



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, May 23, 2019

MINUTES

- PRESENT:** Allen Decker (*Acting – Chairperson*)
Stephen Brown, *Clerk*
Robert Schilling
Celeste Paleologos
- ABSENT:** Leo Schick (*Chairperson*)
- STAFF:** Angela Goncalves, *Assistant Project Manager*
Danny Romanowicz, *Commissioner of Buildings and Inspectional Services*

CITY CLERKS OFFICE
NEW BEDFORD, MA
2019 JUN 26 A 11:12
CITY CLERK

1. CALL TO ORDER

Acting Chairperson Decker called the meeting of the City of New Bedford Zoning Board to order at 6:00 p.m. Acting Chairperson Decker then explained the meeting process and protocol. Acting Chairperson Decker advised the proponents that with only four board members present, a unanimous vote would be required to prevail. He offered proponents an opportunity to continue their matters to a full board meeting. All parties elected to proceed.

2. PUBLIC HEARINGS:

ITEM 1 - CASES #4374 - Petition of: Manuel Almeida (8 Wild Rose Lane, Acushnet, MA 02743) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-Appendix B, rear yard & minimum lot size), 2750 (yards in residence district) and 2753 (rear yard); relative to property located at 293 Princeton Street, Assessors' map 113 lot 126 & 128 in a Residential B [RB] zoned district. The petitioner proposes to convert an existing two story, single family residential dwelling unit into a two (2) residential dwellings per plans filed. (Continued Agenda Item from April 25, 2019).

A motion was made (SB) and seconded (LP) that the following be received and placed on file: communications from the Commissioner of Buildings and Inspectional Services dated 3/25/19;
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communication from the office of the City Planner dated 4/5/19; 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 Brown noted that the following letters were submitted to the meeting packet: Correspondence letter from Nancy St. Gelais, dated May 20, 2019; correspondence letter from Charlie Cardoso, dated May 20, 2019; correspondence letter from Dave & Lauren Hoey, dated May 20, 2019; correspondence letter from Annette Avelar Galant, dated May 23, 2019; correspondence letter from Melissa Santos, dated May 23, 2019; and correspondence letter submitted this evening from Jean Linhares, dated April 26, 2019.

A motion was made (SB) and seconded (CP) to accept the letters and place the same on file. Motion passed unopposed.

Armando Pereira, Comprehensive Design Build Services, stated the two common ownerships lots represent 9,218 SF. He stated the applicant is therefore 782 SF under the 10,000 SF requirement for a two family.

He displayed an aerial view and explained the same. He stated the neighborhood shows both single and two-family homes. He described the single-family dwelling currently present on the lot. He stated the applicant seeks to eliminate the front porch of the existing residence in order to provide more frontage. He displayed the proposal and noted the hardship of a 30' rear requirement, currently only 28.1, creating an encroachment.

Mr. Pereira stated the owner looks to create a two-family where he will reside on the first floor with family members living on the second floor. He stated the property line to the house is 92', and by bringing the house to the west side, they will have 77'. He noted a curb cut which will be moved some 20' to provide off-street parking spots. He stated the existing structure is 1,413 SF with a proposed structure at 2,918 SF. He addressed the rear shortage and lot coverage shortage. Mr. Pereira noted there will be no encroachment on the side yard.

Mr. Pereira explained the proposed floor plans, adding that they will remove the front porch and provide a back deck with stairs. He displayed elevations, which he represented are within the neighborhood character.

Acting Chairperson Decker inquired as to the change in the side yard dimensions to the west side. Mr. Pereira explained the change represents the addition to the house.

Board Member Brown stated that what is before the board is the variance application and he noted the necessary criteria to grant the same. He referred to the abutter letters expressing concerns regarding increased density and inquired as to the proponent's circumstance that meets the criteria. Mr. Pereira stated the hardships are that the lot is under the required two-family size, along with the encroachment on the rear property line. Board Member Brown noted that the home is viable as a single-family.

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Acting Chairperson Decker noted that the ownership came after the zoning changes and the owner should have known at the time of purchase of the existing condition, representing his want rather than his need or hardship.

Mr. Pereira stated the family needs changed, creating a hardship, and the applicant is looking to accommodate himself and his family.

Board Member Brown confirmed the reasons for the design presented wherein the west side is not encroached on and frontage is added to by removing the porch.

Board Member Schilling confirmed with the applicant Manuel Almeida that he intends to live in the subject property with his family/mother-in-law if the variance is granted, but will move to another location if it is not allowed. In response to Board Member Brown, Mr. Almeida stated he wants his mother-in-law to have a separate living area.

In response to Acting Chairperson Decker's invitation to speak or be recorded in favor, Jean Linhares stated her family's home has been there for some 50 years. She pointed out there is more yard with this proposal than other yards in the neighborhood, along with off-street parking. She stated she prefers to have an owner-occupied property.

There was no response to Acting Chairperson Decker's further invitation to speak or be recorded in favor of the petition.

There was no response to Acting Chairperson Decker's invitation to speak or be recorded in Opposition of the petition.

The hearing was closed.

After brief board discussion and consultation with Commissioner Romanowicz, 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 293 Princeton Street, Assessors' map 113 lot 126 & 128 in a Residential B [RB] zoned district to allow the petitioner to convert an existing two story, single family residential dwelling unit into a two (2) story residential dwellings per plans filed which requires a Variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 -Appendix B, 2750 and 2753.

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:

The board finds that, one, 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 property shape is such that if the variance were not allowed the building would not conform with the neighboring buildings in the area. Two, due to those circumstances especially effecting

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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 the existing structure would not be able to be converted into a two-family dwelling. Three, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. Four, 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 specific conditions. 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 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 Brown - Yes

Board Member Schilling - Yes

Board Member Decker - Yes

Board Member Paleologos - Yes

Motion passed 4-0

ITEM 2 – Case #4375 - Petition of: Jose Andrade (4 Old Pierce Road, Dartmouth, MA02747) and William H. Lockwood, Lockwood Architects (PO Box 95, Onset, MA 02558) for a Variance under Chapter 9, Comprehensive Zoning Sections 3100 (parking and loading), 3110 (applicability) and 3150 (size of parking space); relative to property located at 315-319 Dartmouth Street, Assessors' map 28 lot 244 in a Mixed Used Business [MUB] zoned district. The petitioner proposes to make interior and exterior alterations to suit a business on the 1st floor, and residential on the 2nd & 3rd floor at 315 Dartmouth Street, and also fit out a storage space in the rear of lot 307 on Edward Street 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 5/3/19; communication from the Office of the City Planner dated 5/10/19; 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.

Bill Lockwood, Lockwood Architects, on behalf of the petitioner, described the property in question, the former Homelyke Bakery. He noted the three principal structures joined together, consisting of commercial space as well as residential units on second and third floor. He explained

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the proposed uses for the property and stated the plan slightly reduces the footprint. He addressed the existing parking lot/driveway which is currently paved and contains approximately 6 parking spaces. Mr. Lockwood stated this has resulted in their request regarding size and number of parking spaces; the spaces being 19' rather than 20'.

In response to Board Member Brown, Mr. Lockwood stated the building is currently vacant and needs some relief to be viable.

There was no response to Acting Chairperson Decker's invitation to speak in favor of the petition. There was no response to Acting Chairperson Decker's invitation to speak or be recorded in opposition of the petition.

The hearing was closed.

After brief board discussion, narrowing the issues, a motion was made (SB) and seconded (CP) to grant a Variance related to parking space size under provisions of the City Code of New Bedford relative to property located at 315-319 Dartmouth Street, Assessors' map 28 lot 244 in a Mixed Used Business [MUB] zoned district to allow the petitioner to make interior and exterior alterations to suit a business on the 1st floor, and residential on the 2nd & 3rd floor at 315 Dartmouth Street, and also fit out a storage space in the rear of lot 307 on Edward Street per plans filed, which requires a Variance under Chapter 9, Comprehensive Zoning Sections 3100, 3110 and 3150.

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:

The board finds that, one, 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 "L" shape of the lot. 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 the that lot developed before zoning and literal enforcement would require demolition of significant parts of the existing building. 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.

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.

The specific conditions are as follows: This project requires approval by the Planning Board, and any conditions imposed by the Planning Board decision shall be conditions of this variance.

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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 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 Brown - Yes

Board Member Schilling - Yes

Board Member Decker - Yes

Board Member Paleologos - Yes

Motion passed 4-0

ITEM 3 – Case #4376 - Petition of: Welby Park Associates, LLC (1 Welby Road, New Bedford, MA 02745) and Christopher T. Saunders, Esq. (700 Pleasant Street, New Bedford, MA 02740) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of regulations-Appendix A, commercial #4 adult day care) and 5300-5330 & 5360-5390 (special permit); relative to property located at 34 Welby Road, Assessors' map 132E lot 99 in an Industrial A [IA] zoned district. The petitioner proposes to operate an adult day care facility per plans filed.

There was discussion of recusal amongst board members and Attorney Chris Markey. Att. Markey expressed his willingness to go forward, barring any board member's discomfort or partiality, as well as noting that appropriate disclosures had been made.

A motion was made (SB) and seconded (CP) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 5/3/19; communication from the Office of the City Planner dated 5/10/19; 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. Chris Markey, on behalf of Active Day, described the location of this adult daycare. Mr. Markey described the facility, now caring for 83 individuals, with the expansion plan to increase to 110. He stated the petitioner seeks to rehab the 1st floor. He noted hours of operation at 24/7, 365 days a year, barring Christmas and Thanksgiving. Mr. Markey stated the delivery of patients would result in very minimal traffic impact and the facility is located right off the highway. He noted this is very much consistent with the character and office atmosphere at Welby Park and provides a benefit to the community by having the room to service some additional 40 patients. He added there is no need for utility upgrades and changes are to the interior only. He invited questions.

Board Member Brown confirmed the petitioner is keeping the same building footprint.

In response to Acting Chairperson Decker's invitation to speak in favor of the petition, Mark

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Astrachan, building owner and builder, stated they are seeking expansion from their present location. He noted there are two other adult daycare centers in the Welby Park area.

In response to Acting Chairperson Decker's invitation to speak in favor of the petition, Armando Pereira, Comprehensive Design Build Services, stated this is a great opportunity for the elderly community. He stated while their families are working, this keeps them independent and their minds active. He expounded on the benefits. Mr. Pereira expressed his support for the project.

There was no response to Acting Chairperson Decker's further invitation to speak or be recorded in favor of the petition.

There was no response to Acting Chairperson Decker's invitation to speak or be recorded in Opposition of the petition.

The hearing was closed.

There being no board discussion, 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 34 Welby Road, Assessors' map 132E lot 99 in an Industrial A [IA] zoned district, to allow the petitioner to operate an adult day care facility per plans filed, which requires a special permit under provisions of Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230-Appendix A, and 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 use as an adult daycare facility would provide a needed community service for adult individuals with physical ailments and disabilities. Concerning traffic flow and safety, including parking and loading, are that at present 98% of the clients arrive by private shuttle, and the location is in a business park that provides off street parking via 80 parking spaces in the lot at the property. Regarding the adequacy of utilities and other public services, utilities in the area are adequate. Regarding the neighborhood character and social structures, the proposed use is consistent with the existing character of the neighborhood. Regarding impacts on the natural environment, the petitioner states there will be no negative environmental impacts. Regarding potential fiscal impact, including impacts on city services, tax base and employment, this will maintain a business at the address, maintain tax revenue, and increase employment.

With the following specific conditions:

That this project requires approval by the Conservation Commission and the New Bedford Planning Board. Any conditions imposed by the conservation commission and the planning board decision shall also be conditions of this special permit. General conditions are 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

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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 as follows:

Board Member Paleologos - Yes

Board Member Brown - Yes

Board Member Decker - Yes

Board Member Schilling - Yes

Motion passed 4-0

3. OLD/NEW BUSINESS:

A motion was made (RS) and seconded (SB) to approve the minutes of April 11, 2019 related to Cases #4368, #4369, #4370 and #4371.

Motion passed unopposed.

A motion was made (RS) and seconded (CP) to approve the minutes of March 21, 2019 related to Cases #4367, #4368, #4369, #4363, #4364, #4365, #4366 and #4367.


Motion passed unopposed.

4. ADJOURNMENT:

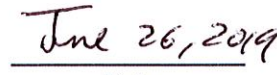
A motion was made (RS) and seconded (CP) to adjourn.

Motion passed unopposed.

NEXT MEETING SCHEDULED FOR JUNE 20, 2019.



Stephen Brown, Clerk



Date