



Zoning Board of Appeals

July 24, 2014 - **Minutes**

New Bedford Main Public Library, 613 Pleasant Street

PRESENT:

Ian Comerford (Chairman)

Allen Decker (Clerk)

James Mathes

Robert Schilling

John Walsh

Also in attendance:

Dan Romanowicz, Building and Inspectional Services Commissioner

Jill Maclean, City Planner

Kreg Espinola, Assistant City Solicitor

Jennifer Gonet

MEETING CALLED TO ORDER by Chairman Comerford at 6:02 pm.

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

CASE #4146 – Special permit

A motion was made (AD) and seconded (JM) that the communication dated 6/18/14 from the Commissioner of Buildings and Inspectional Services be received and placed on file, along with a motion that the appeal be received and placed on file, as well as that the owners of the lots as indicated are the ones deemed by this board to be those affected, and that the action of the clerk in giving notice of this hearing is hereby ratified; and that the communication from the Office of the City Planner dated 7/24/14 be received and placed on file.

Motion passed unopposed.

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

Marc Deshaies for the petitioner requested both hearing be open.

CASE #4147 - Variance

A motion was made (AD) and seconded (JM) that the communication dated 6/18/14 from the Commissioner of Buildings and Inspectional Services, along with the appeal, be received and placed on file; that the plan also be received and placed on file; and that the owners of the lots as indicated are the ones deemed by this board to be those affected, and that the action of the clerk in giving notice of this hearing is hereby ratified; and that the communication from the Office of the City Planner dated 7/24/14 be received and placed on file.

Motion passed unopposed.

Mr. Comerford declared Hearing #4147 open and called upon the petitioner.

Mr. Decker noted that the attorney for the petitioner has a business relationship with his employer, The Buzzards Bay Coalition. Mr. Decker stated that he in no way thought that would cause him to be anything but impartial and objective in hearing the two cases.

Att. Marc Deshaies addressed the board on behalf of the petitioner. He noted the special permit petition consisted of two parts, the first being to allow an adult daycare center to be erected in a mixed use business district. The second part of the special permit application involves the development of onsite parking to service the adult daycare center on Ashley Boulevard. Att. Deshaies noted that for point of reference this unique piece of property is on the easterly side of Ashley Blvd. 1/3 to 1/2 mile from the juncture of Ashley Blvd. and Acushnet Avenue in the city's north end.

The properties along the Boulevard and Avenue are bisected, with a portion of the property lying within the mixed use business district and a portion within a Residential A District. He noted the front part is in the mixed use district approximately 85' deep, with the remainder in the Residential A.

Att. Deshaies noted that traveling south from Ashley Boulevard and Acushnet Avenue there is a funeral parlor and two used car lots; and on the westerly side are several residential dwellings, a condominium complex and a bank. Immediately across the street is Dr. Nisby's dental office. Att. Deshaies stated he had grown up in the neighborhood, which is generally characterized by a lot of businesses with houses interspersed, mostly at the westerly side of Ashley Boulevard.

Att. Deshaies stated that in the special permit, his clients are proposing an adult daycare facility servicing 20-40 individuals on a daily basis between the hours of 8:00-5:00. He stated clients are to arrive at approximately 9:00 and depart at approximately 3:00 pm.

He noted a 1988 Leon Hally plan showing the outlined nine sided (nonagon) property in yellow and its unique shape. Att. Deshaies stated Mrs. Raposa is proposing to develop an approximate 2,900 sf adult daycare center on the front portion on the easterly side of Ashley Boulevard. The two-story facility will contain the daycare center on the first floor and a 3 bedroom residence for family members on the second floor.

Att. Deshaies noted the parking will be screened on Ashley Boulevard by the two-story structure. The petitioners are proposing 11 parking spaces to the rear in the Residential A District; the second part of the special permit request.

He stated the petitioner has worked for Hawthorn Medical for 27 years and her daughter, soon to graduate as a nurse practitioner, seek to have a family run adult daycare center which will employ 5-7 individuals.

Att. Deshaies stated the access to parking will be on the northerly side of the property, with 5 dedicated parking spots to the rear of the property which will be set off for employees. He noted one handicap space and three adjacent spaces coinciding with the rear property entrance which will serve as the required drop off zone.

Att. Deshaies displayed the daycare floor plan, with an activity and dining area, five bathrooms (four handicapped), a shower, a resting room, two nurses stations, an office, a computer, a video room and a meeting room. He stated that under Appendix A to the Zoning by-law they are seeking a special permit for this adult daycare facility as well as parking in a Residential A District.

He noted the standard is that it not be substantially detrimental to the neighborhood. He stated they believed they were proposing an attractive facility having all the appearances of a residence with screened parking to the rear. He again characterized the area as predominantly business interspersed with several residences. Under Chapter 9, Section 5300, there must be a written finding by the board that the social, economic and community needs are served by the proposal. He stated there is a growing elderly population within New Bedford and this proposal serves it.

Mr. Deshaies stated the board needs to determine that this proposal would not adversely affect traffic flow and safety, parking and loading. He stated the Ashley Blvd. location on the easterly side of the boulevard between Chaffe and Dutton Streets is a major north/south thoroughfare in New Bedford. The petitioner proposes two

vans that will pick up clients and between 8:00 and 10:00 am and then there will be return trips at the end of the day.

Att. Deshaies noted that the 100 feet of property frontage will use about 22' for access, leaving available on-street parking for visitors.

Att. Deshaies then addressed the adequacy of the public utilities and other public services. He stated the property is serviced by town sewer and water, and has gas and electric.

In addressing the neighborhood character and social structure, Att. Deshaies again stated he had grown up in the area and has not seen the nature of the neighborhood change. He noted the addition of the Southcoast Hospital and Honey Dew Donuts, as well as the new Bristol County Savings Bank. He stated the neighborhood impact should not be substantially impacted and will in fact be enhanced.

Att. Deshaies noted that no wetlands will be affected with this project, most of the area being overgrown vegetation.

With regard to fiscal impact and city services, Att. Deshaies noted he has been advised there is adequate sewer and water in this part of the city. He stated this project will generate 5-7 jobs in the community. He added that currently assessed as a residential lot, this project will result in commercial taxes. He stated the project meets the criteria, as it is not detrimental to the neighborhood and will not adversely affect traffic. Further, it meets social needs of the community, is not uncharacteristic of the neighborhood, has no impact on the environment and will generate jobs.

With regard to parking, it too will not affect the neighborhood related to social impact or traffic flow, and will be screened by the structure. As such, he stated Petition #4146 meets the criteria for a special permit.

Mr. Comerford invited the petitioner to continue and address Petition #4147 as well.

Att. Deshaies stated that he had had communication with Mr. Romanowicz concerning the 2nd floor residence, a permitted use in a mixed use business district. He stated that because of the lot's unique configuration and the traffic entering the north side of the lot, certain dimensional requirements will need a variance, specifically the frontage needed is 135 feet and the petitioner has 107 feet.

Mr. Comerford inquired as to why the applicant could not construct a smaller 2500 sf building and eliminate the need for a variance, which Att. Deshaies acknowledged was a possibility. Att. Deshaies noted 2700 sf allows them to build out what is allowed in the mixed use business district and supply all the facilities needed under the Department of Elder Affairs to service 30 individuals. The variance applies to the residence, and on the building's southerly side the applicant seeks a variance to 5 feet instead of 10. He stated that the front varies due to the lot configuration, and his client desires to keep the building footprint out of an existing paper street, but the petitioner is seeking a variance with regard to the front yard requirements to 2.5 feet at the closest point.

Att. Deshaies stated he felt the petitioner had met the five criteria for a variance; the unique shape, the literal enforcement causing a hardship to the petitioner, no detriment to the public good, and it does not denigrate from the by-law. He noted a salon property nearby that exhibits the same issue, and as such stated the petitioner is not proposing anything substantially different than some of the other area structures.

Mr. Decker inquired if the rear lot parking is tied to the residential use of the second floor. Att. Deshaies stated there were two additional spaces left for the residents. Mr. Decker noted that the application indicates the facility intends to operate six days a week. Att. Deshaies confirmed the facility intends to operate on Saturdays with the same hours of operation.

In response to Mr. Comerford, Att. Deshaies stated they had 10 spaces, one handicap.

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

In response to Mr. Comerford's invitation to be heard in opposition, Dave Martin of 1260 Ashley Boulevard addressed the board. He apologized for "being a monster" to speak out against adult daycare, but noted his property goes along the side and behind the proposed project. He stated that when he purchased, he was advised that no permanent structure could be built on a paper street, which he noted runs through three properties. He stated he had a problem with the size of the proposed structure, which he felt was too big for the property.

In response to Mr. Comerford's further invitation to be heard in opposition, Judith Martin of 1260 Ashley Boulevard addressed the board. She noted the proposed entrance as indicated by the petitioner will be very close, and expressed that her water and sewer lines appear to run through what the petitioner proposes as the driveway.

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

Ms. Morad, an audience member, requested Chairman Comerford advise abutters they could be recorded with name and address, which Chairman Comerford did.

In response, the following approached:
Lenny Guy of 1268 Ashley Boulevard
Michelle Guy, 1268 Ashley Boulevard

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

Mr. Comerford invited the petitioner to address the opposing remarks.

Att. Deshaies acknowledged Mr. Martin as having a legitimate concern. He noted that a two family or duplex could likely be built on this 10,764 sf lot with 107' of frontage. He assured the board his clients would not have glaring light stations.

With regard to the paper street, Att. Deshaies stated the petitioner owns on both sides and as such would have ownership to develop for access to their properties. With regard to installation of utilities, the petitioner's plan does affect the existing service to their house. Att. Deshaies stated his clients are willing to provide an easement in perpetuity for the water line. He stated they are willing to move any water line as necessary. He stated his clients are again willing to give a perpetual easement with regard to the sewer line and its maintenance. He noted the location of proposed sewer lines and stated Mr. LaBelle had indicated the parties could enter into a joint maintenance agreement.

Att. Deshaies indicated there was a stockade fence near which the petitioner has plantings planned to increase the buffer.

He stated the Raposas are looking to transition their job skills into this venture and are willing to work with the Martins.

In rebuttal, Mr. Martin stated it is his water and sewer line the applicant is looking to tap into, and he does not need an easement for it. He stated he has lived at his property for over 25 years, the petition's subject property in question changing hands and going thru five realtors. He noted the Raposas are nice people and he is just trying to protect his home. He again stated his problem with the size of the building. He stated once it's there it's there, and expressed concerns about what it could become in the future.

Mr. Martin noted they had been taken to court over the water and sewer lines and had won.

Mr. Comerford invited Att. Espinola to address the paper street.

Att. Espinola stated that as Att. Deshaies had pointed out, when there is a common owner of a paper street on both sides, it does merge on the portion that's commonly owned.

Ms. Mathes agreed on questioning the necessity for the proposed size of the facility, as well as any encroachment on a residential area where the direct abutter has an objection.

Mr. Mathes stated he has always found it troublesome to relieve one person of hardship and create a hardship for someone else in the process. He agreed it was a growing service industry, but did not understand why it was being made bigger than necessary.

Mr. Comerford noted the area has many commercial properties. He cited the proposed facility's bus service with vehicles coming in only a couple of times a day, as opposed to a child daycare with parent drop off. He stated that as such, it should have a minimal neighborhood impact given the clientele.

Mr. Comerford closed the public hearings.

Mr. Decker commented that he felt the hours of operation should be limited to 8:00 am to 5:00 pm as the board has done in the past.

Mr. Comerford consulted Ms. Gonet about an overcharge of the petitioner, which would be remedied by a separate motion.

A motion was made (AD) and seconded (JW) to grant Appeal #4146, a motion to grant a special permit under the provisions of the city code of New Bedford to Maria Raposa (11 Karen Lane Dartmouth, MA 02747), relative to property located at ES Ashley Blvd. Assessor's Map Plot 130C, Lot 349 in a Mixed-Use-Business and Residential A Zoned District, to allow the petitioner to construct and operate an Adult Day Care Facility, which will require a Special Permit under Chapter 9 Comprehensive Zoning Section 2000, 2110, 2220, 2230 and Section 3100 Parking and Loading, as well as 3110, 3149, 5300-5360, and 5360-5390 with the following conditions: that the hours of operation be limited to Monday through Saturday 8:00 am to 5:00 pm, 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 4-1.

A motion was made (AD) and seconded (JW) to grant Appeal #4147, a motion to grant a variance under the provisions of the city code of New Bedford to Maria

Raposa (11 Karen Lane Dartmouth, MA 02747) relative to property located at ES Ashley Blvd. Assessor's Map Plot 130C, Lot 349 in a Mixed-Use-Business and Residential A Zoned District to allow the petitioner to construct and operate an Adult Day Care Facility, which will require a variance under Chapter 9 Comprehensive Zoning Section 2700, 2710, 2720, 2730, 2750, 2755 and 2751 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.

A motion was made (AD) and seconded (JW) to have the Zoning Board of Appeals Office reimburse the petitioner Maria Raposa \$750.00 in overcharged application fees.

Motion passed unopposed.

CASE #4148 – Variance

A motion was made (AD) and seconded (JM) to include the following documents in the case file:

- The communication dated 6/16/14 from the Commissioner of Buildings and Inspectional Services;
- The appeal to be received and placed on file;
- The plan submitted to be received and placed on file;
- That the lots as indicated are the ones deemed by this board to be those affected;
- That the action of the clerk in giving notice of the hearing is hereby ratified;
- That the communication dated 7/24/14 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.

Mr. Walsh informed the board that he has a business relationship with the Att. Saunders which he did not believe would affect his judgment in this matter.

Att. Chris Saunders, 700 Pleasant Street, New Bedford, addressed the board on behalf of CSDC Facilities Corp, which has entered into a purchase and sales agreement with present owners PDQ Associates, LLC. He stated his client had entered into a lease agreement with City on a Hill Charter School, resulting in tonight's hearing where his client is seeking to obtain the permits necessary to lease the school to operate a secondary school at 384 Acushnet Avenue in the historic district of New Bedford, known as the old Artworks.

Att. Saunders stated the petitioner is seeking a variance for reduction in parking and loading requirements. He stated the building commissioner had opined a variance from the requirement of 40 off-street parking spaces, 3 drop-off spaces, and 1 loading space was needed.

Att. Saunders noted that many of the downtown area buildings have no off-street parking, as it is not feasible, resulting in the mechanism for special permit reductions.

Att. Saunders stated the normal operational hours of the secondary school will be Monday through Friday from 7:00 am to 3:30 pm with the building hours extending to 5:30 pm. for teacher planning, events or special student needs.

He stated that Roland Velois of PDQ would speak to the development of the building, as whatever goes in the building will require a variance due to the lack of parking. Att. Saunders noted a building in use is better than a vacant building which will fall into disrepair in the historic district.

Att. Saunders stated in addition to the lack of open space, the shape of the lot does not provide for any parking, leaving the only alternative a demolition of the existing structure to rebuild something with a parking structure included. He stated even this alternative will not work, as any developer will hit ledge and will disturb the surrounding soil conditions and structures. He referenced the hole on Union Street and its severe impact to the Masonic Building and the building behind the old Saltmarsh. He noted this prevented the applicant from exercising this alternative, in addition to the astronomical financial hardship it would produce.

Att. Saunders felt that for those reasons the applicant qualified for the variance. He noted they had taken steps to address the parking situation. He stated they had made arrangements to utilize Fisher Junior College on Church Street for the 1st year operation beginning in September. He stated that once the permits are in place, there will be no extensive build out, but merely a renovation of bathrooms and a sprinkler system installation. He stated he expects the high school could be operating by the first of the year. He stated much like Global

Charter on Union Street, Nativity Prep at the former YWCA, and U-Mass Dartmouth and BCC, all show a history of students downtown.

Att. Saunders stated they expect in Year #1 a 100 student enrollment, with the full potential of 110 freshmen, and a staff of 20-25. In Year #2, they anticipate a sophomore and freshman class, consisting of some 180 students maximum and a maximum staff of no greater than 40. He stated they are in the process of looking in the downtown area for more space for future years.

Att. Saunders stated he had searched abutting properties and noted a 1977 variance for the adjacent building, also adjacent to Freestones, for the very same reason setting precedent.

Mr. Comerford noted there was no precedent set in a zoning decision.

Att. Saunders corrected himself to say it had occurred in the past with direct abutters as well as those blocks away in the downtown district.

He noted in 2008 a special permit was obtained from the ZBA to make two dwelling units on upper level floors, again with zero parking. Quoting that decision, Att. Saunders read "Mr. Comerford thinks eventually people would get sick of getting tickets and pay the annual parking fee in the garage." He stated the garage is their remedy as well. He stated he had contacted the traffic commissioner who represented there were 300-400 spaces available. Att. Saunders stated he was told that while he could not enter into an agreement for certain spaces, the space is available. He noted the garage is located essentially a half a block away. Att. Saunders also noted that 2008 Chairman Barry Silvia made the request that a document be executed, which was ignored by other board members and not part of the decision. Therefore no such requirement for the purchase of monthly parking passes should occur with this project.

Att. Saunders stated he felt the garage alleviates the off-street parking for the school's staff members. He stated that consultation with Global Charter School had revealed that approximately 10% of their students have vehicles.

With regard to the loading zone, Att. Saunders stated that the school would have minimal deliveries and is no different than any other downtown business. He noted the school would have a daily food service provider with no preparation of food on-site, and the food can be delivered by van. He stated Dover Street, a non-public way, could be used for this delivery, which should take no more than five minutes and will not impede any traffic. He noted the 50' loading zone across the street is available to them.

With regard to the busing of students, Att. Saunders had consulted with Tremblay Bus, and had included a maximum of four buses in the petitioner's application. He stated that in spite of producing additional costs, they have investigated using smaller 25' buses which will fit on Dover Street, instead of the standard 40' bus. He stated they would develop a strategy with neighbors to stack buses at 3:30, which would have zero disruption to Acushnet Avenue or the private way. He noted the 40' buses would be dropping off students at 7:30 am, a slower morning traffic time, which may cause a minor disruption to on-street traffic.

Att. Saunders noted that Bethel Street has many buses utilized for the Whaling Museum, which leave prior to the City on a Hill daily release, providing an area for the school's buses to queue in, with a travel path down Bethel Street, up Elm Street, down Acushnet Avenue to the front of the school, which happens every day on Court Street for the Hathaway School and on North Street for Holy Family/Holy Name, which create a minor disruption. He felt once familiar, people would work around it.

Att. Saunders felt they had explored reasonable accommodations and will provide downtown with more student business after 3:30 pm. He requested a granting of the variance and invited any board questions.

Mr. Decker inquired as to the volume of parents anticipated to pick up and drop off students. Att. Saunders did not believe drop off would be a problem, just the same as occurs at most schools. With regard to parental pick up, he felt a routine would be developed, again like most area schools. He noted if Dover Street is not utilized for buses, it can be used for pick up, having the right to pass and re-pass, much like was done on the private way at St. James/St. John.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Arthur Bennett of 749 Purchase Street addressed the board. He stated that he and his wife had lived in the downtown area for almost 30 years, presenting living within two blocks of the proposed school. He expressed no problems and was in support of the school and the use of the building. With an underused parking garage within a half block of the school, he saw no parking problem. He noted buses coming and going from U-Mass Dartmouth and the Global Charter School have never presented a problem. He stated if you walk the two blocks from Elm to Union Street there are many vacant buildings, and he would hate to see another one which could viably be used for a positive purpose like this.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Roland Valois of 24 Gulf Hill Drive, Dartmouth, partner with PDQ Associates, owners of the property, addressed the board. He stated that PDQ was a group of civic minded individuals who came together under Crystal Campbell for the purpose of purchasing and developing the building for the use of Artworks. He stated over the years owning the building, they have made no money from it and used it strictly to help create the Arts District in Downtown New Bedford. He stated that Artworks is merging with the art museum, resulting in an almost vacant building. As a builder and developer, he noted for the board that if a better use were available for the building, he would be developing it himself. After examination of many potential uses, it does not work well. He believed the proposed use for the building is probably the best thing for downtown, with clients bused in and teachers coming and going in downtown at limited times. He noted that office use, retail, and apartments would all be more intrusive to the neighborhood. He stated the parking issue will never go away and they will be back before the board if this is denied. He again stated that as a developer, he cannot imagine a better use for the property than the one proposed this evening.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Annie Hayes of 65 William Street addressed the board.

Mr. Comerford encouraged those without new statements to introduce opt to simply be recorded in favor and voiced respect for all who came this evening.

Ms. Hayes stated she is more for than against the proposal. She stated she is concerned about the safety of the kids, as the school would be on a very problematic street. She stated the assumption that there is a 50' loading zone is viewed differently when you live on it. She stated there are elements of danger with kids being right on the street, as there is no buffer zone. She referenced a diagram she had created.

Mr. Comerford clarified that the board was entertaining comments in favor not opposition, specifically comments which dealt with parking.

Ms. Hayes again referenced the loading zone and what she knows about parking on the street. Referring to her diagram, she stated there are 20,000 people using the health clinic, both pediatric and geriatric. She noted an area that she thought was being referenced as the combined 50' of loading zone. She stated Verizon, N-Star and others are typically present at that area 75% of the time. She noted a spot for 15 minute non-commercial parking such as a quick shopper. She indicated an area with no parking, as well as one with 6 metered spaces usually filled for the health clinic. She noted the lack of available parking area. She provided statements by residents of the street.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Greg Jones of Highland Street, Dartmouth with an architectural business in downtown New Bedford addressed the board. He stated he was a PDQ partner. He concurred with Mr. Valois that development of the building is problematic and any use that goes in will need parking relief. He felt the controlled parking created by a school use was important.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Crystal Campbell, a Dartmouth resident and Artworks founder, addressed the board. She stated she acquired the building and developed the group known as PDQ Associates. She stated downtown was hollowed out with very few businesses and no art activities. She stated her thesis was that art could be a developmental tool for a city in transition, and she believes it has borne fruit. She stated there was no parking for any downtown activities and then the Elm Street Garage was built. She believes this is the best use for the building, and without the variance the building will be empty and will eventually need a variance. She is in favor.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Jean Bennett addressed the board, noting she was a historic district realtor for 30 years and encouraged PDQ.

Mr. Comerford again stressed speakers to address the parking issue only.

Ms. Bennett stated that taking down a building such as this is not what made New Bedford great. She stated that two bars went into Center Street with no parking. She encouraged a parking variance for the subject building.

In response to Mr. Comerford's invitation to be recorded in favor, Jeff Pontiff of 15 Hamilton Street, New Bedford addressed the board. He disclosed that he represents the Charter School Development Corp as well as the leasee, City on a Hill. He mentioned his numerous appearances before the boards for developments downtown. He stated when the mayor removed the Custom House parking lot, which he was initially against, many of his surrounding clients were concerned about the ability to sell their property. Mr. Pontiff became convinced that there was a need to develop a walkable downtown, and that is what's being done. He believes this development is a good use of a vacant downtown building and he encouraged the board to support the variance.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Kim Wall of 200 Riverside Avenue, New Bedford, and principle of City on a Hill, addressed the board. She stated she is in support and noted that safety is one of her top priorities.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Warren Berube of 131 Ricketson Street, New Bedford addressed the board.

Mary Mandeville 405 Elm Street, South Dartmouth expressed her support.

Darlene Spencer, Executive Director of New Bedford Community Coalitions Connection at 105 Williams Street, and a New Bedford resident stated she is in favor of the variance.

Steve Pettey of 72 Fern Street, New Bedford, and headmaster of Nativity Prep School expressed that he is in favor of the proposal, and sees it as a great opportunity for the downtown area to have another choice for young people to go to school.

Charlotte Saul, of 2 White Street stated she is for it.

A letter was introduced that was given to City on a Hill Charter School. A motion was made (AD) and seconded (JM) to receive and place on file the 7/24/14 correspondence from Bank Five as well as the 7/14/14 correspondence from PDQ Associates.

Motion passed unopposed.

There was no response to Mr. Comerford's invitation to be heard or recorded in opposition. The applicant offered no rebuttal.

Mr. Comerford closed the public hearing.

Mr. Comerford expressed that he believed it to be a good program and felt the flow of traffic would be controlled.

Mr. Mathes stated it was a great presentation and a project that would be good for both our city and our kids. Mr. Schilling agreed.

A motion was made (AD) and seconded (JM) to grant Appeal #4148, a motion to grant a variance under provisions of the city code of New Bedford to CSDC Facilities Corporation (6731 Columbia Gateway Dr., Suite 220, Columbia, MD, 21046) relative to property located at 384 Acushnet Avenue, Assessor's Map Plot 53 Lot 91 in a Mixed-Use-Business Zoned District, to allow the petitioner to convert the premises into an educational facility known as "City on A Hill Charter School", which will require a variance under Chapter 9, Comprehensive Zoning Section 3000 and 3100-3130, 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.

A motion was made (AD) and seconded (JM) to take Cases #4150 and Case #4151 out of order.

CASE #4150 – Special permit

CASE # 4151 - Variance

Mr. Comerford noted that City Planner Jill Maclean would like to address the board regarding the process before the board with these particular hearings.

Jill Maclean, City Planner, of Palmer Street, New Bedford, addressed the board. She stated that she wanted to explain and clarify the repetitive petition determination process. She stated this project would also need planning board approval. Ms. Maclean stated the ZBA would this evening make a finding on whether or not the applicant's new proposal is significantly different than the one denied several months ago. She stated that if this board did not feel it was significantly different and upholds its previous finding, the issue becomes moot for two more years, unless the petitioner revisits with something different. If the board finds that it is different, she asked that the board open and continue the public hearing for the project application until the September meeting. This will allow the petitioner to appear before the Planning Board's September meeting for its determination on whether the project is significantly different and for potential site plan review.

Ms. Maclean noted for the audience that site plan review cannot be denied, as an "as of right use", it can only be conditioned. One condition would be that the project would be contingent upon Zoning Board approval as well.

Ms. Maclean suggested the board act first on whether or not there is a significant difference. If so, she asked that the board to open and continue the matter to the September meeting.

Ms. Maclean clarified for Mr. Decker that the case would be opened on the finding, applicant input would be taken, public comment would be taken for and against, and then the board would make a determination on whether it is significantly different. After that vote, that hearing should be closed. At that point, the board should open and continue the second case for the new application, as at that point the planning board must also determine whether or not it is substantially different.

Mr. Comerford confirmed with Ms. Maclean that to proceed, the board would have to make sure there were substantial changes to the plans submitted. He then inquired whether after listening to the proposal by the petitioner, would it be necessary to open for public comment. Ms. Maclean noted that was Mr. Comerford's call if he felt discussion was necessary.

Mr. Decker asked for clarification and Assistant Solicitor Espinola suggested he invite the petitioner to demonstrate the substantiability of the changes being proposed. Mr. Espinola clarified that the board take the opportunity to listen to the petitioner and then make a determination at that point whether you think it's substantially different. If you find that it is, then it is tabled or continued. Mr. Espinola noted that he believed the board did need to open the cases.

Assistant Solicitor Espinola offered the board a case, *Ranney vs. Board of Appeals Nantucket*, on the meaning of a "sufficiently revised application", which held that the board may give weight to differences which in an absolute sense are relatively minor but taken together make a difference in the board's mind.

Mr. Mathes confirmed that the board's decision this evening is the very narrow one on whether the project is different or not; not whether we like it or not.

A motion was made (AD) and seconded (JM) concerning Appeal #4150 and Appeal #4151 that the communication dated 6/27/14 from the Commissioner of Buildings and Inspectional Services; the appeal; and the plans as submitted all be received and placed on file. At the same time, that the owners of the lots as indicated are the ones deemed by the board to be those affected; that the action of the clerk in giving notice of the hearing is hereby ratified; and that the communication dated 7/23/14 from the Office of the City Planner be received and placed on file. In addition, he moved that the communication for Case #4251 from the Commissioner of Buildings and Inspectional Services dated 6/27/14, as well as the appeal and the plans submitted be received and placed on file. And that the owners of the lots as indicated are the ones deemed by the board to be those affected; and that the action of the clerk in giving notice of the hearing is hereby ratified; and that the communication dated 7/23/14 from the Office of the City Planner be received and placed on file. Motions passed unopposed.

Mr. Comerford declared the hearing open and invited the petitioner to address the board specifically as to how his plans are different.

Edward Redmond addressed the board and expressed his confusion as well in the resubmittal process. He felt the board was already versed in the lot conditions. He stated that after a task force hearing he intended to construct ten units. After feedback he reduced it to eight units requiring a number of code reliefs; lot width and frontage, side yard setback, parking reduction, and a special permit for access off of Court Street. He stated after his presentation, he received input to reconsider and redesign.

Mr. Redman stated he went back to the drawing board, and now before this board is his resubmitted application. He stated the relief he is seeking has been reduced to only lot width and frontage, as he has decreased the building footprint in width and length. He stated he has increased the open space area from the 35% required, which on this lot would represent 3,500 sf., to in excess of 4,000 sf.

Mr. Redman noted that lot area coverage is allowable at 30%/3,000 sf. He represents his proposal is at 17%, almost half. He stated he has now met all the parking requirements.

Mr. Redman stated he presently proposes only 6 units and no longer needs the parking reduction.

He stated the existing non-conforming lot has a non-conforming use building upon it. He stated he is not creating any hardship by seeking relief in width and frontage, because the lot was created pre-code and is an in-fill lot he is not subdividing.

Mr. Redman stated the reduction on the width of the building will fit nicely into the streetscape. The building is a proposed three-story building with a mansard roof and a fourth floor built into the mansard. The allowable height in the district is 60' and he is well below at 39'1", consistent with the roof line of his direct abutter, a multi-family.

He stated that listening to recommendations he received from the neighbors and the board, he is now actually taking parking off the street, not putting it on. He stated a proposed closing of the Union Street curb cut and access on a less busy way will provide maybe 3 spaces in front of his lot.

He invited questions from the board. He inquired as to the extensive planning board process which requires a 16 page set of plans with some 200 criteria listed, and 16 copies which he must provide by August 8th, which is akin to submitting a complete set of building documents prior to the relief. He sought clarification that if the proposal is found to be significantly different, since abutters are present this evening, he would like to open the hearing for determination, and if found favorable he felt provisos could be set, such as planning board approval, eliminating the need to return in September.

Mr. Comerford sought to address the issue of significant difference.

Mr. Schilling noted that in the original hearing the topics of discussions were parking and size. His memory was that one of the votes against the original proposal suggested the applicant reduce the units to six. Mr. Schilling stated the applicant has now reduced it to from eight to six, and he feels it is a substantial change which he feels improves parking in the neighborhood.

Mr. Redman interjected that there had originally been discussion of reducing the units to six, but increasing the number of bedrooms from two to three. He stated the present plan keeps the number of bedrooms at two, with two parking spaces per dwelling.

Mr. Comerford agreed that the green space provided, as well as the applicant bringing setbacks into compliance is great.

Mr. Decker stated that what was presented this evening is definitely a substantial change from what was denied previously.

A motion was made (AD) and seconded (JM) to make a finding concerning Appeal #4150 that a substantial change has been presented, allowing the application to proceed. Motion passed unopposed.

Mr. Comerford confirmed that Mr. Redman had completed his presentation.

Mr. Redman stated he would answer any questions from the abutters or the board.

Mr. Comerford advised the public that any speakers confine themselves specifically to the variance and the special permit being sought.

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 recorded in favor.

In response to Mr. Comerford's invitation to be recorded in opposition, Ray Nunes of 226 Court Street addressed the board as an abutter. Mr. Nunes expressed concern on the parking lot which would be located right on the side of his home, as well as concern about an absentee landlord. He stated there were changes in the plans, and felt there was really nothing he could say as it was now all about the plans.

Mr. Comerford confirmed with Mr. Espinola that public comment or testimony should be specific to material changes and conditions on which the previous unfavorable action was based.

Mr. Comerford noted that the board had done that as well as made a motion that there was a change, and inquired if the matter should now go to the planning board for their vote on whether there was a significant change. Mr. Espinola confirmed that the city planner had indicated the board should open the hearing, and make a determination as to whether or not there was significant and material change.

Mr. Comerford interjected that the changes are so significant he felt the board would overwhelmingly be in favor of this petition. Mr. Espinola suggested that the chairman was moving from step one to step three. He indicated that even if Mr. Comerford's opinion was that the planning board would make a favorable determination, procedurally the planning board has to actually make their determination.

Mr. Comerford clarified that he thought the city planner's opening comments were more of a recommendation to save time. Mr. Espinola acknowledged that the petitioner had commented on the tight timeframe, but stated that the process is a rigorous process and under the Mass Court of Appeals, once the initial part is done, which is what the board had done this evening, then it has to go to the planning board.

Mr. Redman inquired if there was any way to get a decision with provisos such as planning board approval. Mr. Espinola stated he had not seen that done.

The court reporter indicated uncertainty on whether it had been recorded that the public hearing had been opened. Mr. Comerford indicated that he had and an audience member agreed.

Ms. Morad, an audience member and Councilor at Large, raised a point of order. She asked the Assistant City Solicitor if it was out of order that the board had taken testimony from one abutter.

Assistant Solicitor Espinola stated that he had responded to a legal inquiry by the board, and the board was now taking proper measures to make sure that the public meeting has been opened. The board can then take testimony from abutters on whether there have been significant material changes.

Mr. Comerford commented that he only allowed the abutter to come forward because he was under the impression the public hearing could be held this evening. He stated he did not need testimony from an abutter on whether it was a substantial change to the previous plan, which is the issue before the board. He stated it was plain to see and very evident.

Ms. Morad stated that that is not what the Assistant City Solicitor had said. She represented that Assistant Solicitor. Espinola had stated that if there were abutters in the room who wished to speak specifically to the change in the plans, they should be allowed to do that. Ms. Morad stated she took objection to Mr. Comerford's comment that the board would approve the plan because it was revised.

Mr. Comerford stated he had not said that.

Ms. Morad said he did. She stated this was a public hearing where abutters had a right to voice their feelings, whether it be tonight or at the continued meeting. She stated there should be no pre-determination as to what the board is going to vote before the abutters have an ability to speak.

Mr. Comerford stated there was no pre-determination. He stated that he had said he thought there was a significant change and he thought the board would act favorably on it. He stated that's not a predetermination.

Ms. Morad stated that as chairman, she did not believe that was an opinion that should be voiced before the close of the public hearing. She asked if there was an opportunity for people in the room who wished to speak on the change of the plan to speak this evening, and if not, please determine when the next meeting is that abutters will be able to speak regarding the plans.

Mr. Comerford expressed confusion at how any abutter who might speak could disprove that there is a change in the plans.

Ms. Morad stated that she never speaks before abutters, but would tell the board what she would say.

Mr. Mathes noted that he believed the hearing was opened and the board had heard from the petitioner on whether there was a substantial change from what he presented before. Mr. Mathes stated he feels the board perhaps should not have taken a vote at that time, as other people may have another opinion on whether this represents a substantial change. We can give them a chance to speak on the very narrow topic of whether this is or is not different. Not on the merits of it. And after hearing from those who support or oppose that notion, we close that hearing, discuss it and vote on that specific issue on whether it is different or not. Mr. Mathes moved that the board reconsider the earlier vote and listen to others who may wish to try to persuade the board on that narrow topic.

Assistant Solicitor Espinola agreed.

A motion was formally made (JM) and seconded (AD) to reconsider. The motion passed unopposed.

Ms. Morad stated that she never speaks before abutters, so she would return. She thanked the chairman for the consideration.

In response to Mr. Comerford's invitation to be heard or recorded in opposition, Jose Pao of 10 Newton Street, New Bedford addressed the board. He stated he has been there for twenty-six years. He stated they have problems with the parking lot. He stated he got his surprise that people change the vote. He is against the building.

In response to Mr. Comerford's invitation to be heard or recorded in opposition with regard to Section 3100, Nancy Andrade, 470 Union Street, New Bedford, addressed the board. She stated she had two papers from abutters unable to come this evening. She stated they were under the understanding that the project was going to be changed to six units with three bedrooms. Ms. Andrade quoted, "Chairman Comerford then stated that in his understanding the building could be six units with three bedrooms."

Mr. Schilling noted that's why it's a substantial change; that it had gone to twelve bedrooms from eighteen.

Ms. Andrade stated that no one knew that.

Mr. Comerford stated it didn't matter if they knew. He reiterated that this evening's issue is about the plans submitted this evening.

Ms. Andrade stated she was trying to explain that these two abutters are not in favor of this plan basically because it was a six unit three bedroom from the last meeting. She stated they wouldn't know it got changed, and that she knew because she went to City Hall.

Mr. Comerford tried to confirm with Ms. Andrade whether the abutters she spoke of were against both three bedroom and two bedrooms units.

Mr. Mathes tried to clarify by stating that all the board needed was her opinion on whether this was a substantial change.

Ms. Andrade agreed that it was a substantial change, but noted she still had questions. She stated that at the first meeting, Mr. Comerford had expressed he was for the whole project when it was eight units.

Mr. Comerford again reiterated that was not the topic for this evening.

Ms. Andrade stated that Mr. Comerford did not listen to the people.

In response to Mr. Comerford's further invitation to be heard or recorded in opposition, Ms. Morad addressed the board. Ms. Morad quoted from the repetitive petitions memo written by Ms. Medeiros-Friedman, "If at least four members of the board found that there had been specific material changes in the conditions upon which a previous unfavorable action was based." These are your minutes from the April meeting. "The board found that denying the variance did not constitute a hardship for the applicant, but rather granting the variance would be a hardship for the abutter."

Comments were made out of order by the audience and petitioner.

Ms. Morad continued and stated that the board needs to find that its decision was significantly different. She stated there's no hardship here; that it was a self-made hardship that existed in April and still exists today. "The board found that denying the variance did not constitute a hardship for the applicant, but rather, granting the variance would be a hardship for the abutter." That has not changed.

Ms. Morad stated her second point "that the desirable relief may be granted without substantial detriment to the public good. The board found that there was sufficient information and testimony which had been given to determine that granting the requested relief would result in a negative impact to the public good." That's the board's decision, sir.

Mr. Comerford interjected that was not unanimous.

Ms. Morad stated it did not matter. Ms. Morad stated she was reading what was written by the city solicitor on the board's decision. Ms. Morad stated, "I'm making my testimony, I'm not here to argue with you, sir. And I'd like to know when your commission is up next."

Ms. Morad continued. Four, "that the desirable relief may be granted without nullifying or substantially deteriorating from the intent or the purpose of such ordinance or by-law. The board found that there is an impact of dimensional relief which could be substantial and would substantially deteriorate from the intent to the zoning ordinance." This petitioner is still asking for relief of the zoning ordinance. He's made a self-made hardship. She stated that she did not see how the decisions in April have been overridden by the plan presented tonight. Ms. Morad stated she stood in opposition and looked forward to the planning board hearing and the next zoning board hearing.

In response to Mr. Comerford's invitation to be heard or recorded in opposition, Ward 5 City Councilor Winterson stated he stood in opposition. He noted there had been significant changes, but he thought it was too large of an area to be in that residential area.

In response to an inquiry by Mr. Schilling, Mr. Winterson confirmed that had stated there were significant changes.

There being no further response to Mr. Comerford's invitation to be heard in opposition, the hearing was closed.

After correction on the case number, a motion was made (AD) and seconded (JM) concerning Appeal #4150 as to a finding that the application as submitted is significantly and substantially different from the prior application that was denied.

Motion passed 5-0.

As the board attempted to make a motion, Mr. Redman interjected that he did not believe he would be able to generate the plans for the September 10th planning board meeting, and asked for a continuance to October.

An amended motion was made (AD) and seconded (JM) to open Case #4150 and Case #4151 and table or continue them until the next regularly scheduled Zoning Board of Appeals meeting currently scheduled to be held October 16, 2014.

Motion passed unopposed.

CASE #4149 –

A motion was made (AD) and seconded (JM) to open Case #4149 by receiving the communication dated 6/27/14 from the Commissioner of Buildings and Inspectional Services; the appeal; and the plan as submitted. At the same time, that the owners of the lots as indicated are the ones deemed by the board to be those affected; that the action of the clerk in giving notice of the hearing is hereby ratified; and that the communication dated 7/24/14 from the Office of the City Planner be received and placed on file.

Motions passed unopposed.

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

Jason Barksdale of 195 Bellevue Street addressed the board, indicating that he was trying to put an 18 x 30 addition onto the side of an existing residence zoned for commercial and business. He stated it is considered two addresses, 195 and 197. He noted the 195 portion of the residence was a business at one point. He stated he was seeking to put an addition on that portion for his "snowbird" parents. He stated the petition has been filed for a year and a half.

Mr. Barksdale stated he has applied for a reduction in parking. He stated there is an existing 3 car driveway. He stated without the reduction, he would have to take out the curb and take down a tree.

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

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

Mr. Comerford closed the hearing.

Mr. Decker stated he saw it as a reasonable request and did not see it as a substantial detriment to what was previously there.

Mr. Schilling agreed.

A motion was made (AD) and seconded (JM) to grant Appeal #4149, a motion to grant a finding under provisions of the city code of New Bedford to Andrew and Ellen Barksdale, 197 Bellevue Street New Bedford, MA, relative to property located at 195-197 Bellevue Street Assessor's Map Plot 7, Lots 71 & 75 in a Mixed-

Use-Business Zoned District to allow the petitioner to erect an 18' x 30' addition, thus creating a second residential unit, which will require a finding under Chapter 9 Comprehensive Zoning Section 2400, 2410, and 2440 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.

Upon inquiry by Mr. Comerford, Mr. Mathes accepted the nomination of Vice Chair.

A motion was made (AD) and seconded (JW) to appoint James Mathes as Vice Chair of the Zoning Board of Appeals. The motion passed unopposed.

Mr. Comerford noted the next meeting date is August 28, 2014.

Chairman Comerford adjourned the meeting at 8:55 pm.