



Zoning Board of Appeals

September 26, 2013 - **Minutes**
City Hall, 133 William Street, Room 314

Board Members Present:

Jennifer Smith
Donald Gomes
Debra Raffa Trahan
Horacio Tavares
Allen Decker

Board Members Absent:

Ian Comerford
Mike Amaral
James Mathes

City Staff:

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

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

Continued Hearings:

Case # 4100 A Variance
Case # 4101 A Special Permit
Case # 4102 A Variance

Scheduled Hearings:

Case # 4103 A Variance
Case # 4104 A Variance

Vice Chair, Ms. Smith, chaired the meeting and introduced members of the Board and City Staff. She later read the opening remarks along with the general requirements for granting a Variance and a Special Permit.

She then explained to the petitioner of Case # 4100, that Board Member, Allen Decker will be recusing himself as he hadn't attended August 29th. Meeting and hadn't had the chance to review the tape either. Thus, leaving a four member-board and consequently requiring all four votes in the affirmative for any variance to be granted. The option to either go forward, or continue the case till October's Meeting, was also provided to the petitioner, who elected to move forward with four members. Mr. Decker leaves the room. Mr. Gomes made a motion to remove Case # 4100 from the table. Ms. Trahan seconded it. **With all in favor, the motion carried.**

Ms. Smith, the Acting Chair for tonight's meeting asked Mr. Castignetti if he would recap from where he left off last month. It's a minor dimensional variance for a Rear Yard Setback and consistent with all four corners in the neighborhood, he said. This is an odd shape lot and regardless of how we would maneuver the placement of the house we wouldn't be able to achieve the 30 feet required setback, the

in-house counsel for Long Built Homes continued to say. At the last meeting an abutter has sent in an email objecting to this petition. We have since provided this Board with the actual As-Built Plan for his Lot (17 Mate Drive, the abutter's house) What we are proposing here is no more intrusive than what his orientation to this lot line is in relation to this lot. By visiting the site one will notice that the configuration throughout the subdivision is identical and consistent with what we intend to do here. Mr. Castignetti ended. No one spoke or was recorded in favor of the petition. Mr. Jacob Raposo, 17 Mate Drive spoke in opposition. He presented to the Board a few photographs showing the close proximity of the proposed house to his property line. They were received into the records by a motion from Mr. Gomes seconded by Ms. Trahan. He then told the Board; I have 19' from the back of my house to the property line. I know I needed 30'. I don't really know how this is came about, probably with a variance. This proposed house has 22' which will add up to 41' between the two properties, but, I also have a deck. My main concern here is privacy and property's devaluation. Mr. Gomes asked Mr. Raposo: what would you like to see there? He answered: Some grass with benches. Mr. Gomes then asked the Commissioner, what is the square footage requirement in a Residential A for a single family house? 8000 sqft. Mr. Romanowicz answered. Mr. Gomes continued; according to the zoning code, this lot is buildable. The petitioner is only here because he can't place the house without violating some of the setback requirement, due to the lot's odd shape. Ms. Smith asked Mr. Raposo; what is the Rear Yard Setback of your house. 19' he replied. She also reminded him that the subject lot had received two granted variances before, but because they weren't acted on in due course, this petition is before us this evening. Ms. Trahan was looking for a compromise. During the rebuttal period, Mr. Castignetti defended the subdivision's layout of the lots stating that the proposed grass/open space would be inconsistent with the fabric of the neighborhood. As for Mr. Raposo he said I intend to protect my privacy with a fence and the arborvitae I planted along my property line. At the final rebuttal Mr. Castignetti pointed out to the Board that both lots in question have a 10' drainage easement in the back that should be kept free of any structures, including plantation. The Board asked Mr. Romanowicz to check on this. With no further questions or concerns, Ms. Smith declared the hearing closed. The Board members deliberated for a few minutes after which time Ms. Smith was ready to entertain a motion.

Ms. Trahan motioned to grant Appeal # 4100, a Variance under provisions of the City Code of New Bedford to Long Built Homes Inc. 158 Charles McCombs Blvd. New Bedford, MA 02745 relative to the property located at, 92 Tarkiln Place Assessor's Map Plot 130 G Lot 251 in a Residential A Zoned District, and to allow the petitioner to **Construct a single family dwelling and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements, Appendix B) 2730 (Dimensional Variation) 2750 Yards in Residential Districts and 2753 Rear 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**

Roll Call Vote:

Horacio Tavares -yes

Debra Trahan - yes

Donald Gomes – yes

Jennifer Smith - yes

Tally 4-0, motion passed

Next Case # 4101 (Mr. Decker returned to the room)

Mr. Gomes made a motion to remove Case # 4101 from the table. Ms. Trahan seconded it. **With all in favor, the motion carried.**

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

Ms. Smith declared the hearing open.

Both petitioners, Ms. Leonida Berroa and Ms. Arelis Piccirillo, mother and daughter residing at 80 Clark Street, presented to the Board. My mother has had this Daycare in the basement for the last three years. We recently received a letter from the Building Department asking us to apply for this Special Permit, Ms. Piccirillo, continued. Ms. Smith asked Commissioner Romanowicz to elaborate on the letter and the Special Permit's requirements. Mr. Romanowicz told the Board; the City's 2003 Ordinance required that a Special Permit be granted by this Board for any family daycare and large daycare facility before it can operate as a business. The State was issuing these licenses to Daycare Centers without notifying us. As for, what has triggered this letter now, he said; someone put up a sign for a "Daycare" so, we had to react to it. Commissioner Romanowicz Concluded. Ms. Trahan inquired on the number of children at this facility and whether the petitioners are licensed by the State. We have 9 children and two assistants,

and are fully licensed by the State, they replied. Ms. Smith clarified further with the Commissioner on any other issues that the Board should be aware of. Commissioner Romanowicz told the Board that the petitioners would still have to abide by the State Building Code to insure the full safety of the children, and that all of the required conditions have already been included in the “motion to grant” for this application. No one spoke or was recorded in neither for nor against this petition. With no further questions or concerns Ms. Smith declared the hearing closed. The petitioners inquired whether they still need to install another “means of egress”. Commissioner Romanowicz informed the Board that Mrs. Diana Phillips from the Department of Early Education & Care (State Agency) has visited this location and determined that the two means of egress are not remote enough and that another egress needs to be installed as per State Building Code.

Ms. Trahan motioned to grant Appeal # 4101, a Special permit under provisions of the City Code of New Bedford to: Cesar Bolivar Berroa and Arelis Piccirillo, Lessee, 80 Clark Street New Bedford, MA 02740, relative to property located at 80 Clark Street, Assessor’s Map Plot 84 Lot 148 in a Residential C Zoned District, and to allow the petitioner to **Operate a family child care, and to relieve the petitioner of 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, **with the following conditions:**

- 1- That this approval is contingent upon compliance with the State Building Code.**
- 2- The petitioner will be refunded for the difference between \$ 895.00 Dollars he/she paid for the petition and the new fee as established by the Board for similar petitions. Furthermore,**
- 3- In the event, the City Council eliminates the requirement for a Special Permit under Sub-Section 2323, the petitioner will be refunded for the whole amount of \$ 895.00 Dollars without any further action from this Board.**

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:

Debra Trahan - yes
Donald Gomes – yes
Allen Decker - yes
Jennifer Smith – Yes
Horacio Tavares – Yes

Tally 5-0, motion passed.

Next Case # 4102

Mr. Gomes made a motion to remove Case # 4102 from the table. Ms. Trahan seconded it. **With all in favor, the motion carried.**

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

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

Ms. Smith declared the hearing open.

Attorney, Richard J. Manning, 167 William Street, New Bedford, MA 02740 presented on behalf of the petitioner and submitted to the Board, new plans, eliminating the second floor addition and changing the size of the back addition to 10'x16'. The plans were received and placed on file by a motion from Mr. Gomes seconded by Mr. Decker. He then introduced Mr. Chris Renfree, the project's Architect/Designer of 1379 N. Main Street, Acushnet, MA 02743. Atty: Manning explained on the plans with the help of some, recently-taken photographs, the unique topography associated with the site. This non-rectangular and oddly shaped lot bordering the Pond, he added, has probably one third of its size unbuildable because of the wetland and the buffer zone. Pointing to the site plan that he submitted to the Board, he described the extreme grade variation between Morton Avenue, the front of the house and the Rear of the property, describing yet, another element of hardship. The addition of the garage and the extra bedroom are out of necessity, as this family is expecting another child, he said. He further explained on the plans how the unique characteristic of the lot has dictated the current placement of the proposed garage and bedroom. On a question whether the garage will have any plumbing, Mr. Raposo told the board that he would like to have a bathroom and a sink installed in the future. Atty. Manning concluded his presentation citing the relevant sections of the Zoning Code and the hardship associated with their literal enforcement, thus seeking the desirable relief without the substantial detriment to the public good. Chris Renfree, reaffirmed to the Board that this plan is the most feasible, considering the odd shape of the lot, and its topography, especially, the grade variation. Mr. Daniel Seney, 1463 Morton Avenue, direct abutter, spoke in support of the project. Also, Michael and Niki Gryss, 1051 June Street, were recorded in favor. No one spoke or was recorded in opposition. With no further comments or questions, Ms. Smith Declared the hearing closed and was ready to entertain a motion.

Ms. Trahan motioned to grant Appeal # 4102, a Variance under provisions of the City Code of New Bedford to: Mark P Raposo 1453 Morton Ave. New Bedford MA 02745, relative to property located at 1453 Morton Ave, Assessor's Map Plot 136A Lot 791 in a Residential A Zoned District. and to allow

the petitioner to **Erect a 23'x45' garage, A 10'x16' addition in the back of the home, and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Sections 2300 (Accessory Buildings and Uses) 2310 (General) 2331 (Private Garages) 2332-2334 and 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements) 2730 (Dimensional Variation) Appendix B, 2750 Yards in Residential Districts and 2751 Front Yard and 2755 Side Yards. With no Conditions, and that the project be set forth **according to revised plans submitted tonight** 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:

Debra Trahan - yes
Donald Gomes – yes
Allen Decker - yes
Jennifer Smith – Yes
Horacio Tavares – Yes

Tally 5-0, motion passed

Scheduled Hearings:

Appeal # 4103 was filed by: Eric and Paula Medeiros 14 Devoll Street, **New Bedford MA 02740** who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 14 Devoll Street, Assessor's Map Plot 34 Lot 60 in a Residential B Zoned District. **The petitioner is proposing to build a second story on top of an existing garage to be used as arts and crafts additional space which would require a variance under Chapter 9**, Comprehensive Zoning Sections 2200 (Use Regulations), 2210 (General) 2300 (Accessory Buildings and Uses) 2310 (General) 2330 (Accessory Structures) 2333 (Accessory Structures over 18 feet in height).

Mr. Decker read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated September 9, 2013. Motion seconded by Mr. Gomes. With all in favor, the motion carried.

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

Ms. Smith declared the hearing open.

The petitioner, Mr. Eric Medeiros presented to the Board. My wife is an artist and she is in need of some extra space to pursue her passion for the art. We would like to be able to build a second floor over the existing garage for storage/studio. Ms. Smith clarified with the petitioner over a concern with the way item # 10 in the application was filled out. She wanted to make sure that the only addition they are seeking tonight is the addition over the garage. The petitioner reaffirmed that. Ms. Medeiros was recorded in support of her petition. No one else spoke or was recorded in neither for nor against the petition. With no further questions or concerns Ms. Smith declared the hearing closed and was ready to entertain a motion.

Mr. Decker motioned to grant Appeal # 4103, a Variance under provisions of the City Code of New Bedford to Eric and Paula Medeiros 14 Devoll Street, **New Bedford MA 02740** relative to the property located at 14 Devoll Street, Assessor's Map Plot 34 Lot 60 in a Residential B Zoned District and to allow the petitioner to **build a second story on top of an existing garage to be used as arts and crafts additional work space and to relieve the petitioner of Chapter 9**, Comprehensive Zoning Sections 2200 (Use Regulations), 2210 (General) 2300 (Accessory Buildings and Uses) 2310 (General) 2330 (Accessory Structures) 2333 (Accessory Structures over 18 feet in height). 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:

Debra Trahan - yes
Donald Gomes – yes
Allen Decker - yes
Jennifer Smith – Yes
Horacio Tavares – Yes

Tally 5-0, motion passed

Next Case;

Appeal # 4104 was filed by: Maciej Przybysz 867 Chaffee Street New Bedford, MA 02745 who submitted a Petition for a Variance under provisions of Chapter 9, Comprehensive Zoning relative to property located at 867 Chaffee Street, Assessor's Map Plot 130A Lot 778 in a Residential A Zoned District. **The petitioner proposes to: Construct a 22'x 40' Garage 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 Variation) 2750 Yards in Residential Districts and **2755 Side Yards.**

Mr. Decker read and motioned to receive and place on file communication from Danny D. Romanowicz; Commissioner of Buildings & Inspectional Services dated September 9, 2013. Motion seconded by Ms. Trahan. 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. Trahan. With all in favor, the motion carried.

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

Ms. Smith declared the hearing open.

Mr. Norman Nichols, 2 Monmouth Street, Acushnet, MA, presented on behalf of the petitioner after mentioning to the Board that he has in his possession a notarized Specific Power of Attorney authorizing him to do so. He told the Board; I have been to the site. We tried to build the proposed garage in the back of the house. But, this did not work because of an existing kitchen. The plans that you have in front of you, meet all of the dimensional requirements except for side yard setback. We are seeking a variance for the shortage of 4 feet from the required 10 feet. Ms. Smith confirmed with Commissioner Romanowicz on the side yard requirement in a **Residential A** of it being a 10' on one side 12' on the other. No spoke or was recorded in favor of the petition. Ms. Dorothy Lavoie, 840 Terry Lane, New Bedford, MA 02745 spoke against the petition. She said; I own the vacant, tree property east of where this garage is being proposed (Lot 130A 63). I think, it is a big structure and that the required 10' side yard needs to be respected. At some point in the future I will be selling this lot and whoever buys it will have to abide by the 10' setback requirement. During the rebuttal period Mr. Nichols stated; This garage, if approved, it will have 6' of side yard. And, when you add the 10' on the other lot will be 18' total, this is more than enough for any home, and quite similar to most of the homes in that area. Dennis Lavoie, the son of Ms. Lavoie was also recorded against the petition. He is mainly concerned about a second floor within this garage. Mr. Nichols took the podium and assured the Board; it is only a garage, one level to store some antique cars. Nothing more than what the plans are showing. He then submitted to the Board, The Power of Attorney he had referred to at the beginning of the meeting. This was received and placed on file on a motion by Mr. Gomes seconded by Ms. Trahan. With no further questions or comments Ms. Smith declared the hearing closed and was ready to entertain a motion.

Ms Trahan motioned to grant Appeal # 4104, a Variance under provisions of the City Code of New Bedford to Maciej Przybysz 867 Chaffee Street New Bedford, MA 02745 relative to the property located at 867 Chaffee Street, Assessor's Map Plot 130A Lot 778 in a Residential A Zoned District, and to allow the petitioner to **Construct a 22'x 40' Garage and to relieve the petitioner of Chapter 9,**

Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements, Appendix B) 2730 (Dimensional Variation) 2750 Yards in Residential Districts and **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. Gomes seconded the motion. **With four members voting in the affirmative, the motion carried.**
Roll Call Vote:

Debra Trahan - yes
Donald Gomes – yes
Jennifer Smith – Yes
Horacio Tavares – Yes

Allen Decker – No

Tally 4-1, motion passed

The Board moved to the next item under **Old & New Business**.

OLD AND NEW BUSINESS

Approval of minutes from August 29, 2013. Ms. Trahan made a motion to approve the minutes for cases 4099-4102 this was seconded by Mr. Tavares. With only Mr. Decker abstaining, the motion carried. 4-1

Next Zoning Board meeting, is scheduled for Thursday October 24, 2013. This date was confirmed.

Adjournment

Adjournment: There being no further business, Ms. Smith thanked the Board and requested a motion to adjourn. Mr. Gomes made the motion and was seconded by Ms. Trahan. With all in favor, the motion carried. The meeting was adjourned at 7:58 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 September 26, 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