



# Zoning Board of Appeals

August 29, 2013 - **Minutes**

City Hall, 133 William Street, Room 314

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

## **Board Members Present:**

Ian Comerford  
James Mathes  
Donald Gomes  
Debra Raffa Trahan  
Jennifer Smith

## **Board Members Absent:**

Allen Decker  
Horacio Tavares  
Mike Amaral

## **City Staff:**

Danny D. Romanowicz, Commissioner of Buildings & Inspectional Services  
Ray Khalife, Compliance Officer and Attorney Eric Cohen from the Solicitors' Office.

The meeting was called to order at **6:03 PM**

## **Scheduled Hearings:**

**Case # 4099 A Variance**  
**Case # 4100 A Variance**  
**Case # 4101 A Special Permit**  
**Case # 4102 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.

He then requested a motion to take out of order Case # 4102. Ms. Smith made that motion and was seconded by Mr. Mathes. With all in favor, the motion passed. The Chairman confirmed with the petitioner, Mr. Raposo that he is requesting that his case be continued till September 26, 2013 Meeting, as he could not get the final plans ready on time for this meeting. The Board agreed to the continuance. The petitioner was later asked to sign a 90 day-extension. No abutters were observed, in the room, for this petition. Ms. Smith made a motion to take Item # 2 "under New & Old Business" out of order, **"the review of administrative fee for existing family child care providers, as well as the fee-structure for all petitions as per Chapter II (Administration) Section 2-9 of the City of New Bedford Code of Ordinances"** (Tabled from August 8<sup>th</sup>. Meeting) Mr. Gomes seconded the motion, with all in favor, the motion carried. Chairman Comerford stated for the records that Mr. Mathes is abstaining from participating in this discussion. Mr. Comerford clarified to the audience that although, the agenda is stating fee review for existing family child care providers, this Board normally reviews its administrative fee for commercial and residential applications around this time of the year. So, this discussion will not be specific to child care application-fee. He then gave the floor to attorney Cohen and asked him to guide the Board through. Attorney Cohen, emphasized further on the special permit fee for the daycare. It is purely a matter of policy, he said. Family Child Care providers are required by law to obtain a Special Permit from the Zoning Board of Appeals in order for them to operate in the City. What is proposed before this Board tonight is whether the fee associated with this special permit should be reduced from Commercial to Residential. Mayor Mitchell has made a strong

recommendation to Commissioner Romanowicz, he continued, asking him to refrain from enforcing this ordinance and to extend the grace period until December 15, 2013, thus giving the City Council, who is currently reviewing the requirements of the ordinance, ample time to do so. Meanwhile, I suggest two different motions regarding the fees. One motion, to classify the family child care providers under home occupation (Residential Fee shall apply) and another motion dealing with the fee reduction in general. The Board agreed. After a brief discussion Ms. Trahan Made a motion; **that family child care providers, licensed by the state, be classified as home occupation and be charged the current fee of \$ 495,00 Dollars for their applications, with immediate effect. Mr. Gomes seconded the motion. With all in favor, the motion carried.** Chairman Comerford thanked those in the audience for coming out this evening. He told them, we appreciate the good service you are providing. As you have witnessed, the Board has reduced the fee for the family child care providers from \$ 895.00 to \$495.00. That is a \$ 400.00 Dollars' reduction, he continued. We have a fixed cost that we need to recoup. The \$ 495.00 will cover our cost and that of the legal advertizing cost in the Standard Times. One person in the audience questioned who has the final say in the fee, is it this Board or the City Council? He was told; the fees are this Board's responsibility. The City Council is reviewing the Special Permit Requirements for Day Care Providers, on that you may check with the Council, he was advised.

#### **Next Case # 4099**

Was Filed By: Randall J. Rossi 67 Butler Street, **New Bedford MA 02744** who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 67 Butler Street, Assessor's Map Plot 12 Lot 141 in a Residential B Zoned District. **The petitioner is requesting to erect a 20'x24' carport which would require a variance under Chapter 9,** Comprehensive Zoning Sections 2300 (Accessory Buildings and Uses) 2310 (General) 2331 ( Private Garage ) 2332-2334 and Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements 2730 (Dimensional Variance) Appendix B, 2750 Yards in Residential Districts, 2751 Front Yards and 2755 Side Yards.

Chairman Comerford called Mr. Mathes back to the meeting.

Mr. Mathes read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated August 9, 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 Ms. Smith. With all in favor, the motion carried.

Mr. Mathes motioned that the plan be received and placed on file. Motion seconded by Ms. Smith. 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 Ms. Smith. 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.

Mr. Rossi, the petitioner, told the Board my wife and I would like to keep our vehicles off the street and protected from the elements. We have petitioned the neighbors and they are fine with it. Mr. Paul Bennett of D&B Builders, 32 Nye Avenue Acushnet, Ma, 02743 introduced himself to the Board as the builder on this job. Ms. Smith "and while reading from the stated hardship in the petition" asked for some clarification on the removal of trees & shrubs etc. Mr. Bennett clarified that the home owners' intention is to avoid the removal of any trees or shrubs, otherwise,

they would not have come before this Board seeking a variance. Ward Six Councillor, Mr. Joseph Lopes spoke in support of the petition. No one spoke or was recorded in opposition. With no further concerns or questions, Chairman Comerford declared the hearing closed and was ready to entertain a motion. Ms. Smith made a motion to grant **Appeal # 4099** a Variance under provisions of Chapter 9, Comprehensive Zoning, to Randall J. Rossi 67 Butler Street, **New Bedford MA 02744** relative to property located at 67 Butler Street, Assessor's Map Plot 12 Lot 141 in Residential B Zoned District, **and to allow the petitioner to erect a 20'x24' carport and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Sections 2300 (Accessory Buildings and Uses) 2310 (General) 2331 ( Private Garage ) 2332-2334 and Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements 2730 (Dimensional Variance) Appendix B, 2750 Yards in Residential Districts, 2751 Front Yards and 2755 Side Yards. 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.**

**Next Case #4100 was filed by:** Long Built Homes Inc. 158 Charles McCombs Blvd. New Bedford, MA 02745 who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 92 Tarkiln Place Assessor's Map Plot 130 G Lot 251 in a Residential A Zoned District. **The petitioner proposes to: Construct a single family dwelling with a rear yard deck which will require a Variance** under Chapter 9 Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements, Appendix B) 2730 (Dimensional Variance) 2750 Yards in Residential 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 August 9, 2013. Motion seconded by Ms. Smith. 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 a two minutes recess to catch up on some paper work. After which time, the Board resumed its meeting and the hearing was declared open by the Chairman.

Mr. Lee Castignetti, the petitioner's representative spoke on behalf of the owner, Long Built Homes Inc. He told the Board this odd-shape lot has had two granted variances before, one in October of 2006 and another in early 2008 but, in both incidents the sales didn't go through and the variances lapsed. And, unfortunately, the Governor's Permit Extension Act fell a few months short of covering the last variance. So, in reality it is the same scenario as in the previous cases, Mr. Castignetti, continued. At this time, Ms. Trahan pointed out to Chairman Comerford that the Appeal Letter didn't list the previous two variances that the petitioner's representative just mentioned. The Board discussed the importance of having more details on the two previously granted variances and the significance of having the previous two cases listed on the appeal letter versus not having them listed. While some members felt it is very material to the petition at hand, others, including Mr. Castignetti, disagree. Mr. Castignetti explained that the previous variances were sought by the

previous owner of the subdivision before it was transferred to Long Built Homes Inc. and that could have contributed to the disconnect/confusion in the records. Ms. Smith didn't feel that the circumstances are the same. In 2006 the lot in the back was vacant, now it has an owner who is opposing this variance. Mr. Mathes and while referencing the Abutters List /GIS Map within the application, pointed out to the members that the structure in the back, at 17 Mate Drive, That Ms. Smith just talked about appeared to be closer to the property line than what is proposed before us tonight. To me Mr. Mathes, continued, the subject lot does not look bigger or smaller than the others in the subdivision. The lot with the house on it may have had some kind of an approval. I would be leaning towards a favorable vote on this one here. Over this disaccord among the members, Chairman Comerford suggested another visit to the site. Mr. Castignetti agreed to have the property lines and the proposed foundation for the house flagged, thus rendering the site observer-friendly. The Chairman also suggested hearing the testimony of the City Councillors in attendance so that they do not have to come back next month. Mr. Oliveira, Ward One Councillor spoke in favor of the petition. Ms. Smith asked Concillor Oliveira whether he would be willing to reach out to the opposing abutters, this would make the Board's job a lot easier, she said. Councillor Oliveira agreed to it. No one else spoke or was recorded in favor of the petition. At this time Mr. Mathes read into the records an email sent by the abutter at 17 Mate Drive, Mr. Jacob Raposo, in which he's apologizing for not being able to attend the meeting due to work... He is concerned over large number of problems regarding privacy and noise level if a house is built on this lot... A motion to receive and place on file was made by Mr. Mathes and seconded by Mr. Gomes. With all in favor, the motion carried. Ms. Trahan asked if we could have an As-Built Plan for the house at 17 Mate Drive and whether it had any other approvals. Chairman Comerford requested a motion to table this petition. Mr. Mathes made a motion to table case # 4100 until September 26, 2013. Ms. Trahan seconded it. With all in favor, the motion carried. The Board moved to the next case.

**#4101** filed by: Cesar Bolivar Berroa, 80 Clark 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 80 Clark Street, Assessor's Map Plot 84 Lot 148 in a Residential C Zoned District. **The petitioner proposes to: Operate a family child care which will require a Special Permit under Chapter 9,** Comprehensive Zoning Sections 2200 (Use Regulations), 2210 (General) 2220 (Applicability) 2230 (Table of Use Regulations, Appendix A) C-Commercial # 5, and 2323 Family Day Care Homes. And Section 5300 Special Permits 5310 Special Permits Granting Authority 5320-5326 Criteria.

Chairman Comerford disclosed to the Board and the audience that Mr. Mathes will be recusing himself from any discussing involving day care services (due to his employment with the YMCA). He then explained to the petitioner the risk of moving forward with only four members and her options in the matter. The petitioner elected to have the Board continued her case till September 26 meeting and signed a 90 day- extension. The Board moved to the next item under **Old & New Business**.

## **OLD AND NEW BUSINESS**

- 1- Hear a complaint regarding a previous ZBA Case # 3857 (224-226 Mt. Pleasant Street)  
Submitted by Zoe Boza 220-222 Mt. Pleasant Street. (At the August 8<sup>th</sup>. Meeting the Board requested that an invitation, to attend, be sent to the petitioners of the subject case.)

Chairman Comerford told the members that Ms. Bosa is here but the other party (Mr. & Ms. Costa) had called the Zoning Office around 3.30 This afternoon stating that they could not attend the meeting. We probably need to continue it, he added. Mr. Gomes asked Commissioner Romanowicz if he has contacted Mr. Costa. Mr. Romanowicz told him, we sent the Costas a certified letter that they have acknowledged receiving. Their son called at 3.20 this afternoon stating his parents would not be able to make the meeting. Ms. Bosa approached the podium and requested a permission to speak. She said; A letter was sent out by the inspector that they are running the filter 24 hrs. Another certified letter went out asking them to be here. I know they are home, I saw their car in the driveway. I would like to know how long does this progress? The summer is almost over. When does this end? They are ruining my quality of life. Ms. Smith asked for some clarification on the issue. It was explained to her that the pool was granted with conditions that they are not been adhered to. Chairman Comerford asked Commissioner Romanowicz for some guidance moving forward. Mr. Gomes suggested an enforcement of the penalty for not being in compliance with the ZBA decision. Commissioner Romanowicz handed over to Mr. Gomes a copy of the

building inspector's letter. Mr. Gomes Made the following motion that was seconded by Ms. Smith: **That the Zoning Board of Appeals recommends that the Commissioner of Buildings & Inspectional Services enforces with immediate effect, in accordance with Section 5120 (Enforcement) and Section 5130 (Penalties) of the City Ordinance that Ms. Filomena Costa & Mr. Jose Costa 224-226 Mt. Pleasant Street, New Bedford who seemed to be in violation of Article VII- Prevention and Abatement of Nuisances. Section 6-120 creation or maintenance of nuisance prohibited states in the City of New Bedford that there is a penalty of \$300.00 Dollars a day and that the Commissioner of Buildings and Inspectional Services institutes this penalty immediately. With all in favor, the motion carried.** Ms Boza argued with the Board that this may not be enough. She wanted to know if the Costas' have the right to appeal this Board's recommendation to impose the penalty, because if they do, she continued, they will appeal it and nothing will change. What is it that I have to do to bring another case, because the motion was not properly documented, so that they can't run that filter all day and ruin my quality of life for another year, now that the season is almost over? The Chairman as well as the members have all taking turns in explaining to Ms. Boza that they have done everything in their power to solve the issue and that the Costas' are now in violation of the City Ordinance on Nuisances which is more powerful than the **timing conditions that this Board had on running the filter at the time the variance was granted.**

**Mr. Mathes left the room.**

**Next. The Board resumed its discussion on the administrative fee, in general**

2-Review of administrative fee for existing family child care providers, as well as **the fee-structure for all petitions** as per Chapter II (Administration) Section 2-9 of the City of New Bedford Code of Ordinances (Tabled from August 8th. Meeting).

Chairman Comerford suggested an \$ 800.00 for the Commercial Applications and a \$ 400.00 for the residential Applications. That would be a 20% reduction across the board he said. We have enough money in our budget to observe any type of cost that could come our way in the near future. Ms. Trahan said: I have done my calculation, similar to what I do each year. I'm proposing \$ 745.00 and 345.00. This will cover our cost and the advertising cost. We do not have to pay for a stenographer like we used to or photocopying the application 11 times, the petitioner is doing that now. So, we're saving money. Ms. Smith agreed with Ms. Trahan, if we could give people a break during this tough economic time, it would be great. Mr. Gomes was all for reducing the fee. Chairman Comerford opened the floor for any comments. Ward 6 Councillor, Joseph Lopes told the Board my focus is not on the fee structure but, rather on a point of information. The Council has sent this Body a letter on an amended motion requesting that you vote on that motion to allow a 45-day grace period for any existing licensed Day Care Facility, to allow the facility owner to apply for the permit and waive the fees during the 45-day grace period. I understand that the Mayor's proposal is for 90 days, I think, the Council's, although, it is for a shorter period of time it has more of a benefit to the providers. The Mayor's proposal does not call for that. The Mayor has asked Commissioner Romanowicz not to have any inspectors do any inspection for existing day care facilities during the 90 days, what the Council has done is providing a full waiver of the fee, other than the advertizing portion, and the grandfather protection if they come in within the 45 days. At this time, Chairman Comerford told Concillor Lopes, the advertizing fee is \$ 345.00 and that is exactly what we were trying to tell those providers in the room. Councillor Lopes suggested that a clarification be sent out to these providers advising them that this fee is in fact only to duly advertize the hearing. He thinks some of them have left the room thinking they will be charged fees above the advertizing fees. Ms Trahan asked Councillor Lopes if the Council could request to waive the fee, considering the circumstances of the existing day care providers and the 45-day grace period. Councillor Lopes replied; that would be a question for the Council and Atty: Geratowski to answer. Chairman Comerford said he might draft something for the Council on that regard. Councillor Lopes thanked the Board Members for their efforts. Ward One Councillor, James Oliveira, spoke next. He told the Board I understand the issue with the existing ordinance and the fee structure prior to now. Had this been enforced, it would have affected most of us including myself as a parent. Reducing the fee is good. These are not large operations with big vouchers. They are doing more of a community Service, he continued. With the Mayor getting behind the Council to halt the application process and Councillor Martins putting it on the Ordinance Committee-Agenda to further review the ordinance, I think we are doing the right thing to make this work properly. This will give the Day Care Providers the opportunity to put some money aside for this process. At this time Chairman Comerford read into the records the letter that was received from the

City Council requesting that “the Zoning Board allow a 45-day grace period and waive the fee for any existing Day Care Facility”. So, that it is clear, the chairman continued, the Board has reduced the fee structure from \$ 895.00 to \$345.00 and we will not be able to waive the fee completely. Councillor Oliveira thanked the Board for the opportunity. With no one else in the audience commenting on the issue, Chairman Comerford suggested \$ 750.00 for Commercial Applications and \$ 350.00 for Residential Applications. Ms. Trahan made a motion that was seconded by Ms. Smith that: **Effective immediately the Zoning Board fees are reduced as follows; \$750.00 for Commercial Applications and \$350.00 for Residential Application and that a refund be allowed for any currently pending applications. With all in favor, the motion carried Next Item.**

3- Having received and reviewed the draft minutes of August 8, 2013 meeting, Donald Gomes motioned to approve the minutes for cases 4094, 4095, 4096, 4097 and 4098 Ms. Smith seconded the motion. With all in favor, the motion carried.

Next Zoning Board meeting, is scheduled for Thursday September 26, 2013. This date was confirmed.

4 - Adjournment

**Adjournment:** There being no further business, Chairman Comerford thanked the Board and requested a motion to adjourn. Ms Smith made the motion and was seconded by Mr. Gomes. With all in favor, the motion carried. The meeting was adjourned at 8: 14 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 29, 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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*Allen Decker, Clerk*