



# Zoning Board of Appeals

May 30, 2013 – **Minutes**

City Hall, 133 William Street, Room 314

**\*\*View Agenda\*\***

## **Board Members Present:**

Ian Comerford  
James Mathes  
Allen Decker, Clerk  
Jennifer Smith, Vice Chair  
Debra Raffa Trahan

## **Board Members Absent:**

Mike Amaral  
Horacio Tavares  
Donald Gomes

## **City Staff:**

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

The meeting was called to order at **6:00 PM**

## **Scheduled Hearings:**

**Case # 4091 A Special Permit**  
**Case # 4092 A Variance**  
**Case # 4093 A variance**

Chairman Comerford introduced members of the Board and City Staff. He later read the opening remarks along with the general requirements for granting a Variance and a Special Permit.

### **Appeal # 4091 A Special Permit**

**Was filed by:** Lee Miguel 224 Mt. Pleasant Street, **New Bedford MA 02746** who submitted a Petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 88 ½ E.S. Acushnet Avenue and 399 S. Second Street, Assessor's Map Plot 31 Lot 219 in a Mixed-Use-Business Zoned District. **The petitioner is requesting the approval of a driveway that would require a Special Permit under Chapter 9, Comprehensive Zoning Section 3149** (Vehicular access to a building lot accessed from public way that does not constitute frontage of the lot).

Mr. Decker read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated May 10, 2013. Motion seconded by Ms Smith. With all in favor, the motion carried.

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

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

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

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

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

Chairperson Comerford declared the hearing open.

Petitioner, Lee Miguel, 224 Mt. Pleasant Street presented on his own behalf. He told the Board, that he purchased this lot from the City through the Abutters Lot Program in 2008. He cleaned it up and he is been using it for parking. Chairman Comerford asked him if he joined the two lots on the deed. Mr. Miguel answered yes. Mr. Decker pointed out that the deed that is included in the application is not the recorded one with the Registry of Deeds and asked Mr. Miguel to provide such a copy within ten business days. Mr. Miguel agreed. Mr. Decker is also interested in knowing who's allowed to park there once the driveway is put in, since the use for the two properties is now linked together. Mr. Miguel said; it has always been a parking for me and my tenants only, not a public parking. Mr. Decker reiterated that thru. this Abutters Lot Program, the ultimate use of this lot is to support the residential use at 399 S. Second. Ms. Trahan told the Board, before the house burnt down, there used to be a small driveway on this lot, now three quarters (  $\frac{3}{4}$  ) of it is paved, and asked when did that happen. It has always been like that, Mr. Miguel replied. It is not paved, only cleaned up, the top is clean asphalt. Ms. Trahan continued saying; I see inconsistency with this application, the petitioner has not been doing what he has been asked to do from the time he purchased the lot. It has been used to park commercial vehicles, the Planning Board asked him to provide landscaping and screening and it has not been done. My main concern here is the conformity with the neighborhood. The program is supposed to help beautify the neighborhood and not the other way around. At this time, Chairman Comerford read from a copy of the Planning Board Decision that took place on May 8, 2013 that the petitioner has already installed a fence, applied a layer of blacktop and that he will at the time of pavement provide landscaping. Mr. Decker reaffirmed that under this program the use of the newer property is to support the older property and that the petitioner has testified that it will be used as parking for the existing tenants and not for his two commercial vehicles. Addressing the petitioner, Mr. Decker continued you agreed to abide by the rules of this program. Mr. Miguel replied I have been doing everything the city has asked me to do from the day I bought it. I will not park my commercial vehicles there overnight. Ms. Trahan inquired on the existing storage container on the lot. Mr. Miguel replied, it is for one of my tenant and I have asked him to either remove it or get a permit for it from the City. Ms. Trahan asked for a clarification from Commissioner Romanowicz, who told the Board yes, there is one, but, the petitioner said he will go to the Planning Board first, then the Zoning Board (Mr. Miguel interjects) after I do this, I will apply for a permit for the asphalt and another one for the container, I have been doing it one step at a time. Ms Smith spoke and elaborated on an email exchange, dated April 24, 2013, between the Tax Title Attorney Mr. Blair Bailey and Ray Khalife, who was asking for an advice in which Mr. Bailey stated that; **commercial parking for his tenants' vehicles would be allowed under the abutters program as long as the vehicles belonged to the tenant. It should be clear that it is not for his vehicles.** With no more questions by the Board, The Chairman asked for those wishing to speak in support. No one spoke or was recorded in support of this petition. He then asked if anyone is wishing to speak in opposition. No one spoke or was recorded in opposition. He declared the hearing closed. The Board discussed whether or not to include a condition in the motion, especially, the advice from attorney Bailey that Ms. Smith had mentioned earlier, Chairman Comerford did not find this to be necessary, since the applicant seems to understand the rules and regulations of the system, and the laws are already in place. I think it becomes an issue, only when it does go outside of what the purview of the abutters lot program is intended for, like the parking of semi-trucks. Dumb trucks etc. this would then be a different situation and the laws will be enforced by the neighbors and the Inspectional services. With no further discussion, Ms. Smith motioned to grant Appeal # 4091, a Special Permit

under provisions of the City Code of New Bedford to Lee Miguel 224 Mt. Pleasant Street, **New Bedford MA 02746** relative to the property located at 88 ½ E.S. Acushnet Avenue and 399 S. Second Street, Assessor's Map Plot 31 Lot 219 in a Mixed-Use-Business Zoned District, and to allow the petitioner **to retain the existing driveway and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Section 3149 (Vehicular access to a building lot accessed from public way that does not constitute frontage of the lot). With a condition that the petitioner provides to the Planning Department copies of the recorded deeds for the two subject properties, 88 ½ E.S. Acushnet Ave. and 399 S. Second Street within ten business 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. Decker seconded the motion. With four votes in the affirmative, the motion carried.

\* Copies were provided on June 7, 2013

#### **Roll Call Vote:**

James Mathes – yes  
Debby Trahan – No  
Allen Decker – yes  
Jennifer Smith – yes  
Ian Comerford- yes

#### **Tally 4-1, motion passed**

#### **Appeal # 4092**

#### **A Variance**

**Was filed by:** Ernest and Joyce Beauregard 15 Junior Street, New Bedford, MA 02740 who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 15 Junior Street, Assessor's Map Plot 44 Lot 375 in a Residential A Zoned District. **The petitioners propose to: Erect an 8' x 17' addition in the rear of their home, which will be in violation of Chapter 9**, Comprehensive Zoning, Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements Appendix B) Green Space, Lot Coverage and Section 2753 Rear Yard.

Mr. Decker read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated May 10, 2013. Motion seconded by Ms Smith. With all in favor, the motion carried.

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

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

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

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

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

Chairperson Comerford declared the hearing open.

Kevin Beaugard, the son of the petitioner, 15 Junior Street spoke on behalf of his parents. He told the Board the proposed addition will be for a half bath, a new room for a washer/Dryer and a storage area. Chairman Comerford questioned the preparation of the plans. Mr. Beaugard replied that it was put together by the contractor. It is going to be a one story addition in the rear of the house, five (5) feet from the property line which is pretty much consistent with the rest of the houses in that area. To a question whether the neighbors have been approached on this, Mr. Beaugard answered; yes they have. With no more questions from the Board, Chairman Comerford asked for those in favor of the petition to step forward. Ms. Pamela Cole, 10 Junior Street spoke in favor. She told the Board this is a wonderful neighborhood with small houses. Any out of necessity-addition will require the same process. No one else spoke or was recorded in opposition. Mr. Comerford declared the hearing closed.

With no further questions or discussion, Ms. Smith made a motion to grant **Appeal # 4092**, a variance under provisions of Chapter 9, Comprehensive Zoning, to Ernest and Joyce Beaugard 15 Junior Street, New Bedford, MA 02740 relative to property located at 15 Junior Street, Assessor's Map Plot 44 Lot 375 in a Residential A Zoned District and to allow the petitioner to **Erect an 8' x 17' addition in the rear of their home and to relieve the petitioner of Chapter 9**, Comprehensive Zoning, Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements Appendix B) Green Space, Lot Coverage and Section 2753 Rear Yard. 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. Mathes seconded the motion. **With all in favor, the motion carried**

#### **Roll Call Vote:**

James Mathes – yes  
Debby Trahan – yes  
Allen Decker – yes  
Jennifer Smith – yes  
Ian Comerford - yes

**Tally 5-0, motion passed**

#### **Appeal # 4093            A Variance**

**Was filed by:** Mario and Maria Melo, 26 Blueberry Drive, Acushnet, MA 02743 represented by Atty. Vincent N. Cragin of Halloran, Lukoff & Smith, PC 432 County Street New Bedford, MA 02740 who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 281-283 Myrtle Street, Assessor's Map Plot 91 Lot 102 (Merged with Lot 223) in a Residential B Zoned District. **The petitioner proposes to: combine Lot 1 ( 3111 sqft.) with the adjacent Lot owned by Carlos & Cheryl Lima, Plot 91 Lot 110 and combine Lot 2 (158 sqft.) with the registered land shown on the Plan as "remaining land", which will require a Variance under Chapter 9**, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2711 (Lot Change), 2720 Table of Dimensional Requirements Appendix B, (Minimum Lot Size, Lot Frontage and Front Yard).

Mr. Decker read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated May 10, 2013. Motion seconded by Ms Smith. With all in favor, the motion carried.

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

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

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

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

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

Chairperson Comerford declared the hearing open.

Attorney Vincent N. Cragin of Halloran, Lukoff & Smith, PC 432 County Street New Bedford, MA 02740 represented the petitioners. He explained to the Board on the plans the proposed division of the subject lot. This Odd L-Shape Lot that my clients own, he continued, is shown on the plans as Lot 1 and 2 ( Unregistered Land) in the back of lot 102 where the two-family structure is located (281-283 Myrtle St. Registered Land). My clients are seeking to carve out Lot 1 (3,111 Sq Ft.) and convey it to Carlos & Cheryl Lima, adjacent abutter, at 119 Garfield Street. The remaining 158 Sq. Ft. of Lot 2 is to be combined with lot 102. Lots 1 and 2 are not to be considered buildable lots unto themselves, he added. The site has a grade difference of about two feet between lot 1 and lot 102, it makes sense to convey lot 1 to the Limas since it is at the same level as their lot. They could have a better use for it. Ms. Smith had a question/concern over creating a non-conforming lot if this petition is granted and lot 1 does not get combined with the Limas' Lot. Attorney Cragin said; the lot will be conveyed to them and presumably merged by the Assessors' Office. After a brief discussion, Commissioner Romanowicz told the Board that the lots will be merged for zoning purposes and he cited **Section 2712, merger of lots. Adjacent lots held in common ownership on or after the effective date of this Section shall be treated as a single lot for zoning purposes so as to minimize nonconformities...** . . . Chairman Comerford read from the Planning Office Recommendation that the possible creation of a non-conforming lot subject to a future variance was a concern that seems to be clarified. Ms. Trahan questioned the financial hardship with this petition, the property was only acquired less than a year ago. Attorney Cragin, acknowledged Ms. Trahan concern, but, defended his clients' petition. It's a hardship going forward, he said. With no further questions for Attorney Cragin, Chairman Comerford asked if anyone is wishing to speak in favor of the petition. Mr. Carlos Lima, 119 Garfield Street spoke in favor. He told the Board we have 12 children (that we have adopted over the years) seven of them live at home. I need the extra land to park my camper and have additional play ground for the kids. I realize, the lot is too small to be buildable, the only thing I ask, could I put a garage on that lot? Mr. Romanowicz felt that this could be possible with a certain size garage that meets the setback requirements. Mrs. Theresa Rebelo, 118 Buchanan Street, spoke in favor. Chairman Comerford elaborated briefly on the hardship, a point raised earlier by Ms. Trahan. He believed that the short time of the property acquisition does not eliminate the presence of a hardship. New circumstances could have arisen since the transaction - job & family loss, health issues etc., creating a hardship. No one else spoke or was recorded in opposition. Mr. Comerford declared the hearing closed.

With no further questions or discussion, Ms. Smith made a motion to grant **Appeal # 4093**, a variance under provisions of Chapter 9, Comprehensive Zoning, to Mario and Maria Melo, 26 Blueberry Drive, Acushnet, MA 02743 and to Attorney Vincent N. Cragin of Halloran, Lukoff & Smith, PC 432 County Street New Bedford, MA 02740 relative to property located at 281-283 Myrtle Street, Assessor's Map Plot 91 Lot 102 (Merged with Lot 223) in a Residential B Zoned District, and to allow the petitioner to **combine Lot 1 ( 3111 sqft.) with the adjacent Lot owned by Carlos & Cheryl Lima, Plot 91 Lot 110 and combine Lot 2 (158 sqft.) with the registered land shown on the Plan as "remaining land" and to relieve the petitioner of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2711 (Lot Change), 2720 Table of Dimensional Requirements Appendix B, (Minimum Lot Size, Lot Frontage and Front Yard).** 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. Mathes seconded the motion. **With all in favor, the motion carried**

**Roll Call Vote:**

James Mathes – yes  
Debby Trahan – yes  
Allen Decker – yes  
Jennifer Smith – yes  
Ian Comerford - yes

**Tally 5-0, motion passed**

**OLD AND NEW BUSINESS**

**1<sup>st</sup>.item. Approval of Meeting Minutes from February 28<sup>th</sup>, March 28 and April 4<sup>th</sup>. 2013**

Having reviewed the minutes, Mr. Decker made a motion to approve the minutes from February 28, 2013 for Case # 4086. The minutes for March 28, 2013 (this meeting was continued till April 4, 2013 due to the Holly Thursday-Holiday) and the minutes for April 4, 2013 for Cases # 4087, 4088, 4089 and 4090. Ms. Smith seconded this motion. With all in favor, the motion carried.

**2<sup>nd</sup>.Item. Report on two “Old Business” items; the hiring of a stenographer to take minutes of meetings, and the Board’s Request, through the Mayor’s Office, for the Mayor to seek the appointment of additional associate members.**

**Mr. Romanowicz** told the members; it appears that the Zoning Board will remain administered by the Planning Office in the new fiscal year, starting July 1, 2013. Therefore, he could not hire the stenographer that the Board had requested at the last meeting of April 4<sup>th</sup>. He then suggested a new motion to that effect. Ms. Smith made a motion to send a request to the Acting Director of Planning, Jill Maclean to hire a stenographer and, preferably, get that person in place for the next meeting. Mr. Decker seconded the motion. With all in favor, the motion carried.

On the Board’s Request for Mayor Mitchell to seek additional associate members, Mr. Khalife told the Board that he received an email from the Chief of Staff, Mr. Neil Mello stating that the Mayor is in the process of reaching out to several candidates that might serve as associate ZBA members, hoping that some announcements could be made shortly.

Other miscellaneous items that were discussed:

Due to not having any pending applications before the Board, Ms. Trahan suggested to cancel June’s meeting. The Board agreed. The next ZBA Meeting was scheduled for July 25, 2013.

Mr. Khalife sought the Board’s Approval for an unpaid invoice of \$425.00 owed to Medical Eval Specialists, Inc. dating back to 5, 17, 2008 re: independent medical exam for Mr. Barry Sylvia, former ZBA Chairman, 10 Seaview Terrace. (Workmen Comp. Case # 00880200600380). The Board approved the payment.

The Board discussed the current application and ways to improve it by revising the check-list among other things e.g abutters list, recoded deeds etc. Mr. Decker volunteered to work with Ray Khalife on that. Ms.

Trahan requested a budget update prior to FY 2014, since the Board is not meeting until July 25. She also asked for the Board's permission to meet with Ms. Maclean to discuss things that could be done to improve the process moving forward and reports back to the Board. The Board agreed.

**Adjournment:** There being no further business, a motion to adjourn was made by Ms. Trahan and seconded by Ms. Smith. With all in favor, the motion carried. The meeting was adjourned at 7:27 P.M.

Respectfully submitted,  
Ray Khalife

**CERTIFICATE AS TO MINUTES OF MEETING OF ZONING BOARD OF APPEALS**

I, Allan 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 May 30, 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.

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*Allan Decker, Clerk*