



Zoning Board of Appeals

April 24, 2014 - **Minutes**

Brooklawn Park Senior Center, 1997 Acushnet Avenue

PRESENT:

Chairman Ian Comerford

Allen Decker

Debbie Trahan

James Mathes

Robert Schilling

ALSO IN ATTENDANCE:

Dan Romanowicz, Inspectional Services

Craig Espinola, City Solicitors Office

MEETING CALLED TO ORDER by Chairman Ian Comerford at 6:07 p.m. Mr. Comerford explained procedures.

A motion was made (DT) and seconded (JM) that Case #4131 be taken out of order. Motion passed unopposed.

CASE #4131 –

After reading into the record the April 2, 2014 communication from the Commissioner/Inspector of Buildings, a motion was made (AD) and seconded (JM) that the communication be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the appeal be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the plan be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the owners of the lot as indicated are the ones deemed by the board to be those affected.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the action of the clerk in giving notice of the hearing is hereby ratified.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the communication from the Office of the City Planner be received and placed on file.

Motion passed unopposed.

Mr. Comerford opened the hearing.

Att. Matthew Thomas addressed the board on behalf of Att. Saunders for the petitioners. He stated that petitioner, Mr. Downing, is seeking to construct a 2 bedroom apartment over an existing 3 tall garage, which is an as of right use on the Residence C District, but the structure is non-conforming being too close to the rear yard line. The proposed extension will not increase the non-conformity and will be built within the existing footprint with a height less than the height of the surrounding predominantly two-family properties. As such, the board could determine the development is not substantially more detrimental than the existing non-conformity.

In addition, with regard to the special permit, this will provide another affordable rental apartment, and will not create any traffic, parking or safety concerns.

He stated the property will be serviced by municipal water and sewer, is expected to add \$50,000 to the city tax base, and fits in with the neighborhood character.

Att. Thomas referenced the plan submitted for the board and stated that no surrounding abutters or neighbors had expressed any concern. He submitted a letter of support from James Almeida.

A motion was made (AD) and seconded (JM) to receive and place on file.
Motion passed unopposed.

Mr. Comerford inquired of Mr. Romanowicz regarding accessory buildings with regard to any difference with 800 Belleville. Mr. Romanowicz stated this would not be an accessory building. Mr. Comerford thought a residence in an accessory building needed to be owner occupied and inspected every two years.

In response to Mr. Comerford's invitation to speak in favor of the petition, Ward 5 City Councilor Winterson addressed the board, stating he was in favor of Mr. Downing's proposal. He stated he had received no negative comments from abutters.

In response to Mr. Comerford's invitation to speak in favor of the petition, City Councilor Brian Gomes stated he was in favor of the special permitting. He noted other projects such as this have been done in the city, specifically on Cleveland Street. He stated he saw no parking problem and believed the project would be good for the neighborhood.

City Councilor Jim Oliveira addressed the board expressing that he too is in favor of the project and knows Mr. Downing to be a good landlord, him having rented to Mr. Oliveira's daughter.

In response to Mr. Comerford's invitation to speak in favor of the petition, Ward 2 City Councilor Steve Martins addressed the board in favor of the project. He stated he had viewed the plans and spoken to Mr. Downing and thought an area owner looking to upgrade his property is great news.

City Council president and Councilor Ward 6 Joe Lopes addressed the board in favor of the petition. He too had seen the plans and spoken to Mr. Downing and gave the project his full support. He noted the board had granted permission to a property owner on Capitol Street and Brock Ave to turn a garage bay into an apartment to rent out.

There was no response to Mr. Comerford's further invitation to speak in favor.
There was no response to Mr. Comerford's invitation to speak in opposition.

Attorney Thomas upon invitation for rebuttal offered none and expressed thanks for the board's consideration.

The public hearing was closed.

A motion was made (AD) and seconded (JM) to grant Appeal #4131, a motion to grant a special permit under the provisions of the city code of New Bedford to Scott Downing, 70 James Street, New Bedford, MA 02740, relative to property located at 70 James Street Assessor's Map Plot 44 Lot 63 in a Residence C Zoned District, and to allow the petitioner to create a residential unit above an existing garage, which will require a Special Permit under Chapter 9 Comprehensive Zoning Section 2400, 2410-2432, 5300-5390 with the following conditions: 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.

Motion passed 5-0

CASE #4127 -

Mr. Comerford announced the board member Allan Decker would recuse himself on this matter. He advised the petitioner that as such, four affirmative votes would be needed, or the petitioner could postpone his matter. Petitioner elected to go forward this evening.

A motion was made (DT) and seconded (JM) to take Case # 4127 out of order.
Motion passed unopposed.

After reading into the record the communication from the Commissioner/Inspector of Buildings, a motion was made (JM) and seconded (RS) that the communication be received and placed on file.
Motion passed unopposed.

A motion was made (JM) and seconded (DT) that the appeal be received and placed on file.
Motion passed unopposed.

A motion was made (JM) and seconded (DT) that the plan be received and placed on file.
Motion passed unopposed.

A motion was made (JM) and seconded (DT) that the owners of the lot as indicated are the ones deemed by the board to be those affected.
Motion passed unopposed.

A motion was made (JM) and seconded (DT) that the action of the clerk in giving notice of the hearing is hereby ratified.
Motion passed unopposed.

A motion was made (JM) and seconded (DT) that the communication from the Office of the City Planner be received and placed on file.
Motion passed unopposed.

Mr. Comerford opened the hearing.

Petitioner Ludgero DaSilva addressed the board and explained that he has an apartment above the garage which he currently lives in. He stated it was a large 4 bedroom apartment, and he is now, at his age, seeking a smaller living space downstairs in the garage.

In response to Mr. Comerford's invitation to speak in favor, Sarah DaSilva Quintal addressed the board on behalf of her father. She expressed that at the time they moved there, both she and her mother resided in the apartment. She stated that the apartment is now too large for her father. She stated the downstairs space had

been used as an office and her father is looking to convert it into an area that will also provide sleeping quarters to provide accessibility as he ages, as well as increase his retirement income.

In response to Mr. Comerford's invitation to speak in favor, Eduardo Borges, contractor for the petitioner, addressed the board. He stated he had done work for Mr. DaSilva in the past and as a contractor thought the garage apartment conversion was a high risk. He felt there was plenty of parking room on this large property and is in favor of the petition.

There was no response to Mr. Comerford's further invitation to speak or be recorded in favor.
There was no response to Mr. Comerford's invitation to speak in opposition.

The petitioner offered no rebuttal upon invitation by Mr. Comerford.

Mr. Comerford closed the hearing. He expressed the motion appeared straightforward and he found no issues, but would like approval conditioned on acceptance by site plan review.

A motion was made (JM) and seconded (DT) to grant Appeal #4127, a motion to grant a special permit under the provisions of the city code of New Bedford to Ludgero A. DaSilva, 800 Belleville Avenue, New Bedford, MA 02745, relative to property located at 800 Belleville Avenue Assessor's Map Plot 116 Lot 52 in a Residential B Zoned District and to allow the petitioner to convert an existing garage into a residential unit, which will require a Special Permit under Chapter 9 Comprehensive Zoning Section 2400, 2410-2432, and 5300-5360, 5360-5390 with the following conditions: that the proposed project will require site plan review approval from the planning commission to allow installation of an off-street parking area; and that 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.
Motion passed 4-0,

The meeting recessed at 6:40 and resumed at 6:46 pm with board member Allan Decker.

CASE #4118 –

After reading into the record the February 10, 2014 communication from the Commissioner/Inspector of Buildings, a motion was made (AD) and seconded (JM) that the communication be received and placed on file.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the appeal be received and placed on file.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the plan be received and placed on file.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the owners of the lot as indicated are the ones deemed by the board to be those affected.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the action of the clerk in giving notice of the hearing is hereby ratified.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the communication from the Office of the City Planner be received and placed on file.

Motion passed unopposed.

Mr. Comerford opened the hearing.

Richard Westergren of Poyant Signs addressed the board on behalf of the petitioner. He stated that the board had the complete drawing set of the proposed free-standing sign and its location in the site plan. He stated the 4 x 12 double faced aluminum illuminated sign box would sit atop a 12' high pole structure and would be located at the driveway entrance with a 6' setback. Mr. Westergren stated the poles and colors were designed to be compatible with the building and neighborhood. He stated the design was consistent with other signs in the neighborhood such as St. Anne's, but smaller with a sign face of 46.6 sf. He invited questions from the board.

There was no response to Mr. Comerford's invitation to speak in favor.

There was no response to Mr. Comerford's invitation to speak in opposition.

Mr. Comerford stated that City Planner Jill Maclean had submitted suggestions, it being a backlit sign with regard to brightness and the time the sign could be illuminated.

Mr. Decker noted that though no opposition was expressed at tonight's meeting, the board had received a February 23, 2014 correspondence from Janice Hodgson of 3166 Acushnet Avenue, an abutter, property owner and active voter in opposition.

A motion was made (JM) and seconded (DT) that the correspondence be received and placed on file.
Motion passed unopposed.

Mr. Comerford suggested an hour before and opening and closing.

In response to an inquiry by Mr. Mathes, Mr. Westergren stated he believed the closing hour to be 8:00 pm, but was unsure. He stated the applicant was agreeable to one hour after closing.

In response to an inquiry by Mr. Decker regarding any capability to manage brightness, Mr. Westergren stated it was florescent tubes which would be on a timer.

Mr. Mathes expressed his support of the hour before and hour after condition.

Mr. Comerford proposed 7:00 am to 9:00 pm., to which the applicant agreed.

Mr. Comerford closed the hearing.

After consultation between Ms. Trahan and Mr. Comerford, a motion was made (AD) and seconded (JM) to grant Appeal #4118, a motion to grant a variance under the provisions of the city code of New Bedford to Child & Family Services, 3057-3087 Acushnet Avenue, New Bedford MA 02745, relative to property located at 3057 Acushnet Avenue, Assessor's Map Plot 132A Lot 72 in a Mixed-Use Business Zoned District, and to allow the petitioner to erect a freestanding ground sign that exceeds the height and area regulations, which would require Variances under Chapter 9, Comprehensive Zoning Sections 3200, 3201, 3210, 3250, 3255 and 3256 with the following conditions: that signage illumination be limited to the hours between 7:00 am and 9:00 pm daily; 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.

Motion passed 5-0.

CASE #4128 – Special permit

After reading into the record the April 1, 2014 communication from the Commissioner/Inspector of Buildings, a motion was made (AD) and seconded (JM) that the communication be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the appeal be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the plan be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the owners of the lot as indicated are the ones deemed by the board to be those affected.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the action of the clerk in giving notice of the hearing is hereby ratified.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the communication from the Office of the City Planner be received and placed on file.

Motion passed unopposed.

Mr. Comerford opened the hearing.

A second sign in sheet was started.

Dennis Daily, Mount Vernon Group Architects, addressed the board on behalf of the petitioner, stating that the Whaling Museum is seeking to continue a non-conforming use on the site described as Johnny Cake Hill, but better described as the entire block running from William Street to Union Street between Johnny Cake Hill and N. Water Street. He stated the proposed building will fill the area along the N. Water Street street front from the Museum to the Sun Dial Building completing the N. Water Street elevation. Mr. Daily said the design is compatible with N. Water Street, but with an awareness of the Johnny Cake Hill sensitivity of smaller buildings of a more residential scale.

Mr. Daily stated the building will continue as a museum, a non-conforming use in the industrial district. He stated he sees it as a positive addition to the already vibrant center and beautiful historic district.

He presented a diagram to illustrate the existing property and the zero lot line of N. Water Street. He phrased the proposed project as the fit in of a missing tooth. Mr. Daily felt it an important site reflective of the whaling nature of the city with regard to the waterfront view up Rose Alley.

Mr. Comerford called for order and asked those in the audience talking to step outside.

Mr. Daily noted the project's proposed plantings, continuation of the fencing, and the erection of a wall and ornamental gate, would be an improvement to transformers and other accessories presently in the gravel lot area, in addition to maintaining the strong street edge.

At Mr. Comerford's request, the illustration was displayed for the cable access recording.

Mr. Decker inquired of any loss of the south end of the new structure. The petitioner expressed it is used for deliveries and is generally unused space.

In response to Mr. Comerford's invitation to speak in favor, Jeff Pontiff of 13 Hamilton Street addressed the board, stating he was a neighbor to the proposed construction and is in favor of the project. Mr. Pontiff stated the Whaling Museum is a great gathering place and center of energy downtown. He felt this was a community asset and would benefit the museum.

There was no response to Mr. Comerford's further invitation to be recorded in favor.
There was no response to Mr. Comerford's invitation to speak in opposition.

Mr. Comerford opened the floor for questions.

Mr. Mathes agreed the Museum is one of the most important buildings within the city and felt the stewards had done a wonderful job. He was pleased to see them strive to grow in New Bedford.

In response to an inquiry to Ms. Trahan, Mr. Gordon Greal of Mount Vernon Group Architects explained that once the applicant had obtained site plan review and special permit for parking, construction should start at the end of June and run 8-9 months.

Mr. Comerford stated his belief that all were in agreement that museum is a great downtown site and the project will add to the city offerings.

Mr. Decker reminded petitioner that paperwork is outstanding.

Mr. Comerford closed the public hearing.

There being no further discussion, a motion was made (AD) and seconded (JM) to grant Appeal #4128, a motion to grant a special permit under the provisions of the city code of New Bedford to Jorge Figueredo, Mount Vernon Group Architects, Inc., 47 N. Second Street, New Bedford, MA 02740 and Old Dartmouth Historical Society, 18 Johnny Cake Hill, New Bedford, MA 02740, relative to property located at 18 Johnny Cake Hill Assessor's Map Plot 53 Lot 161 in an industrial A Zoned District, and to allow the petitioner to construct a four (4) story addition (5,270 Sf.) onto the existing Whaling Museum, which will require a Special Permit under Chapter 9 Comprehensive Zoning Section 2400, 2410-2432, 5300-5360 and 5360-5390 with the following conditions: that the project be set forth according to the 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.

Motion passed 5-0.

CASE # 4129/4130 – Petition for variance/Special permit

Mr. Comerford noted that both hearings would be opened concurrently, statements would be heard, and then two separate votes would be taken.

After reading into the record the April 1, 2014 communication from the Commissioner/Inspector of Buildings regarding petition for variance, a motion was made (AD) and seconded (JM) that the communication be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the appeal be received and placed on file.

Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the plan be received and placed on file.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the owners of the lot as indicated are the ones deemed by the board to be those affected.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the action of the clerk in giving notice of the hearing is hereby ratified.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the communication from the Office of the City Planner be received and placed on file.
Motion passed unopposed.

After reading into the record the April 1, 2014 communication from the Commissioner/Inspector of Buildings with regard to a special permit, a motion was made (AD) and seconded (JM) that the communication be received and placed on file.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the appeal be received and placed on file.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the plan be received and placed on file.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the owners of the lot as indicated are the ones deemed by the board to be those affected.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the action of the clerk in giving notice of the hearing is hereby ratified.
Motion passed unopposed.

A motion was made (AD) and seconded (JM) that the communication from the Office of the City Planner be received and placed on file.
Motion passed unopposed.

Mr. Comerford opened the hearings.

Petitioner Edward Redman of Preferred Realty Services, 475 Union Street, addressed the board. Mr. Redman stated he was seeking a variance to raze the existing building and construct residential housing.

Mr. Redman stated the current building encompasses over 70% of the 10,000 sf lot presently accessed off of Union Street with no off-street parking present.

Mr. Redman, new to area, acquired the property in July. He stated the property has been many things over the years, such as a dry cleaner, a church, a fish processing establishment, a storage establishment and a cabinet

maker. He stated the current mixed-use business zoning would allow for multi-family residential housing. He stated one of the hardships is that the property is an in-fill lot, created before today's zoning ordinances concerning frontage, width and lot area.

Mr. Redman represented that the proposal is for eight two-bedroom residential units after the current building is razed. In addition, 10 units of parking will be located in the rear of the property, the subject of the relief sought. Mr. Redman expects additional parking in front and rear of the lot, providing 2/1 spaces respectively.

Mr. Redman displayed the site plan to illustrate his proposal for the lot running between two streets, with proposed access off of Court Street allowing for safer access.

Mr. Redman referenced the now dormant property as it currently sits as a liability with no historical significance, and he expressed feedback he has received that commercial development/use is not feasible. He stated he has brought the tax bills current and has entered an agreement to bring the tax arrearage current with monthly payments. He expressed this as another liability to the city.

Mr. Redman stated his proposal reduces use of the lot to 21%, provide open and green space with landscape buffers to shield abutters. He believes it to be in harmony with the area, being predominantly residential.

Mr. Redman stated the petitioner will provide storm water management, which is now absent. He stated they are seeking no height or story relief.

Mr. Redman displayed renderings of the proposed project for the board, showing the modern townhouse nature he hopes will attract young professionals or empty nesters and be an asset to the community.

In response to a question by Mr. Decker on the number of units, the petitioner explained that zoning allows for ten 1,000 sf units, but he felt that was little too tight.

There was no response to Mr. Comerford's invitation to be heard in favor.

In response to Mr. Comerford's invitation to speak in opposition, Nancy Andrade of 470 Union Street, New Bedford, addressed the board. She stated she was directly across the street from the project. Ms. Andrade represented that the table of individuals with her were also against the project.

She stated the building was a former owner occupied cleaners for many years, and there was never a traffic/parking issue. She stated that Mr. Romanowicz knows the area having attended the Union Street projects meetings.

Ms. Andrade stated they had a problem with eight residential units in the small area. She stated they had major parking concerns. She stated the Hathaway School occupies the Court Street block to Union Street, and produces traffic, such as buses, during the day on Court Street such that Court Street cannot be used.

Ms. Andrade stated the petitioner is looking to put ten parking spaces, but needs sixteen. She cannot conceive this building will work there as there is not enough room, referring to Mr. Costello's building on County and Merrimac. She questioned whether the term marketable meant Section 8.

Petitioner corrected that the term he used was market rate.

Ms. Andrade stated she did not see anyone going on there, and people on Court Street would now have a parking lot outside their windows. She asked the petitioner how many bedrooms the units would have.

Mr. Comerford explained that Ms. Andrade could not address the petitioner, and stated the project called for 2 bedrooms per unit.

Ms. Andrade again stated that would likely produce at least sixteen cars. She expressed fire issues and stated the project will create an alleyway and is not conducive to the neighborhood. She agreed it is currently an eyesore, but she does not see this working.

In response to Mr. Comerford's invitation to speak in opposition, Rene Nunes of 226 Court Street addressed the board. He stated his property will be next to the proposed parking lot. Mr. Nunes stated the petitioner had said the current building is not structurally sound, but petitioner is building up on this.

Petitioner stated he is razing the building.

Mr. Nunes expressed concern about people going through the walkway from Union Street to Court Street. He stated the parking is bad and his tenant already has trouble getting a space. He stated that he measured and represented that one side of the building is 6" away from what was the medical supply center on Union Street and he will have 12" on his property from the parking lot. He offered pictures to the board. He too felt eight units was a lot for a 45' wide property and did see it as feasible. He felt this would make his property value drop and he has put a lot of money into his house.

A motion was made (AD) and seconded (JM) that the three photographs be received and placed on file. Motion passed unopposed.

In response to Mr. Comerford's invitation to speak in opposition, Lucia DaSilva of 483 Union Street, addressed the board. She stated she could not see an 8 tenant facility there. She stated her fence is ruined from the former owners taking a camper in the alleyway and she is not fixing it for someone else to come and hit it. She stated the alleyway is used like a street. She stated she has lived in her home since 1972 and she will not have privacy in her own backyard and is totally against the project.

In response to Mr. Comerford's invitation to speak in opposition, Randall ??, addressed the board stated he lived directly across the street from the proposed parking lot. He stated you can currently put five cars, but the opening for this building will take two spaces. He explained all the places in the area where parking is not allowed. He expressed concern during bad weather and election time.

In response to Mr. Comerford's invitation to speak in opposition, Jose Manuel Pao of 10 Newton Street, a 26 year resident of an upholstery shop, addressed the board. He too expressed concern with the parking. He stated he is against the project as there is not enough room for parking. He submitted a petition to the board.

A motion was made (AD) and seconded (JM) that the petition of opposition containing 23 signatures be received and placed on file. Motion passed unopposed.

In response to Mr. Comerford's inquiry, the fifteen audience members represented as being opposed acknowledge they had signed the submitted petition.

Ms. Andrade stated she could supply a hundred signatures.

In response to Mr. Comerford's invitation to speak in opposition, David Lajoie of 22 Atlantic Street addressed the board, stating he was against the project for all the reasons stated.

In response to Mr. Comerford's invitation to speak in opposition, Lea Britto of 461 Union Street addressed the board. She is against the project and is concerned about a fire breaking out. She stated a previous speaker could not walk around without clothes because people in this proposed building court look in her house. She stated Mr. Redman will live in Rhode Island and if something happens he will not be available. She thinks the project is a good idea, but not in her neighborhood.

In response to Mr. Comerford's invitation to speak in opposition, Audrey Brow of 214 Court Street addressed the board. She stated she is new to the area and the charm is the privacy and she is opposed to eight units.

In response to Mr. Comerford's invitation to speak in opposition, Richard DeSouza of 468 Union Street addressed the board. He stated he is in agreement with those who spoke in opposition. He feels the building is too big and will house too many people without enough parking. He stated there is no room between the buildings, and he thought when you build you need a certain amount of space between the buildings.

Mr. Comerford explained that is why the board is meeting on this project tonight.

There was no response to Mr. Comerford's further invitation to speak in opposition.

In rebuttal, Mr. Redman thanked the residents for coming and expressing their concerns. He stated he heard the major concern expressed was parking. He stated parking will be required off-street regardless of what is built on the site. He felt school buses come in the morning and go in the afternoon, and the people he is trying to attract will be coming after the buses are gone.

Mr. Redman stated while regulations require two spaces per unit, he does not know how many people will live in the small, quaint, two floor, two bedroom units.

With regard to the building being too close to side yards, Mr. Redman stated he is relieving that condition by razing the building and his plan will result in 12'5" and 8'3" on the west side, with 118' of rear yard. As such, he is reducing the footprint and adding landscaping. He stated the abutter that has a garden and likes trees, may note he is adding trees.

Mr. Redman stated the building is within the height of abutting buildings and will be sprinklered per requirements.

Mr. Redman stated he does not see the property being used as a cut through from Union to Court Street, but stated if a fence was necessary it could be arranged.

Mr. Redman noted the fence of one abutter in reality is encroaching on his property some 8". He stated a new fence will be installed and thus improve her property.

He stated he believes the abutters benefit with this project as he is proposing to replace what is there now with a nice building with green space, parking and landscaping.

In opposition rebuttal, Nancy Andrade stated she has lived in the area since 1969 and has gone through many issues on Union Street. She stated the area is a neighborhood and people at meetings don't get that because they are driving by on their way home. She stated she is going home. She again stated she cannot see that many units in that area, as there are already issues. She stated there is already a two family house with drug issues. She stated she told Mr. Redman to knock the building down and throw some grass seed on it. She stated when they knocked down the Old Colonial Restaurant they damaged her garage.

Mr. Comerford asked Ms. Andrade to confine her comments to the subject project.

Ms. Andrade stated this is what happens and she is still waiting for someone to fix her garage. She stated things happen and people go away. She stated the people at the table own their homes, not rent. Mr. Redman will have tenants while he's in Rhode Island. She thinks it looks lovely in comparison, but does think it feasible to have that many units in such a small space. She stated with children going to and from school and the winter season it will be a nightmare.

Mr. Comerford closed the public hearing. He thanked all who came out and believed the project could add to the neighborhood, as the landscape of the city is changing and drawing more business professionals.

Mr. Comerford noted the project still needs to go for site plan review.

Mr. Mathes noted the planner had recommended granting the variance and special permit providing the total number of units were six, and he agreed, primarily because of the parking issue. He stated he liked the look of the project and the thought of something being done on this unorthodox lot. He felt safety issues would be addressed through the process. Mr. Mathes stated working downtown, he drives by the site a lot. He stated he could foresee a couple of triple deckers being put there, again equaling six families. He stated he could support six units, but would still be concerned with only six parking spaces and would prefer to see 2 off-street per unit because of the parking issues already there. Mr. Mathes stated that as always he is there to help petitioners work on their hardship and would love to help see this project to fruition, but the parking issues articulated by the neighbors present him with a valid concern that it will cause hardship to them. He stated he has never voted for a project that essentially transfers the hardship from the petitioner to the neighbors. He felt six units instead of eight would mitigate the impact of the parking issues.

Mr. Redman stated he is not asking for relief density of units. He reminded the board he is allowed ten. He said he has thought about two buildings, and has thought about subdividing the parcel for access off of both Court and Union. He is looking to make the units attainable to young people and keep costs down.

Mr. Redman stated he could build six unit but increase unit size and thereby possibly increase the volume of people, such as six 3 bedrooms. He stated he appreciated the board's input, but there were arguments on both sides. He believes the 10 parking spaces proposed, along with the two available on Union Street, and the one on Court Street curb cut put him at only three short of the sixteen needed.

Mr. Comerford expressed that he did not see six added cars on the street breaking the neighborhood, especially with rear parking on Court Street and frontage on Union Street. He felt people could access the building from both sides.

An audience member made comments and Mr. Comerford reminded her that the floor was not open for comments.

Mr. Schilling noted that he lived lower down on Union Street and saw the same concerns expressed with the removal of the Custom House parking lot, but has since seen the adaption to its absence and loss of those parking spaces. He understood the concerns, but he too did not see that issue as a deal killer and felt the proposed project sounded good and would be a change for the better.

Inaudible comments were made from a female audience member. She stated everyone goes on to their houses and is not in the neighborhood. She questioned whether there would be a 24 hour maintenance man since Mr. Redman would have to come all the way from Rhode Island.

Mr. Comerford expressed appreciation for the statements.

Ms. Trahan stated she liked the project, but believes the people of the neighborhood. She stated Mr. Redman bought the property nine months ago with its shape and topography, and cannot really say his proposal is not a detriment to the neighborhood. She feels the hardship was made by Mr. Redman himself by trying to put such a big building on it, though she loves the look of it.

Mr. Comerford disagreed that Mr. Redman had created his own hardship when he bought a pre-existing non-conforming building.

Ms. Trahan stated he bought it and could put a single family on it, and therefore it is not a hardship, as he is able to do something else. She stated the project did not have to be that big in that neighborhood. It would eliminate the hardship, but Mr. Redman wouldn't make as much money.

Mr. Redman stated he bought a property in a multi-family use zone, not a single family zone.

Ms. Trahan reiterated that Mr. Redman could make his money back without it being eight units. She stated the petitioner needed to prove a hardship and that it would not be a detriment to the neighborhood, and she did not believe that had been proven.

Mr. Comerford felt that thinking would result in no forward progress in the city and the continuation of old buildings undeveloped.

Inaudible comments were made by an audience member, who Mr. Comerford asked to not speak.

Ms. Trahan reiterated that even though the issue at hand was six parking spaces, any number of needed parking spaces are an issue as neighbors have all said there are not enough spaces even currently.

Mr. Mathes indicated that he believes neighbors want to see something nice come to the neighborhood as opposed to what is there now, but he believes as proposed it will create a parking hardship for current residents. He again stated he was in agreement with the city planner's recommendation for fewer units. He stated that although he would like to see two off-street spaces per unit, he would be more comfortable if twelve were needed and the petitioner only had ten. Mr. Mathes stated he had seen many cars as well as the buses mentioned. He represented that he would likely support the project at six units and ten spaces, but would not support the project as presented. He confirmed that four affirmative votes were needed for the project to pass. He expressed that he was thrilled to see investment in the city.

The petitioner stated the proposed footprint is 25'x84' which is roughly 2,300-2,400 sf. The existing building is 32' wide by 217'.

Mr. Comerford confirmed that six 3 bedroom units could result in 18-20 cars, and that eight 2 bedroom units is relatively the same situation.

Ms. Trahan noted that a plan for five units would not require the parking permit and presents no hardship.

Petitioner stated the side yard width is the hardship, which was existing before his purchase and not created by him.

Mr. Comerford explained the petitioner would need to show that literally enforcing the provisions would create a hardship, financial or otherwise.

Ms. Trahan noted the large size of the proposed building. The petitioner expressed the empty building on it is large, and that when the property was a church it most likely created parking problems as well.

Mr. Mathes stated he had voted against a proposal for a church in the neighborhood for the same parking problem reasons, and reiterated his unwillingness to transfer hardship from one person to another.

The petitioner noted that the width required is 150 and he has 45 as the parcel exists.

Further discussion occurred about other potential things that could be built on the site.

Mr. Mathes again expressed his desire to have the project developed, but in a way that does not create or transfer the parking hardship, and again stated he agreed with the city planner's suggestion that number of units be six, but was unmovable on the project as proposed.

In response to a question by Mr. Schilling of whether the project was viable at six units, Mr. Redman expressed it was close to a deal breaker, and he believed at six units he would need to move up to 3 bedrooms, which would result in even more cars.

The board reminded Mr. Redman that the requirement for parking was per unit not per bedroom.

Mr. Redman stated that the 2 bedroom units as designed are to keep population and car count down. He stated he could design four 4 bedroom units in the same footprint, but increase the cars even more. He stated he had done his homework and the proposal as designed reflects that, and that is why he reduced the units to eight from the ten allowed. He stated the hardship results from a change in the zoning code for an in-fill lot, with zero lot lines.

Mr. Redman stated the majority of neighbors have two families with no off-street parking and have in essence transferred their hardship to the community. Mr. Mathes reminded the petitioner the neighbors are already there. Mr. Redman noted he was capable of going back to a fish processing plant which already has a permit in place and would have no off-street parking, but he did not think that's what the neighbors would want to see. He stated he is trying to propose an improvement.

Mr. Mathes confirmed the applicant was hard and fast on eight units. The applicant expressed he was hard and fast on an income stream of \$400-\$500 per bedroom/\$1,200 per unit, just below market rate. He said reducing to six units would require him to go to 3 bedrooms/\$1,500 per month, which he feared would price some people out of the market. He stated he is looking to keep the building full.

A male in the audience stated that his mortgage is \$1,400 per month with a \$500 per month apartment upstairs. He stated the prior building owner who cooked fish had two fires in the building and the board of health shut it down, so Mr. Redman cannot reopen that business.

A female audience member asked if there would be 24-hour maintenance man.

Mr. Comerford interrupted to continue with the meeting format.

The female audience member stated that the board was only allowing Mr. Redman to talk.

Mr. Comerford explained the process at this point was that the board was asking the petitioner, Mr. Redman, questions, and she was making statements.

After the audience member told Mr. Comerford not to talk to her like that, Mr. Comerford informed her she was free to leave, but could not take the floor.

Mr. Decker expressed he was torn on the issues and found it a difficult proposal boiling down to parking. He felt the proposal attempted to address the parking need as much as it could. He noted the planner's comments on a unit number reduction, but stated he did not yet have his mind made up.

The petitioner asked if he had an option to withdraw without prejudice and then revisit. He expressed he needed a moment to think.

Mr. Mathes clarified that if the project were voted on this evening and got three or fewer votes, the petitioner was precluded from revisiting this project for two years. He further clarified if the petitioner withdrew, he could come back with the proposal as it is or as something different.

A motion was made (DT) to allow the petitioner to withdraw.

Petitioner stated he had not exercised the option to withdraw, but just inquired of its availability. He requested the board allow him a moment to collect himself.

The meeting recessed at 8:40 pm and resumed at 8:50 pm.

By way of clarification, the petitioner asked if he went for a vote and the vote failed, he would need to wait two years. Mr. Comerford noted that was the case unless there was a substantial change to the plan submitted. He confirmed for the petitioner that he could refile another design.

Mr. Redman stated he had spoken to some of the neighbors and appreciated their input. He stated he did not wish to exercise his option; that he felt the board was fair and just, and he had presented a good project and wanted to hear the board's decision.

A motion was made (AD) and seconded (RS) to grant Appeal #4129, a motion to grant variances under provisions of the city code of New Bedford to Preferred Realty Services LLC, 386 B Third Beach Road, Middletown, RI 02842, relative to property located at 475 Union Street, Assessor's Map Plot 51 Lot 269 in a Mixed-Use-Business Zoned District, and to allow the petitioner to raze the building and reconstruct eight (8) residential units as per plans filed, which will require a Variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720, 2730, 2750, and 2755 with the following conditions: 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.

Motion failed 2-3

A motion was made (AD) and seconded (RS) to grant Appeal #4130, a motion for special permit under provisions of the city code of New Bedford to Preferred Realty Services LLC, 386 B Third Beach Road, Middletown, RI 02842, relative to property located at 475 Union Street, Assessor's Map Plot 51 Lot 269 in a Mixed-Use-Business Zoned District, and to allow the petitioner to raze the building and reconstruct (8) residential units as per plans filed, which will require a Special Permit under Chapter 9 Comprehensive Zoning Sections 3100, 3110, and 3149 with the following conditions: 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.

Motion failed 2-3

OLD BUSINESS:

A motion was made (AD) and seconded (DT) that the March 27, 2014 Zoning Board of Appeals meeting minutes, addressing Cases 4120, 4121, 4122, 4119, be accepted as presented

There being no further business, the meeting was adjourned at 8:54 p.m.