



Zoning Board of Appeals

January 24, 2013 – **Minutes**

City Hall, 133 William Street, Room 314

****View Agenda****

Board Members Present:

Ian Comerford, Chairman
Jennifer Smith, Vice Chair
James Mathes, Clerk
Allen Decker
Donald Gomes

Board Members Absent:

Debra Raffa Trahan
Michael Amaral
Horacio Tavares

City Staff:

Danny D. Romanowicz, Commissioner of Buildings & Inspectional Services
Ray Khalife, Senior Planner

Cases Heard:

#4082
#4020B
#4083
#4084
#4085

The meeting was called to order at 6:08 p.m.

Chairman Comerford introduced members of the board and city staff. Mr. Comerford read the opening remarks along with the general requirements for granting a Special Permit/Variance.

Mr. Decker made a motion to move **Appeal # 4085 petition for a Variance** from the order of the Agenda to 1st that evening. Mr. Mathes seconded the motion. With all in favor, the motion carried.

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated January 7, 2013. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the plan be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Chairman Comerford declared the hearing open.

The Chair asked who would be representing the Club that evening. Mr. David Machedo, 8 Andes Court, Acushnet Ma. approached and said that he is the Chairman for Club S.S. Sacramento. He said they've noticed that a large volume of people waiting to use the ladies' bathroom for years so they felt at this time it would be beneficial for the community to build an 18 stall facility ladies' room. The Chair asked if anyone had any questions for Mr. Machedo. There were no further comments or questions for Mr. Machedo.

The Chair asked if anyone else was present in favor. Mr. David Lucio, 15 Blackmer Street, Fairhaven, Ma. approached and said that he is the 2nd Vice President of the Club. On behalf of what Mr. Machedo said, he felt the same and wanted to help out the female patrons in the feast so people can stay and not go home because of the waiting in line and just planning for the future.

The Chair asked if anyone else was present in favor. Mr. Brian Fernandes, 17 Jenkins Street, N.B., MA said he is the Acting President of the Club while the President is away. He felt that they need to separate the crowd of ladies waiting to use the restroom. If they had these stalls, then it would be easier for everyone.

The Chair asked if anyone else was present in favor. Mr. Steven Martins, Ward 2 City Councillor, approached and wanted to add that the Club has offered to build a ladies' bathroom on that side of the property. A couple of years ago, they came before this Board. They bought a house that was rundown and tore it down and expanded the feasts grounds. Now they're trying to grab all those people in the middle of the feast grounds. If you've been to the feast in the past, there are very long lines for the use of ladies' restrooms. They just want to continue to keep it on their property and just build an additional bathroom making it convenient for all those hundreds of thousands of people who attend the feast. They are no strangers to the City and they give back to the City every single day. They are members that are here and are committed in New Bedford. Also, they went in front of the Planning Board already who voted unanimously, also went before the City Council who voted unanimously, and then Mr. Romanowicz found a niche in that plan; they were told that they had to come before the ZBA and were more than happy to comply.

The Chair asked if anyone else was present in favor. No other favorable testimony heard. Then, the Chair asked if anyone were present opposed. No oppositions heard.

With no further questions or concerns, Chairman Comerford declared the hearing closed.

Ms. Smith motioned to grant Appeal # 4085 a Variance under provisions of the City Code of New Bedford to Club Madeirense S.S. Sacramento, Inc. 88 Tinkham Street New Bedford, MA 02746 relative to the property located at SS Tinkham Street New Bedford, MA 02746 Assessor's Map Plot 105, Lot 80 in a Mixed-Use-Business Zoned District and to allow the petitioner to construct a new 793 S.F. restroom facility and to relieve the petitioner of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2720 (Table of Dimensional Requirements Appendix B), 2750 (Yards in Residential Districts), 2753 (Rear Yards), 2755 (Side Yards) with no conditions and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a Building Permit be issued by the Department of Inspectional Services and Acted upon within one year.

Mr. Decker seconded the motion. With all in favor, the motion carried.

Roll Call Vote:

Ian Comerford – yes

Jennifer Smith – yes

James Mathes – yes

Donald Gomes – yes

Allen Decker – yes
Tally 5-0, motion passed

Scheduled Hearings:

Appeal # 4082

Notice is given that a public hearing on the Petition of: David Bovarnick, co-executor of the Estate of Cheryl Bovarnick, 56 Kearney Road, Needham, MA 02494 and Atty: Richard J. Manning 167 William Street New Bedford, MA 02740 **who petitioned the Zoning Board of Appeals for a Special Permit** under provisions of Chapter 9, Comprehensive Zoning relative to property located at 836 Pleasant Street, Assessor's Map Plot 59, Lot 8 in a Mixed-Use-Business Zoned District. **The petitioner proposes to operate a Subway franchise** which will require a Special Permit under Chapter 9, Comprehensive Zoning Section 2000 (Use and Dimensional Regulations), 2200 Use Regulations, (C) Commercial #18, Fast Food, 3000 (General Regulations), 3100 (Parking and Loading) 3110 (Applicability), 3120 (Special Permit), and 3130 (Table of Parking and Loading Requirements) and 5300-5390 (Special Permit).

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated January 3, 2013. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the plan be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Atty. Richard Manning, 167 William Street, N.B., MA approached to represent the case. He said also present with him was Jay Bovarnick, one of the brothers, as well as, Tony DeMelo, the builder. Ms. Andrade will be the franchisee running the store. Atty. Manning said the proposed building used to be Slade's Ferry Bank which has been vacant approximately nine years. The proposal is to locate a Subway Restaurant in the vacant area formerly occupied by the bank.

He suggested under the bylaws of a fast food restaurant because they are changing the use from a bank to a fast food restaurant under 2210; they must seek a Special Permit because they are in a Mixed-Use-Business District. As indicated in the introductory comments, he suggested the standard is to show there's a benefit to the neighborhood or a benefit outweighs any adverse consequences or affects of the proposed use. He would submit that there is actually substantial benefit to the community and neighborhood and the City as a whole and that there are no adverse consequences or affects by what they are proposing to do.

He continued to say that a Subway restaurant located at that location will fill a void in the neighborhood by providing fast low cost food with healthy alternatives. He finds that one of the issues that the Board may be concerned with is the traffic and parking. He stated that they appeared before the Planning Board in late December 2012 and they granted a Special Permit for the parking so the number of parking spaces presently

available is satisfactory with no alterations needed. Traffic flow will remain as it is. There's an entrance onto Purchase St. and on the side street. The traffic shouldn't be any different than when the bank was operating there. They really have only two peak hours which is during lunch and dinner. They will also be providing bathrooms in the facility. The restaurant will be accessible by the foot traffic from the surrounding locations. This has been a long and vacant space and now it will be utilized generating income. It will also provide employment looking at 1-2 full-time employees and several part-time positions.

Ms. Smith asked about the hours of operation. Atty. Manning suggested that the hours of operation will be from 7 A.M. to 9 or 10 P.M. and the parking lot will be used in conjunction with Walgreens.

Mr. Comerford asked if anyone else was present in favor. No other favorable testimony heard. Then, Mr. Comerford asked if anyone was present in opposition. No opposition heard.

Mr. Comerford stated there's a five minute rebuttable if anyone is interested. There being no further business, Mr. Comerford declared the hearing closed.

Mr. Comerford asked if there will be a drive-thru. Ms. Ana Andrade, 197 Bush St. Fall River, MA said there wouldn't be a drive-thru.

Ms. Smith motioned to grant Appeal # 4082 a motion to grant a Special Permit under provisions of the City Code of New Bedford to David Bovarnick, co-executor of the Estate of Cheryl Bovarnick, 56 Kearney Road, Needham, MA 02494 and Atty: Richard J. Manning 167 William Street New Bedford, MA 02740 relative to the property located at 836 Pleasant Street, Assessor's Map Plot 59, Lot 8 in a Mixed-Use-Business Zoned District and to allow the petitioner to operate a Subway Restaurant and to relieve the petitioner of Chapter 9, Comprehensive Zoning Section 2200 (Use Regulations), 2210 General, 2230 Table of Use Regulations, Appendix A #18, Fast Food Restaurant and 5300-5390 (Special Permit) with no conditions and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a Building Permit be issued by the Department of Inspectional Services and Acted upon within one year.

Mr. Decker seconded the motion.

Roll Call Vote:

Allen Decker – yes

Donald Gomes – yes

James Mathes – yes

Jennifer Smith – yes

Ian Comerford – yes

Tally 5-0, motion passed

Appeal # 4020B

Notice is given that a public hearing on the Petition of: **Acorn Management Co., Inc. Dana Ricciardi, President, 218 Willard Street, Quincy, MA 02169 and Riverbank Lofts, LLC, 218 Willard Street, Quincy, MA 02169 and Marc R. Deshaies, Esq. Perry, Hicks & Deshaies, LLP c/o Marc Deshaies 388 County Street, New Bedford, MA 02740 who petitioned the Zoning Board of Appeals for a Special Permit** under provisions of Chapter 9, Comprehensive Zoning relative to property located at 200 Riverside Avenue, Assessor's Map Plot 105, Lot 170 and Plot 111 Lot 155 in an Industrial A & B Zoned District & (Riverside Ave. Mill Overlay District). **The petitioner proposes to modify a previously approved Special Permit # 4020 at the recommendation of the building commissioner**, which would require a Special Permit under Chapter 9, Comprehensive Zoning Sections 4200A-4272A(vi) (Riverside Avenue Mill Overlay District) and 5300-5390 (Special Permits).

Chairman Comerford wanted to point out to Atty. Marc Deshaies that Mr. Decker would be removing himself from the hearing so only four members of the Board would be accountable to vote and had asked if he wanted

to proceed as is or if he wanted to postpone until all five members were able to vote. Atty. Deshaies opted to proceed with the hearing.

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated January 3, 2013. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the plan be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Atty. Marc Deshaies, law firm of Perry, Hicks & Deshaies, 388 County St., N.B., approached and said he was presenting for his client, Acorn Management Co., also present were Quintin Ricciardi of Acorn Management.

He stated that they were present in the nature of a modification to a previously granted Special Permit dated April 25, 2011 to correct some technical issues that arose from the conceptual phrase to the actual build out phrase. This property is the old Cliftex North building situated on the East side of Riverside Avenue abutting the Westerly banks of the Acushnet River.

The Site Plan that they asked for modification has been before the Planning Board on December 12, 2012 and on January 9, 2013 at which time, the Planning Board granted them a Special Permit to reduce parking from the required 252 to 232 parking spaces as well as granting approval of Site Plans. The previously submitted Site Plans have gone through one modification. He had with him a new full set of plans and five reduced copies of the plans incorporating the one modification as such he turned into the Board for review. Mr. Gomes motioned to receive and place on file. Mr. Mathes seconded the motion. With all in favor, the motion carried.

When they were in the development phase of this project, it was determined because of the conversion from commercial industrial to residential that about 5,000 sq. ft. of the building lay on filled tidelands. That small portion required Mr. Ricciardi, Acorn Management, to petition The Dept. of Environmental Protection for a new Chapter 91 Waterways license. What has happened on the modified Site Plan is referenced to what they call water dependent and non-water dependent use, they had to make available public access to the Acushnet River and on their plans they have public access along the Northerly side of the building with a walkway going down to the green space. Also, previously they had parking. The Commonwealth of Mass. had asked them to remove a certain amount of off-street parking and to make it an esplanade area tying into the Riverwalk. The Site Plan changes were dictated by Chapter 91 where they had to reduce parking, reconfigure the parking along the Easterly side of the building. What they have now in the building itself is 160 parking spaces and 62 outdoor parking spaces. They were previously over 280 parking spaces.

The other changes in the Site Plan are that they were planning in having tennis courts on the Acushnet River. Because of certain historical tax credit, they are now going to have an outdoor garden and grilling area. The drainage is still going to a bio retention area introduced in the back. There will be more benches and walk areas for people but that was the Site Plan and it has been approved by the Planning Board along with granting necessary relief from the parking requirements.

Currently what they wanted to focus on is what they had previously in April-May 2011. The concept that was being advanced by Mr. Ricciardi was to have 13 townhouses which would be on the lower level and on the second floor of the building itself along with 127 parking spaces into the rear of the townhouses. They were going from concept to construction design and at that time, the issue became that vehicles could hit the townhouses causing structural damage and in the event of a fire, if a door was opened, then the fire would act like a fire chase and bring the fire up to the upper levels of the building. Mr. Ricciardi looked at it and realized that wasn't something that he would have wanted to happen so he abandoned that concept.

In March 2011 when they were going to the initial construction, Mr. Ricciardi submitted plans to the Building Commissioner and was issued a controlled building permit in reliance upon the fact they were previously granted the right to build 140 residential units, 13 townhouses, with 127 units above. What they have done is scale back a project in consideration of construction and fire dynamics, as well as, the reconfiguration of the parking.

What they are now proposing in seeking modification of the previously granted Special Permit is the fact that there will no longer be any town houses along the Westerly front of the building. The townhouses have been eliminated. All of the ground level will be devoted to 160 parking spaces which has been a great success both at Wamsutta and at Victoria Riverside because it's heated and no ice. You just drive in and take the elevator up. The parking will be entirely on the ground level and a plan for the second floor which was revised in April-May 2012 which was submitted on the controlled building permit. They're going to have 126 units on the first floor, the proposed second floor as well as the third floor. They are also introducing a solar array on the roof of the building.

Although they're permitted for 140, if the townhouse are not to be constructed, as a departure from the plans previously approved as well as the parking necessitating asks that they come before the Board to modify the Special Permit and to allow them to have ground level parking for 160 automobiles and to have 126 apartments on the 1st, 2nd, and 3rd floors of the building thus reducing the Specific Findings under Section 5320 Chapter 9.

Atty. Deshaies went through the Special Findings and asked the Board to make specific findings that the project that they're proposing is consistent with what the City Council acted as to zoning and allow these mill buildings to be rehabilitated residential facilities. There's not going to be any substantial detriment to the neighborhood. It's in an industrial area now and it's not going to be increased noise. The pedestrian and vehicular traffic is on Belleville Ave. and on Riverside Ave. which are fairly large streets. They are going to have more green space as well. It has a new enhanced tax bill which will have an impact on the City's tax base. With that said, Atty. Deshaies asked the Board to make those specific findings and grant Acorn Management a modification of a previously granted Special Permit and to allow them to construct 126 residential apartment units on the upper levels of Cliftex North Mill Building and to allow 160 ground level parking.

Chairman Comerford asked if anyone had any questions for Atty. Deshaies. Ms. Smith asked about the reduction of the green space requirement but they concluded that although they are increasing green space it's still below the green space bylaw requirements. No one else had any further questions.

The Chair asked if anyone else was present in favor that would like to be recorded. Mr. Jeff Pontiff, 13 Hamilton St., N.B. approached to be recorded in favor. No other favorable testimony heard. Then, the Chair asked if anyone was present in opposition. No opposition heard.

With no further questions or concerns, Mr. Comerford declared the hearing closed.

Ms. Smith motioned to grant Appeal # 4020B, a Special Permit under provisions of the City Code of New Bedford to Riverbank Lofts, LLC, 218 Willard Street Quincy, MA 02169 and Acorn Management Co., Inc. Dana Ricciardi, President, 218 Willard Street Quincy, MA 02169 and Marc R. Deshaies, Esq. Perry, Hicks & Deshaies, LLP 388 County Street, New Bedford, MA 02740 relative to the property located at 200 Riverside Avenue, Assessor's Map Plot 105, Lot 170 and Plot 111 Lot 155 in an Industrial A & B Zoned District, respectively & (Riverside Ave. Mill Overlay District). And to allow the petitioner to modify **a previously granted Special Permit # 4020 at the recommendation of the building commissioner by reducing the number of residential dwellings from the previously permitted 140 Units (13 Townhouses and 127 Apartments) to 126 Apartments all to be situated on the upper levels of the Mill Building. That the petitioner be allowed to dedicate the ground level of the Mill Building exclusively for vehicular parking for the residents of the development. And that pursuant to Chapter 9 Section 4200A the petitioner is hereby granted relief for the following setback requirements. A reduction in the Front Yard, Side Yard and Rear Yard Setbacks. A reduction in the parking and loading requirement. A reduction in the green space requirement. And finally, an increase in the lot coverage requirement, and to relieve the petitioner of Chapter 9, Comprehensive Zoning Sections 4200A-4272A(vi) (Riverside Avenue Mill Overlay District) and 5300-5390 (Special Permits). (Without any conditions) .** And that the project be set forth according to plans submitted to the Board at Tonight's Hearing and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year. Motion seconded by Mr. Mathes.

Roll Call Vote:

Ian Comerford – yes

James Mathes – yes

Donald Gomes – yes

Jennifer Smith – yes

Tally 4-0, Motion passed

Appeal # 4083

Notice is given that a public hearing on the Petition of: William C. and Geraldine Hegarty 312 Cross Road N. Dartmouth, MA 02747 and Nydia Gonzales 233 Wood Street, New Bedford, MA 02745 **who petitioned the Zoning Board of Appeals for a Variance** under provisions of Chapter 9, Comprehensive Zoning relative to property located at 535 Ashley Blvd. Assessor's Map Plot 113, Lot 97 in a Mixed-Use-Business Zoned District. **The petitioner proposes to operate a church**, which will require a Variance under Chapter 9, Comprehensive Zoning Section 3000 (General Regulations), 3100 (Parking and Loading) 3110 (Applicability), 3120 (Variance), and 3130 (Table of Parking and Loading Requirements).

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated January 3, 2013. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the plan be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Deacon Enrique Marrero, 282 Main Street, Providence R.I. approached to present the case on behalf of the church. He stated that also present with him was Pastor Gonzalez and the other Deacon of the church Abraham Martinez to assist with any questions. They are proposing to do a bi-lingual church English and Spanish named "Doorway to Heaven Worship Center".

Pastor Gonzalez had passed away about seven months ago, was the leader of the church for nine years and since then his wife Pastor Nydia Gonzalez had taken over the leadership and reins of the church. They are located in Brockton, MA with an additional campus here in New Bedford. They are leasing a space from the Campbell School and they are reverting to have all of their worship and services here in New Bedford since the Pastor is from here. They are also subleasing from another church here in New Bedford. He mentioned that the church was really involved with the community in Brockton, MA and did things like host Thanksgiving for the homeless and open up soup kitchens.

Mr. Comerford asked how many days in the week would there be services. Deacon Marrero responded that they are looking to have bible studies during the week, 3-4 days max and Sunday service. Mr. Comerford asked about the fire code limit. Deacon Marrero said that the limit is 99 people but they currently have about 40 members and he expects to have no more than 60-70 visitors total.

Mr. Comerford asked if anyone was present in favor of the petition. Mr. Jeff Pontiff, E.J. Pontiff Real Estate, 13 Hamilton Street, New Bedford approached and stated that his realty group represented both the landlord and the tenant in this transaction. He stated that the building had been vacant for three years and also had the building for sale 2 years and had no offers on the property. They finally negotiated a lease with the church and said that they do business for a lot of churches and these churches help landlords pay their taxes. The property tax for this building is about 6,000 a year. He asked the Board to take that into consideration and also consider that this is a mixed-use business/commercial building. This site used to be Hegarty Printing and there are commercial buildings down and across the street.

Mr. Comerford asked if anyone else would like to speak in favor. No other favorable testimony heard.

Then, Mr. Comerford asked if anyone was present in opposition.

Ms. Sharon Ferreira, 208 Irvington Street, N.B.,MA approached and said that her house is directly behind the former Hegarty Printing building. She said that parking right now is difficult for the residents and that an extra 70 members will make matters worse because there's no where to park. It would take the spaces of the elderly residents; and it would take spaces from those residents who work and come home since the members of the church would show up late afternoons into evenings. As far as businesses go, across the street is a car lot and they don't have a lot of foot traffic at all. The other businesses are two blocks away; it's a liquor store and it has its own parking. Further down is Tedeschi's which it too has its own parking. This building has no parking. When it was a printing business, clients would go in an out in a matter of minutes and the business would close at 5 p.m. when everyone else was leaving work. She is opposed to having a church there now since members would stay for hours taking up resident parking spaces. She felt that parking is already maximized with vehicles and each home has multiple vehicles. The parking bans are also an issue.

Mr. Comerford asked if anyone else would like to speak in opposition.

Ms. Maureen Pires, 521 Ashley Blvd., N.B., MA approached and said she lives in a six-family home and that parking comes at a premium. At night, the whole street is taken with resident parking; and she thinks that if those 70 members were to park at Brooklawn Park it still wouldn't be enough parking. She said that this is still a residential area and there would not be parking for residents and that she does oppose it.

Mr. Comerford asked if anyone else would like to speak in opposition.

Mr. Kenneth Ferreira, 125 Holly St., N.B., MA approached and said he doesn't live in the area but is familiar with the area and said yes there are businesses there but they run during business hours. The people that go after business hours are those that go to the package store or Tedeschi's. He is concerned with how this traffic will affect the neighborhood.

Mr. Comerford asked if anyone else would like to speak in opposition.

Mr. Steven Martins, 273 Shaw St., N.B., Ward 2 City Councillor, said that he is trying to represent the business and the constituents who live in the neighborhood. The building has been vacant for three years so he sympathizes with the business owner but also sympathizes for the neighbors who live directly in the neighborhood as well. He said that not only he represents that area but also he lives two blocks over so he feels their pain. He understands that there are multi-family homes and that it's very tough to find a parking spot. Then again, he understands that it has been very difficult for the business owner to sell or lease the property.

Mr. Comerford asked if anyone else would like to speak in opposition. No other opposed testimony heard. Then, Mr. Comerford stated that there is a five minute rebuttable period if anyone wanted to speak.

Deacon Marrero approached and said as a point of clarification, they don't have 70 members; they have a potential of 70 members. They currently have 40 members. He said that when they do have an activity during the week it's at 7 p.m. to start so most people are home from work at that time; and they're in their parking spots. Their Sunday service is at 10 a.m. so you assume there are people home. He said that they are not looking to create ruckus at all and that they are a very humble church.

Mr. Comerford suggested to Deacon Marrero if the members may park on the Ashley Blvd. side. Deacon Marrero didn't have any objection to that. Ms. Smith asked through the Chair if they may put a condition on the hours of the church operation that they shall not start before 7 p.m. during the week. There was a brief discussion amongst them and they thought that may be borderline constitutional. They went back to the residents to ask if there is anything that the members can do to make this okay making it good for everybody. Ms. Pires approached and said that although she has a six-family home they have more than six cars. That is still an issue for her because after their block is full of vehicles, they have to go beyond their block for parking.

With no further business, Mr. Comerford declared the hearing closed.

There was a brief discussion amongst the members of the Board. Mr. Decker felt that the residents have a hard enough time as it is because they are regulated to only on street parking. He felt empathy for the property owner and the proposed use but still felt swayed by the comments of the residents. Mr. Gomes suggested that this building has been vacant for three years and that there is a problem there as to the zoning requirements. He felt troubled with the hardship being the parking in that area and like most of the City with a mix of store fronts and businesses and residential. He would like to help the church and give them permanency as well as giving the residents some relief in parking. Mr. Mathes said that it is a very positive thing that the building will be occupied with a church but also felt that this is about the hardship. There's been hardship for the property owner for the vacant building and then there's hardship for the residents

in parking. In his opinion, whichever way they decide, he felt it would be a transfer of hardship and he was not willing to transfer hardship from one to another.

Mr. Romanowicz said that he made a suggestion to the petitioner that to the Northeast of this building is Brooklawn Park and it goes from Irvington Street all the way to Brooklawn Park & Ashley School. He had suggested to the petitioners to ask the School Department if they may park in the school parking lot and take a bus to transport them back and forth. He said that there's approximately 700-800 yards of parking on the Northeast side. There are no residents to park there. People across the street on the West side have off street parking. Mr. Mathes asked why the Planning Office said that there is no detriment to the community. Mr. Khalife said that he took the parking availability along Brooklawn Park into consideration when he made that determination. The members could park across the street as long as they park in the Parking lots. There was a brief discussion among them before they moved to make a motion.

Ms. Smith made a motion to grant Appeal # 4083 a motion to grant a Variance under provisions of the City Code of New Bedford to William C. Geraldine Hegarty 312 Cross Road N. Dartmouth, MA 02747 and Nydia Gonzales 233 Wood Street, New Bedford, MA 02745 relative to property located at 535 Ashley Blvd. Assessor's Map Plot 113, Lot 97 in a Mixed-Use-Business Zoned District and to allow the petitioner to use the premises as and solely as a religious place of worship under the name "Doorway to Heaven Worship Center" and to relieve the petitioner of Chapter 9, Comprehensive Zoning Section 3100 (Parking and Loading) 3110 (Applicability) and 3130 (Table of Parking and Loading Requirements Appendix C) with no conditions and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a Building Permit be issued by the Department of Inspectional Services and Acted upon within one year. Mr. Gomes seconded the motion.

Roll Call Vote:

Jennifer Smith – no

Donald Gomes – no

Ian Comerford – yes

James Mathes – no

Allen Decker – no

Tally 4-1, motion failed

Appeal # 4084

Notice is given that a public hearing on the Petition of: Charles Gaspar & Annette Scrocca 237 Ryan Street New Bedford, MA 02740 and Steven Alves, 119 Alden Road, Fairhaven, MA 02719 **who petitioned the Zoning Board of Appeals for a Variance** under provisions of Chapter 9, Comprehensive Zoning relative to property located at 237 Ryan Street Assessor's Map Plot 38, Lot 206 in a Residential A Zoned District. **The petitioner proposes to extend back porch and install sunroom** which will be in violation of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements Appendix B), 2750 (Yards in Residence Districts), and 2753 (Rear Yards).

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated January 3, 2013. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes read and motioned that the appeal be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the plan be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the owners of the lots as indicated are the ones deemed by the Board to be affected. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the action of the Clerk in giving notice of a hearing as stated be and it hereby is ratified. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Mathes motioned that the Communication from the Office of the City Planner be received and placed on file. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

Mr. Comerford declared the hearing open.

Mr. Steven Alves, owner of Stevens Home Improvement Co. Inc., 119 Alden Road, Fairhaven, MA 02719 resides at 281 Mattapoisett Rd., Rochester, MA 02770 approached. He said that the Gaspar's currently have an existing porch on the back corner of his house which is very small. They're concerned with mosquitoes and etc. What they would like to do is just extend the porch 4 ft. more with a platform and vinyl siding just like what they have and keeping the existing structure. The total area is 4x11 ft. 6 in. just to give them a little more room to sit out and enjoy themselves. By the dormer windows is where the porch exists and on the other side is actually the house. Mr. Alves submitted a picture of the house to demonstrate the layout of the porch. Mr. Mathes motioned to receive material and place on file. Mr. Gomes seconded the motion. With all in favor, the motion passed.

Mr. Comerford asked if anyone had any questions. Ms. Smith just wanted to confirm that the setback requirement is 30 ft. and that they're talking about a 10 ft. difference from what is required and what is being proposed. Mr. Alves concurred with Ms. Smith.

Mr. Decker stated that in the package submitted; there's a copy of a mortgage but not a deed. He wanted to make it a requirement that with an application that the deed be part of that application.

Mr. Khalife stated that they did ask for a copy of the deed; and it must have been an oversight that the mortgage did have a Book and Page. The Board agreed to make it a condition in this appeal to have a copy of the deed within 20 days submitted to the Planning Office.

Mr. Comerford stated for the record that there wasn't anyone else present in favor of or in opposition. With no further business, Mr. Comerford declared the hearing closed.

Ms. Smith made a motion to grant Appeal # 4084 a motion to grant a Variance under provisions of the City Code of New Bedford to Charles Gaspar & Annette Scrocca 237 Ryan Street New Bedford MA 02740 and Steven Alves, 119 Alden Road, Fairhaven, MA 02719 relative to property located at 237 Ryan Street Assessor's Map Plot 38, Lot 206 in a Residential A Zoned District and to allow the petitioner to extend the back porch and install a sunroom and to relieve the petitioner of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements Appendix B, Rear Yard) 2730,

(Dimensional Variation) 2750 (Yards in Residence Districts), and 2753 (Rear Yards) with the following conditions that the property owners provide a copy of the Deed to the Planning Department within 20 days and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds and a Building Permit be issued by the Department of Inspectional Services and Acted upon within one year. Mr. Gomes seconded the motion.

Roll Call Vote:

Allen Decker – yes

Donald Gomes – yes

Ian Comerford – yes

James Mathes – yes

Jennifer Smith – yes

Tally 5-0, motion passed

Old & New Business:

Approval of Meeting Minutes from November 29, 2012

Mr. Decker motioned to approve the Meeting Minutes from November 29, 2012 in which the following cases were heard and decided upon: Appeal # 4081, 4079, 4080. Mr. Mathes seconded the motion. With all in favor, the motion passed.

Discuss & Approve This Year's Schedule of Meetings

The Board members discussed and approved this year's schedule of meetings.

Election of Officers

Mr. Mathes motioned to nominate Allen Decker to be the Clerk for this year. Ms. Smith seconded the motion. Mr. Decker accepted his nomination. Ms. Smith motioned to nominate Ian Comerford to be the Chair for this year. Mr. Mathes seconded the motion. Mr. Comerford accepted his nomination. Mr. Mathes motioned to nominate Jennifer Smith to be the Vice Chair for this year. Mr. Decker seconded the motion. Ms. Smith accepted her nomination. Mr. Mathes motioned to accept the entire slate under a single vote. Mr. Decker seconded the motion. With all in favor, the motion passed.

Next Zoning Board Meeting, Thursday February 28, 2013 at 6:00 P.M.

Adjournment: There being no further business, the meeting was adjourned at 8:16 P.M.

Respectfully submitted,
Kathy Sousa

CERTIFICATE AS TO MINUTES OF MEETING OF ZONING BOARD OF APPEALS

I, Allen Decker, Clerk for the City of New Bedford Zoning Board of Appeals, certify that the above is a true and correct transcript from the minutes of the meeting of Board of Appeals, for the City of New Bedford held at 6:00 pm on January 24, 2013, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Massachusetts and bylaws of the City of New Bedford and that a quorum was present.

I further certify that the votes and resolutions of the Zoning Board of Appeals for the City of New Bedford at the meeting are operative and in full force and effect and have not been annulled or modified by any vote or resolution passed or adopted by the Board since that meeting.

Allen Decker, Clerk