or be recorded in favor.

There was no response to Board Member Decker's invitation to speak or be recorded in opposition.

The hearing was declared closed.

There being no board discussion, a motion was made (SB) and seconded (LP) to grant a special permit under provisions of the City Code of New Bedford to Lee Miguel, d/b/a Miguel's Electric, relative to property located at 1353 Purchase Street, Assessors' map 66 lot 11 in a Mixed Use Business [MUB] zoned district, to allow the petitioner to convert the building into a fast food pizza restaurant per plans filed, which requires a Special Permit under provisions of Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230 – Appendix A #23, 5300 - 5330 & 5360- 5390. In accordance with City of New Bedford Code of Ordinances Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

This determination includes consideration of each of the following:

The social, economic or community needs served by the proposal. In this case, the proposed pizza restaurant would revitalize a vacant commercial storefront, while adding desirable food alternatives to serve the needs of the community and the economy. Concerning traffic flow and safety, including parking and loading, Purchase Street is a two-way street with permitted on street parking on both sides. Regarding the adequacy of utilities and other public services, there are adequate utilities for gas, electric, water and sewer in this area. Regarding the neighborhood character and social structures, this proposed development would be harmonious with the structure of the neighborhood by providing needed and desired services. Regarding the impacts on the natural environment, in this case there are no negative impacts on the natural environment. Regarding potential fiscal impact, including impacts on city services, tax base and employment, the proposal would increase tax revenue, property values, and create jobs. The above requirements are met.

With no specific conditions, but with general conditions as follows: that the project be set forth according to the plans submitted with the application; that the applicant 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 this 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.

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Roll-call vote as follows:

Board Member Schilling - Yes

Board Member Brown - Yes

Board Member Decker - Yes

Board Member Parrish - Yes

Motion passes 4-0

A motion was then made (SB) and seconded (LP) to grant a Variance under provisions of the City Code of New Bedford relative to property located at 1353 Purchase Street, Assessors' map 66 lot 11 in a Mixed Use Business [MUB] zoned district, to allow the petitioner to convert the building into a fast food pizza restaurant per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 3000, 3100, 3110 and 3130 Appendix C.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that in respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances. This determination includes consideration of the following:

First, the board finds that there are circumstances related to the soil conditions, shape or topography which especially 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, the circumstances are the proposed pizza restaurant is to be located on the smallest commercial lot in the area and that lot was previously an abandoned building. Second, 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 denial would deny the applicant of a viable tenant where the condition of the property sale was to reuse it within one year as specified in the deed as a condition of the tax lien sale from the city, which has been extended. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinances, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no special conditions, but with general conditions 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 granted 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.

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Roll-call vote as follows:

Board Member Brown - Yes

Board Member Parrish - Yes

Board Member Schilling - Yes

Board Member Decker - Yes

Motion passed 4-0

Acting Chairperson Walsh rejoined the meeting.

ITEM 3 - Case # 4365 - Petition of Sharon Street Realty Trust, C/O Jose Araujo Trustee (PO Box 91 Rochester, MA 02770) and Farland Corp (401 County Street, 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, front yard, side yard, rear yard, lot coverage by building % and green space), 2750 (yards in residence district), 2751 (front yard), 2753 (rear yard) and 2755 (side yard); relative to property located at 984 Sharon Street, Assessors' map 137A lot 21 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to re-construct a 12-unit residential apartment building on the same footprint previously destroyed by a fire per plans filed.

A motion was made (SB) and seconded (RS) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 2/14/19; communication from the Office of the City Planner dated 3/5/19; the appeal package as submitted; the plans as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Att. Renee Moniz, on behalf of Sharon Street Realty Trust, stated they seek a dimensional variance and described the property location. She stated the 32,000 S/F lot currently has one building upon it, a three-story 12-unit residential apartment building. She added that there was also a concrete foundation slab on the property, which previously had a similar three-story building 12-unit apartment building which burned down in 2009. She stated the lot purchase occurred in 2017 and the owner has been in the process of improving the property and now seeks to rebuild the destroyed building using the existing concrete slab. Approval of the variance would allow the owner to continue with the prior use, with no change to the neighborhood. She stated the slab is currently an eyesore on the neighborhood and an attractive nuisance. Att. Moniz submitted photos to the board.

A motion was made (AD) and seconded (LP) to receive and place on file.

Motion passed unopposed.

Att. Moniz displayed the property and explained the same, stating the rebuild is the most practical use of the lot, and as such they seek the variance for setbacks. She noted a large area of outcrop preventing the placing of the foundation elsewhere. She addressed hardship and the other board considerations for granting the variance.

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In response to Acting Chairperson Walsh's invitation to speak or be recorded in favor, Mr. Araujo, the property owner's son, stated, on his father's behalf, stating his father has multi-families in the city that are very well-maintained, and he is an excellent landlord. He noted his father's improvement to the property and asked the board to grant the request.

In response to Acting Chairperson Walsh's invitation to speak or be recorded in favor, Councilor Linda Morad stated she was in favor of the petition. She stated it was purchased with the intention of restoring the second building. She stated plans that will be submitted to the planning board contain the same footprint and building structure, and does not derogate from the neighborhood. She reminded the board that currently it is a slab, and noted his other properties, some 30 of them, are pristine. She stated she has received no opposition to the project and believes it will be beneficial to the city.

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

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

The hearing was declared closed.

There being no board discussion, a motion was made (SB) and seconded (RS) to grant a variance under provisions of the City Code of New Bedford relative to property located at 984 Sharon Street, Assessors' map 137A lot 21 in a Mixed Use Business [MUB] zoned district, to allow the petitioner to re-construct a 12-unit residential apartment building on the same footprint previously destroyed by a fire per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 – Appendix B, 2750, 2751, 2753 and 2755.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that in respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances. This determination includes consideration of the following:

First, the board finds that there are circumstances related to the soil conditions, shape or topography which especially 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, the circumstances are that soil conditions prohibit a foundation in another area and are likely the reason for the original structures on the parcel. Construction on the existing foundation would be necessary and advantageous. Existing conditions are an attractive nuisance. 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 if the relief is not granted to reconstruct the building destroyed by fire, the site would only be operating at 50% of original units. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of

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the zoning ordinance or bylaw, and that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinances, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With the following special conditions:

- The project requires approval by the New Bedford Planning Board, and any conditions imposed by the planning board decision shall also be conditions of this variance.

General conditions 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 granted 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 as follows:

Board Member Walsh - Yes

Board Member Brown - Yes

Board Member Decker - Yes

Board Member Schilling - Yes

Board Member Parrish - Yes

Motion passed 5-0

ITEM 4 – Case # 4366 - Petition of: David and Donna DeMello (88 Newton Street, New Bedford, MA 02740) for a Variance under Chapter 9, Comprehensive Zoning Sections 2300 (accessory building and uses), 2310 (general), 2330 (accessory structures), 2331 (private garage), 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements - Appendix B, side yard), 2750 (yards in residence district) and 2755 (side yard); relative to property located at 88 Newton Street, Assessors' map 51 lot 42 in a Residential B [RB] zoned district. The petitioner proposes to construct an 18'x21'x9' metal garage per plans filed.

A motion was made (SB) and seconded (LP) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 2/14/19; communication from the Office of the City Planner dated 3/5/19; the appeal package as submitted; the plans as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

David DeMello, Newton Street, New Bedford, stated that they are seeking to stay in New Bedford, but need to make their property conducive to their needs. He noted the items they have purchased over the years, some of which have been stolen, and they want to put up a metal shed.

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He stated for it to look right in the yard, it would be within 2' of their neighbor's fence. He stated he spoke to his abutter, who has no problem with it. He stated he is trying to keep his stuff safe and do the right thing by getting a permit. He stated they are currently using a tent and another 8'x10'shed but want to be able to lock up everything safely.

Acting Chairperson Walsh confirmed the shed would be on the right side of the house.

Board Member Decker confirmed the pool would have to be removed. Mr. DeMello stated they are trading off one the pool for the garage.

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

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

The hearing was declared closed.

After brief board discussion, including the lack of neighbor opposition and the state of the neighborhood, a motion was made (SB) and seconded (LP) to grant a variance under provisions of the City Code of New Bedford relative to property located at 88 Newton Street, Assessors' map 51 lot 42 in a Residential B [RB] zoned district, to allow the petitioner to construct an 18'x21'x9' metal garage per plans filed, which requires a Variance under Chapter 9, Comprehensive Zoning Sections 2300, 2310, 2330, 2331, 2700, 2710, 2720 - Appendix B, 2750 and 2755.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that in respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances. This determination includes consideration of the following:

First, the board finds that there are circumstances related to the soil conditions, shape or topography which especially 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, the circumstances are the proposed location of the shed due to the configuration of the yard and location of existing driveway and curb cut. 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 previous theft of applicant's property necessitating a shed and creating a circumstance where the applicant would have to move due to lack of storage space if relief was denied. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinances, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request,

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/>

the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no specific conditions, but 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 granted 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 as follows:

Board Member Walsh - Yes

Board Member Brown - Yes

Board Member Decker - Yes

Board Member Schilling - Yes

Board Member Parrish - Yes

Motion passed 5-0

3. APPROVAL OF MINUTES

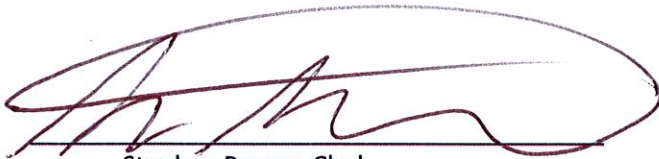
A motion was made (JW) and seconded (SB) to receive and place on file the meeting minutes of February 2019, which addressed Cases #4360; 4361; 4362.

Motion passed unopposed.

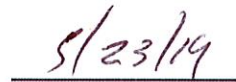
4. ADJOURNMENT:

The meeting was declared adjourned at 8:15 p.m.

NEXT MEETING SCHEDULED FOR April 11, 2019.



Stephen Brown, Clerk



Date