



Zoning Board of Appeals

August 8, 2013 – 6:00 P.M. - **Minutes**
City Hall, 133 William Street, Room 314

****View Agenda****

Board Members Present:

Ian Comerford
James Mathes
Donald Gomes
Horacio Tavares

Board Members Absent:

Allen Decker
Jennifer Smith
Mike Amaral
Debra Raffa Trahan

City Staff:

Danny D. Romanowicz, Commissioner of Buildings & Inspectional Services
Ray Khalife, Compliance Officer

The meeting was called to order at **6:05 PM**

Scheduled Hearings:

Case # 4094 A Variance
Case # 4095 A Special Permit
Case # 4096 A variance
Case # 4097 A Special permit
Case # 4098 A Special permit

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.

At the beginning of the meeting, Donald Gomes requested that item # 2 under Old & New Business regarding **the daycare fee** be taken out of order and tabled until August 29, 2013. This was driven by a written request from Zoning Board Member Debby Trahan which was later accepted into the records. Mr. Gomes reasoning behind putting it off till the 29th. was that, three of the regular members are not present (Jennifer Smith, Allan Decker And Debby Trahan). Furthermore, Jim Mathes had indicated earlier that he has a conflict (Being employed by YMCA, also a day care provider) and did not want to participate in the discussion. Mr. Gomes didn't think it is appropriate to discuss the fees with two alternates and only one regular member. After a brief deliberation on the date, Mr. Gomes made a motion to that effect which was seconded by Mr. Tavares. The motion carried 3-0 with Mr. Mathes abstaining. Interested parties present in the audience were advised of the new hearing date. One person in the audience asked Chairman Comerford to specify on the zoning law. Chairman Comerford told him this item has been tabled until August 29th. "we are not getting into this right now" sorry that you have to come down, but, will be here on the 29th. The Board then moved to hear the first scheduled case.

Appeal # 4094 A Variance

Was filed by: Paul E. Lamothe Jr. 973 Bartlett Street, **New Bedford MA 02745** who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 973 Bartlett Street, Assessor's Map Plot 132 Lot 453 in a Residential A Zoned District. **The petitioner is requesting to erect a Recreational Room in the basement which would require a variance under Chapter 9, Comprehensive Zoning**

Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements Appendix B) Heights of Buildings.

Mr. Mathes explained to the public that with only four members present, any petition will require four votes in the affirmative to pass. Those of you wishing to be heard with a full board (five members) he continued, have the right to do so at the next meeting. All petitioners wanted to proceed with four members.

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated July 17, 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.

Chairperson Comerford declared the hearing open.

Petitioner Paul E. Lamothe Jr. told the Board my carpenter did the work without permit.

The basement existed before the house burnt down. But, because the carpenter didn't pull a permit I am here asking for a variance. Mr. Gomes questioned the reason for the variance since it is a single family house. Commissioner Romanowicz explained that under the Dimensional Regulations a single family dwelling is described as 2.5 stories. The petitioner has a first floor, a second floor, and a basement. That is 2.5 stories. To create habitable space in the basement requires a variance to bring it up to 3 stories. We have in the past done the same thing for attics as well. The Board will also stipulate that it should remain a single family, Mr. Romanowicz emphasizes further. David Michawski, 332 Fall River Road, Dartmouth, introduced himself as the project manager on the job. He spoke in favor of the petition and told the Board when the house burnt down we managed to get original plans from City Hall and rebuilt the house accordingly on the same foundation. No one spoke or was recorded in opposition. With no further questions or concerns, Chairman Comerford declared the hearing closed and was ready to entertain a motion.

Mr. Mathes made a motion to grant **Appeal # 4094**, a variance under provisions of Chapter 9, Comprehensive Zoning, to Paul E. Lamothe Jr. 973 Bartlett Street, **New Bedford MA 02745** relative to property located at 973 Bartlett Street, a single family dwelling, Assessor's Map Plot 132 Lot 453 in a Residential A Zoned District **and to allow the petitioner to erect a Recreational Room (Habitable Space) in the basement and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Sections , Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements Appendix B) Heights of Buildings. 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. **With all in favor, the motion carried**

Roll Call Vote:

James Mathes – yes
Horacio Tavares - yes
Donald Gomes – yes
Ian Comerford - yes

Tally 4-0, motion passed

Appeal # 4095 was filed by: Agness and Daniel Gonsalves 109 Maryland Street, New Bedford, MA 02745 who submitted a Petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 109 Maryland Street, Assessor's Map Plot 127 Lot 349 in a Residential A Zoned District. **The petitioner proposes to install a 12x 28 foot driveway which will require a Special Permit** under Chapter 9 Comprehensive Zoning Section 3149 (Vehicular Access from a Public Way that does not constitute frontage of the subject lot).

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated July 17, 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.

Chairperson Comerford declared the hearing open.

Daniel Gonsalves spoke on behalf of his Grandmother, the petitioner. He told the Board we would like to install another driveway in the back of the house to accommodate a wheel-chair accessible van for his handicapped grandmother. Chairman Comerford inquired on the City Tree that the Acting City Planner is referring to in her recommendation letter and questioned whether any arrangements has been done to remove it. Mr. Gonsalves' reply was that the proposed driveway does not interfere with the existing tree. It is about 7 feet away. Why should I be responsible to remove a tree that is already causing issues in the neighborhood. Shouldn't the City be responsible for that? He added. Mr. Mathes explained to Mr. Gonsalves that the Board might be considering a condition with its approval of this driveway, in the event that the tree is removed. Chairman Comerford explained further that the Acting City Planner is requesting that in case the tree is removed, the petitioner needs to replace it with 3 shade trees planted somewhere else in the neighborhood, preferably on Metcalf Street. The Board deliberated on the type of condition that could be included in the decision as well as "the 3 for 1 equation" and felt that the one for one-tree is fair and seems more appropriate. Chairman Comerford inquired on the process to remove a City Tree, Commissioner Romanowicz explained it. No one spoke, or was recorded in, neither for nor against the petition. With no further concerns or questions, Chairman Comerford declared the hearing closed and was ready to entertain a motion. Mr. Mathes made a motion to grant **Appeal # 4095**, a Special Permit under provisions of Chapter 9, Comprehensive Zoning, to **Agness and Daniel Gonsalves New Bedford MA 02745** relative to property located at 109 Maryland Street, Assessor's Map Plot 127 Lot 349 in a Residential A Zoned District, **and to allow the petitioner to install a 12x 28 foot driveway (in the back of his house) and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Sections Section 3149 (Vehicular Access from a Public Way that does not constitute frontage of the subject lot). With the following Condition: That in the event "The tree is damaged or deemed dead

by the City's Arborist, the petitioner is required to purchase and plant at his own expense a shade tree "at least 3.5 in caliber", in a location determined by the Department of Public Infrastructure (DPI) within the same neighborhood, preferably on Metcalf Street, 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. **With all in favor, the motion carried**

Roll Call Vote:

James Mathes – yes
Horacio Tavares - yes
Donald Gomes – yes
Ian Comerford - yes

Tally 4-0, motion passed

Appeal # 4096 was filed by : TRI- The Resource Inc. and Jill O'Neil 200 Palmer Ave. Falmouth, MA 02540 who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 141 Grinnell Street AKA 122-124 SO. Sixth Street, Assessor's Map Plot 35 Lot 176 in a Mixed-Use Business Zoned District. **The petitioner proposes to: operate a barber shop by installing equipment and fixtures in Unit D, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 3100 (Parking and Loading) 3110 (Applicability) 3130 (Table of Parking Requirement) Appendix C (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 July 17, 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.

Chairperson Comerford declared the hearing open.

Michael Galasso, Project Manager for TRI Resource Inc, presented to the Board. We're a non-profit affordable housing developer and have been working with the City in the last 4 to 5 years and have done a lot of work, especially in the South End. We acquired this property in 2010, was vacant/boarded up. On the history of the building he said; previously it had a market and a hair salon, but, when we came to you in 2011 asking for a permission to put three (3) Residential Units on the ground floor, we didn't think of the need for a hair salon. Now that we have an application from Mr. Pereira, we're here again asking to allow him to put a barber shop in Unit D. We think this will be a great addition and a benefit to the neighborhood. You were talking about trees earlier. Besides renovating the building, we have purchased and planted quite a few trees in the park across the street and

have added some benches as well, enhancing the whole corner on County and S. Sixth streets making it a lot safer. Arthur Pereira “the new tenant” 17 Bonney Street spoke in favor of the petition, he told the Board; I grew up in the neighborhood and most of my clients live within walking distance from the shop. He didn’t think parking would be an issue. No one spoke or was recorded in opposition. Chairman Comerford declared the hearing closed. Board Members, Mr. Mathes and Mr. Gomes, have both praised TRI Resource Inc. for their good work. With no further questions or concerns Mr. Mathes **made a motion to grant Appeal # 4096**, a Variance under provisions of Chapter 9, Comprehensive Zoning to: TRI- The Resource Inc. and Jill O’Neil 200 Palmer Ave. Falmouth, MA 02540 relative to property located at 141 Grinnell Street AKA 122-124 SO. Sixth Street, Assessor’s Map Plot 35 Lot 176 in a Mixed-Use Business Zoned District and to allow **The petitioner to: operate a barber shop by installing equipment and fixtures in Unit D, and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Sections 3100 (Parking and Loading) 3110 (Applicability) 3130 (Table of Parking Requirement) Appendix C (Table of Parking and Loading Requirements) “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. **With all in favor, the motion carried**

Roll Call Vote:

James Mathes – yes
Horacio Tavares - yes
Donald Gomes – yes
Ian Comerford - yes

Tally 4-0, motion passed

Appeal # 4097 was filed by : TRI- The Resource Inc. and Jill O’Neil 200 Palmer Ave. Falmouth, MA 02540 who submitted a Petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 141 Grinnell Street AKA 122-124 SO. Sixth Street, Assessor’s Map Plot 35 Lot 176 in a Mixed-Use Business Zoned District. **The petitioner proposes to: operate a barber shop by installing equipment and fixtures in Unit D, which will require a Special Permit under Chapter 9**, Comprehensive Zoning Sections 2400 (Nonconforming Uses and Structures) 2410 (Applicability) 2420 Nonconforming Uses) and 5300-5360, 5360-5390 (Special Permits).

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated July 17, 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.

Chairperson Comerford declared the hearing open.

With this Special Permit being heard in conjunction with the previous Variance # 4096

Michael Galasso, Project Manager for TRI Resource Inc, **presented the same information to the Board.** We're a non-profit affordable housing developer and have been working with the City in the last 4 to 5 years and have done a lot of work, especially in the South End. We acquired this property in 2010, was vacant/boarded up. On the history of the building he said; previously it had a market and a hair salon, but, when we came to you in 2011 asking for a permission to put three (3) Residential Units on the ground floor, we didn't think of the need for a hair salon. Now that we have an application from Mr. Pereira, we're here again asking to allow him to put a barber shop in Unit D. We think this will be a great addition and a benefit to the neighborhood. You were talking about trees earlier. Besides renovating the building, we have purchased and planted quite a few trees in the park across the street and have added some benches as well, enhancing the whole corner on County and S. Sixth streets making it a lot safer. Arthur Pereira "the new tenant" 17 Bonney Street spoke in favor of the petition, he told the Board; I grew up in the neighborhood and most of my clients live within walking distance from the shop. He didn't think parking would be an issue. No one spoke or was recorded in opposition. Chairman Comerford declared the hearing closed. Board Members, Mr. Mathes and Mr. Gomes, have both praised TRI Resource Inc. for their good work. With no further questions or concerns Mr. Mathes **made a motion to grant Appeal # 4097**, a Special Permit under provisions of Chapter 9, Comprehensive Zoning to: TRI- The Resource Inc. and Jill O'Neil 200 Palmer Ave. Falmouth, MA 02540 relative to property located at 141 Grinnell Street AKA 122-124 SO. Sixth Street, Assessor's Map Plot 35 Lot 176 in a Mixed-Use Business Zoned District and to allow **The petitioner to: operate a barber shop by installing equipment and fixtures in Unit D, and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Sections 2400 (Nonconforming Uses and Structures) 2410 (Applicability) 2420 Nonconforming Uses) and 5300-5360, 5360-5390 (Special Permits). "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. **With all in favor, the motion carried**

Roll Call Vote:

James Mathes – yes
Horacio Tavares - yes
Donald Gomes – yes
Ian Comerford - yes

Tally 4-0, motion passed

Appeal # 4098 was filed by : Kiriakos and Filomena Stergiotis 44-46 Parker Street New Bedford, MA 02740 who submitted a Petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 44-46 Parker Street, Assessor's Map Plot 65 Lot 19 in a Residential B Zoned District. **The petitioner proposes to: Change the first floor unit from a Mixed-Use Business into a Residential Unit, which will require a Special Permit under Chapter 9**, Comprehensive Zoning Sections 2400 (Nonconforming Uses and Structures) 2410 (Applicability) 2430 (Nonconforming Structures, other than single and two-family structures) 2431, 2432 and 5300-5360, 5360-5390 (Special Permits).

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated July 17, 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.

Chairperson Comerford declared the hearing open.

Petitioner, Filomena Stergiotis told the Board; We would like to rezone this property from Mixed-Use Business to Residential. Ever since we purchased it has not been used as commercial. We are paying more taxes and more for utilities, including gas and electricity. We tried to rent it out as a business, Mrs. Stergiotis continued, but we couldn't. It has become a financial burden. Mr. Stergiotis also spoke in favor of his petition. He told the Board with the school only a block away, no one is willing to open a business at this location. We can't afford the high tax. No one spoke or was recorded in opposition. Chairman Comerford declared the hearing closed. With no further questions or concerns Mr. Mathes **made a motion to grant Appeal # 4098**, a Special Permit under provisions of Chapter 9, Comprehensive Zoning to: Kiriakos and Filomena Stergiotis 44-46 Parker Street relative to property located at: 44-46 Parker Street, Assessor's Map Plot 65 Lot 19 in a Residential B Zoned District and to allow **The petitioner to: Change the first floor unit from a Mixed-Use Business into a Residential Unit and to relieve the petitioner of Comprehensive Zoning Sections 2400 (Nonconforming Uses and Structures) 2410 (Applicability) 2430 (Nonconforming Structures, other than single and two-family structures) 2431, 2432 and 5300-5360, 5360-5390 (Special Permits). "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. **With all in favor, the motion carried**

Roll Call Vote:

James Mathes – yes
Horacio Tavares - yes
Donald Gomes – yes
Ian Comerford - yes

Tally 4-0, motion passed

OLD AND NEW BUSINESS

1-Approval of Meeting Minutes from May 30, 2013

Having received and reviewed the draft minutes of May 30, 2013 meeting, Jim Mathes motioned to approve the minutes for cases 4091, 4092 and 4093 Mr. Gomes seconded the motion. With all in favor, the motion carried.

2-Review of administrative fee for existing family child-care providers. (this was tabled earlier until August 29, 2013).

3- Hear a complaint regarding a previous ZBA Case # 3857 (224-226 Mt. Pleasant Street)
Submitted by Zoe Boza 220-222 Mt. Pleasant Street.

Ms. Zoe Boza told the Board that she has an issue with this 2007 Variance. The Board granted a variance to install an outdoor swimming pool with a condition that the filter be run for only two hours a day (between 9AM and 7PM) yet, it is constantly on all day, seven days a week from May 19 through the middle of September. It has become

nuisance. Furthermore, in the minutes, the petitioner had agreed to move the filter to the other side if the noise becomes an issue. But, because this wasn't mentioned in the motion of the decision, nothing is happening, despite the Building Department's letter asking him to do so, she added. All that I am here for is to have him do what he said he would at that meeting; remove the filter to the other side if and when this becomes a problem, Ms. Boza continued saying. Commissioner Romanowicz emphasized further on Ms. Boza's request: She would like to have the conditions changed and the only way to do that, having reviewed this with Solicitor Friedman, the ZBA Attorney, would be by another motion from the Board since these conditions were in the minutes but not in the motion. Both Mr. Tavares and Mr. Mathes didn't feel comfortable rendering any decision until they have heard from both parties and have come to a clear understanding as to "what is and what is not" in their power to do as a Board in a similar situation. After a brief discussion, Mr. Mathes made a motion authorizing Commissioner Romanowicz to send a certified letter to Filomena & Jose Costa, 224-226 Mt. Pleasant Street requesting their presence to a Zoning Board of Appeals meeting on August 29, 2013 to discuss the conditions pertaining to a ZBA Case # 3857. Mr. Tavares seconded the motion. With all in favor, the motion carried.

4. Next Zoning Board Meeting, is scheduled for Thursday August 29, 2013. This date was confirmed.

5 - Adjournment

Adjournment: There being no further business, Chairman Comerford thanked the Board and requested a motion to adjourn. Mr. Gomes made the motion and was seconded by Mr. Mathes. With all in favor, the motion carried. The meeting was adjourned at 7:45 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 August 8, 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