



# *Zoning Board of Appeals*

July 17, 2014 - **Minutes**

New Bedford Main Public Library, 613 Pleasant Street

**PRESENT:**

**Ian Comerford (Chairman)**

**Allen Decker (Clerk)**

**Robert Schilling**

**Leo Schick**

**Horatio Tavares**

**Also in attendance:**

Dan Romanowicz, Building and Inspectional Services Commissioner

Jennifer Gonet

MEETING CALLED TO ORDER by Chairman Comerford @ 6:15 pm.

Chairman Comerford then explained the process and procedures to the applicants and those in attendance.

**CASE #4139** – Special permit

Communication dated 5/22/14 from the Commissioner of Buildings and Inspectional Services was read into the record.

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

Motion passed unopposed.

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

Motion passed unopposed.

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

Motion passed unopposed.

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

Motion passed unopposed.

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

Motion passed unopposed.

Mr. Comerford declared the hearing opened and called upon the petitioner.

Bill Hanrahan, a site acquisition specialist from Network Building and Consulting, a vendor of Sprint Spectrum addressed the board. He noted that in March 2012, Sprint had received a special permit for 12 antennas and 12 remote radio units in addition to two ground cabinets and a fiber box. Since that time, Sprint has received a detailed report from Gibraltar Chimney International, an expert on chimney structure, which stated that the chimney required immediate work prior to any antennae work being done on it.

He stated that in March 2014, they had filed a building permit application incorporating the requested demolition due to safety and structural issues involved, which was denied and has brought them here this evening.

Mr. Hanrahan stated the report by Gibraltar Chimney dated 11/26/12 noted that the brick shell was in a severely deteriorated condition which warranted immediate attention. The primary recommendation in the report was to demolish the upper twenty feet of the chimney, which is actually an implosion.

Mr. Hanrahan stated that the 2012 minutes noted falling bricks. He stated the same minutes noted any change in plans would be submitted to the building department, which is what the applicant has done.

Mr. Hanrahan informed the board that the current equipment mix is different than that applied for in 2012 because the project involves some design changes, and in fact is actually less than permitted in 2012. He stated Sprint wishes to preserve those rights, but wished to proceed with a partial installation of the Network Vision Equipment, replacing 3 CDMA antennas with 3 Network vision antennas, operating on 1800-1900 megahertz with a much greater band width, as well as 9 remote radio heads, as well as some groundwork in the cabinets, as outlined in the application.

Mr. Hanrahan offered a Gibraltar Chimney letter received earlier in the week. He stated the applicant is asking that the 2012 permit be modified to include the required demolition for the top 20 feet, as well as the current mix of equipment under the Network vision installation as outlined.

A motion was made (AD) and seconded (RS) to receive the Gibraltar Chimney correspondence dated July 14, 2014 as part of the record file for the project. Motion passed unopposed.

Mr. Hanrahan stated the applicant felt they needed to act on this and that proceedings as is would present a great liability issue. He stated the installation was the only thing providing income from the smokestack and if Sprint were forced to vacate the site and lose the income, it would be doubtful the stack would be maintained sufficiently

In response to an inquiry by Mr. Comerford, Mr. Hanrahan stated he believed the stack to be 136', which would be reduced to about 116'.

Mr. Schilling inquired if the 116' were in a similar condition. The applicant stated that according to the report it was not as bad. The report noted a huge vertical stress factor, which increases in instability the higher you go.

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

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

Mr. Comerford closed the public hearing.

Mr. Decker wanted to confirm communication from the city consult which recommended that once notified the Sprint project was complete that G&G Communication return for a final site inspection, and suggested the same as a condition.

Mr. Comerford noted that he believed that to be part of the normal process. The board consulted with Ms. Gonet.

A motion was made (AD) and seconded (HT) to grant appeal on case #4139, to grant a special permit under the provisions of the city code of New Bedford to Sprint Spectrum L.P (Agent, Bill Hanrahan), 5 Dartmouth Drive, Milford, MA 01757, relative to property located at 89 West Rodney French Blvd., Assessor's Map Plot 15, Lot 151 in an Industrial B Zoned District to allow the petitioner to modify a previously granted Special Permit by demolishing a 20 foot section of the smokestack on which the antenna are located, as per the Radial Brick Chimney Inspection Report completed by Gibraltar Chimney International, LLC and dated November 26, 2012. This will require a Special Permit under Chapter 9, Comprehensive Zoning Sections 4900-4951C and Sections 5300-5330 and 5360-5390 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 #4144** – Variance

Communication dated 5/23/14 from the Commissioner of Buildings and Inspectional Services was read into the record.

A motion was made (AD) and seconded (RS) that the communication be accepted and received on file.  
Motion passed unopposed.

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

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

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

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

Mr. Comerford declared the hearing opened and called upon the petitioner.

Rosa Pena of 17 Reynolds Street addressed the board requesting a property variance for a three season room.

In response to Mr. Comerford, Ms. Pena indicated the room was already built, the work having been done by her family.

Mr. Decker inquired as to whether the contractor named on the application, Mr. Pereira, was a family member. Ms. Pena stated he was not and indicated she had just hired him to bring the project up to code and completed, as it not yet finished.

Mr. Decker inquired why the applicant had failed to talk to the city first.

Ms. Pena stated she did not know the property line has to be 30' from the house, because she used to have a deck that she wanted to expand.

Mr. Decker stated he had some difficulty when the proper city office is not inquired of prior to the work.

Ms. Pena stated she was not in the city at the time she provided her authorization for deck repair, which the workers then decided to expand. She stated when she returned a couple of days later it was done and she requested a permit which was denied.

Mr. Schilling asked if the room was on the same footprint as the deck. Ms. Pena stated it was, and that the deck was there long before she purchased the house. She again stated that she was unaware about the 30' as the property next to her does not have 30' in the back.

In response to an inquiry by Mr. Schilling, Ms. Pena stated that no one had complained to her about it. She added that she hired the architect to help her figure out the proceeding on the whole thing and try to see if she can fix it and keep it.

Mr. Comerford assured the applicant it was not the board's intention to rake her over the coals, but the growing frequency of similar situations where people just build things and then appear before this board seeking forgiveness generates the sort of questions being asked of her.

Ms. Pena stated that the surrounding properties are way away from the property line, and as such does not interrupt their property line or create an obstruction for them. She again stated that one neighboring house has only has 10' and another only '15, and that is why she wasn't aware completely about the property line, stating she thought it was 6' until the architect explained it to her.

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

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

Mr. Decker asked Ms. Pena to confirm that the sun room as it currently exists is no larger than the existing deck. Ms. Pena confirmed that when she returned someone had decided to make the deck bigger, and the existing sunroom is larger than the previous deck.

Mr. Schilling inquired whether the sunroom is bigger than the size the deck was before, to which Ms. Pena stated it was.

Mr. Schilling noted that not having been around long enough to experience this once a month sort or mistake, he was inclined to vote in favor if this application.

Mr. Comerford agreed, stating it would now go through the building department and be brought up to code.

Mr. Comerford closed the public hearing.

A motion was made (RS) and seconded (HT) to grant a variance under provisions of the city code of New Bedford to Rosa Pena, 17 Reynolds Street, New Bedford, MA relative to property located at 17 Reynolds Street, Assessor's Map Plot 77, Lot 66 in a Residential C Zoned District to allow the petitioner to erect a 12.9 x 25.4 foot addition/three season room, which will require a Variance under Chapter 9, Comprehensive Zoning Section 2700, 2710, 2720, 2750 and 2753 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 4-1.

**CASE #4145** – Variance

Communication dated 5/27/14 from the Commissioner of Buildings and Inspectional Services was read into the record.

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

Motion passed unopposed.

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

Motion passed unopposed.

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

Motion passed unopposed.

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

Motion passed unopposed.

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

Motion passed unopposed.

Mr. Comerford declared the hearing open and called upon the petitioner.

Joseph Michaud, Law Offices at 324 Union Street, New Bedford, addressed the board on behalf of the applicant, seeking to erect a single car garage on their property. He noted the particular concern is the side yard setback requirement. Mr. Michaud stated the applicant believed a variance would be justified under special circumstances due to the topography and shape of the parcel, including the placement of the current building. He noted the 1954 building was placed at an angle by the former owners making it almost impossible to erect a garage at this time. He noted there would still be space between the abutting parcel and the proposed garage.

Mr. Michaud represented that literal enforcement would be a hardship, the house being on a slab without any available basement storage. He stated his clients were aging and would like to be able to park their vehicle indoors for access during inclement weather, so they could attend doctor appointments without brushing snow off the car on a regular basis, which would be a personal hardship to them.

Mr. Michaud stated that relief could be granted without nullifying or substantially derogating from the intent of the bylaw, which is to prevent crowding or encroaching, the area consisting of multiple single family homes with many if not all having garages. He stated relief could be granted without a detriment to the public good. He stated it would in fact enhance the public good by increasing his client's safety in their golden years and would lessen the chance of their vehicle being broken into or being the target of some type of crime. He stated it would also increase the overall value of their home, serving the tax base of the city.

Mr. Michaud stated the petition was accompanied by a list of the abutters and neighbors who had signed the petition in support of allowing the Camaras to erect a garage. He stated given all these factors, a variance would be justified and benefit the overall good of the neighborhood. He invited questions from the board.

A motion was made (AD) and seconded (LS) to accept and place on filed correspondence date 7/8/14 on behalf of the property owner at 79 Foxborough Street. Motion passed unopposed.

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

Upon invitation from Mr. Comerford, Mr. Michaud stated his clients were long-term city residents, looking to sink their roots even further by erecting this garage which will help them in their later years.

Mr. Comerford closed the public hearing.

Mr. Comerford stated he felt the petition met all the requirement with regard to granting a variance; the topography and circumstances and does not nullify the intent or purpose of the bylaw and really fits into the neighborhood.

Mr. Decker noted that the property owners to the side where the garage is proposed to be built, the Leals, who would be most affected, took time to submit an individual letter supporting the project.

A motion was made (AD) and seconded (HT) to grant Appeal #4145, a motion to grant a variance under provisions of the city code of New Bedford to Kenneth M. Camara and Ana M. Camara, 69 Foxborough Street, New Bedford, MA 02746, relative to property located at 69 Foxborough Street, Assessor's Map Plot 95, Lot 155 in a Residential A Zoned District to allow the petitioners to erect a 16' x 24' garage, which will require a variance under Chapter 9, Comprehensive Zoning Sections 2300, 2310, 2330, 2331, 2700, 2710, 2720, 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 passed 5-0

With regard to the previous election of officers, Mr. Schilling sought to decline his nomination as vice chair, citing his inexperience on the board at this point. He suggested someone else take it, unless it need be.

Mr. Decker noted the position has been vacant since Jennifer Smith left the board.  
Mr. Comerford stated he would follow-up with Mr. Mathes regarding the position.

A motion was made (AD) and seconded (LS) to receive, accept and approve the minutes from the May 22, 2014 meeting of the Zoning Board of Appeals as submitted. Motion passed unopposed.

Mr. Comerford noted the next meeting date is July 24, 2014.

There being no further business, Chairman Comerford adjourned the meeting at 7:04 pm.