



# *Zoning Board of Appeals*

August 28, 2014 - **Minutes**

New Bedford Main Public Library, 613 Pleasant Street

## **PRESENT:**

**Ian Comerford** (*Chairman*)

**James Mathes** (*Vice-Chairman*)

**Allen Decker** (*Clerk*)

**Robert Schilling**

**Leo Schick**

## *Also in attendance:*

*Dan Romanowicz, Commissioner Building and Inspectional Services*

*Jennifer Gonet*

MEETING CALLED TO ORDER by Chairman Comerford at 6:00 pm.

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

## **PUBLIC HEARINGS:**

### **CASE #4152** – Special Permit

A motion was made (AD) and seconded (JM) that the correspondence dated 7/23/14 from the Commissioner of Buildings and Inspectional Services be received and placed on file; that the appeal be received and placed on file; that the plan be received and placed on file; that the owners of 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; and that the communication from the City Planning Department dated 8/6/14 be received and placed on file.

Motion passed unopposed.

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

Att. Marc Deshaies, of New Bedford, addressed the board on behalf of the petitioner.

Mr. Decker disclosed that his employer, the Buzzards Bay Coalition, has a business relationship with Att. Deshaies and his law firm. He stated he did not believe that would in any way, shape or form affect his impartiality or objectivity in hearing the case.

Att. Marc Deshaies stated the petitioner was seeking to locate a dental office in a mixed use business district. He stated he was appearing for Linear LLC, the owner of the property, with the applicant and proposed general contractor being Coliseum Development LLC. Also in attendance was Dr. Sahad, the principal of Creative Dental PLLC and proposed tenant at 160 West Rodney French Blvd. Att. Deshaies noted the property is on the easterly side of said boulevard, north of the hurricane barrier, and located in an older strip mall consisting of two separate buildings. One building housing a free standing auto parts store. The second building currently houses the Department of Transitional Assistance, a restaurant, and a Family Dollar Store, with the proposed location for the dental office within the easterly part of the main building, containing approximately 2,200 sf.

Att. Deshaies noted that a dental or medical office is not allowed in a mixed use business district unless by special permit.

The proposal contains a build out of approximately \$150,000 to create six treatment rooms, a reception area, and ancillary equipment such as x-ray machines and storage. Att. Deshaies stated the property contains approximately 234 parking spaces on-site, which is more than adequate to serve the property tenants. He noted that behind the easterly side of the building is an area of parking spaces which will be used by employees. He estimated that there will be two dentists, two dental assistants, and two receptionists/bookkeepers at the premises.

This older strip mall space is a repurpose from a former laundromat, an allowed use, to a professional dental office.

Att. Deshaies noted that under Section 5300, the board has the authority to grant a special permit specific findings, in particular that the social, economic and community needs are served by the proposal. He suggested that south of County Street, there are not currently any dental services. This proposal introduces dental services to the southern part of the city. He stated they believe this fills an existing need.

The location is on a major trunk boulevard, and as such will have no detrimental impact on traffic volume. There is no indication that utilities are not adequate to service the proposed facility. In addition, there are commercial buildings on the west side of Rodney French Boulevard, and as such the applicant does not believe there is any detrimental impact to the neighborhood. In fact, the modernization of the Department of Transitional Assistance and this project will just add to the redevelopment of this older strip mall.

Att. Deshaies stated there is no impact on the natural environment, this being an existing structure. He stated this project also produces the employment of four to six individuals. He stated hours of operation are expected to generally be 10:00am to 6:00 pm daily, with the possibility of hours of 10:00 am to 8:00 pm on a couple of evenings depending upon the need for services.

Att. Deshaies stated he believes they meet the criteria for a special permit and there will be no substantial detrimental impact on the neighboring residents, this location having been in existence for some 35 years.

In response to Mr. Comerford's invitation to be heard in favor, Councilor Joseph Lopes of Dudley Street, addressed the board and asked to be recorded in favor of the project.

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

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

Mr. Comerford closed the hearing.

Mr. Comerford expressed that he thought the matter was pretty straightforward.

Mr. Decker noted that due to a lack of clarity on who the applicant was, the Planning Office had suggested a specific special condition be included within the motion that approval would be granted to Creative Dental at 160 West Rodney with the owner of the building being Linear Retail Properties.

Att. Deshaies found that condition fine, as the special permit would run with the land.

A motion was made (AD) and seconded (LS) to grant Appeal #4152, a motion for special permit under the provisions of the city code of New Bedford to Coliseum Development, LLC., c/o Nestor J. Limas, Creative

Dental, 4 Harvest Drive N. Andover, MA 01845, and Linear Retail Properties, LLC., c/o Gail McNeice, 5 Burlington Wood Drive Suite 107 Burlington, MA 01803 relative to property located at 160 West Rodney French Blvd., Assessor's Map Plot 13, Lot 126 in a Mixed Use Business Zoned District to allow the petitioner to renovate an existing office space into a dental office as per plans filed, which will require a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230, 5300-5330 and 5360-5390 with the following conditions: that this special permit is for Creative Dental located at 160 West Rodney French Blvd. with the owner of the building being Linear Retail Properties, c/o Gail McNeice, 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.

Att. Deshaies clarified the name as Creative Dental Group P.L.L.C.

With that amendment the motion was seconded (LS)

Motion passed 5-0

**CASE #4153** – Variance

A motion was made (AD) and seconded (LS) that the communication dated 7/25/14 from the Commissioner of Buildings and Inspectional Services be received and placed on file; that the appeal be received and placed on file; that the plan be received and placed on file; that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; that the action of the clerk in giving notice of the hearing is hereby ratified; and that the communication from the City Planning Department dated 8/6/14 be received and placed on file. Motion passed unopposed.

Mr. Comerford declared the hearing open and invited the petitioner to address the board.

Dan Faber of North Dartmouth, addressed the board on behalf of Peter Georgeopoulos. He stated they went from a larger home into a new home with an unfinished cellar. They were seeking to frame and sheetrock the cellar with perhaps a rug and tile in order to put furniture and possessions in it, and perhaps spend time in it, but not as a total living space. He stated there will be no bathroom or running water. Petitioner will just frame the walls, paint and install a suspended ceiling.

Mr. Decker inquired whether the petitioner had seen the property prior to purchase and knew the condition of the basement, and Mr. Faber confirmed that he had, but did not realize there would be a problem to perform this work until he applied for the permit. Mr. Faber stated the back side of the basement is finished.

In response to Mr. Comerford's invitation to be recorded in favor, the following responded:  
Councilor Steve Martins, 273 Shaw Street

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 be heard in opposition.

Mr. Comerford closed the hearing.

There being no board discussion, a motion was made (AD) and seconded (LS) to grant Appeal #4153, a motion to grant a variance under the provisions of the city code of New Bedford to Peter Georgeopoulos, 152 Tarkiln Place New Bedford, MA 02745 relative to property located at 152 Tarkiln Place, Assessor's Map Plot 130G, Lot 244 in a Residential A Zoned District to allow the petitioner to create a habitable space in the basement as per plans filed, which will require a variance under Chapter 9, Comprehensive Zoning Sections 2200, 2210, and 2330 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 #4154** - Variance

A motion was made (AD) and seconded (LS) that the communication dated 7/25/14 from the Commissioner of Buildings and Inspectional Services be received and placed on file; that the appeal be received and placed on file; that the plan be received and placed on file; that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; that the action of the clerk in giving notice of the hearing is hereby ratified; and that the communication from the Office of the City Planner dated 8/7/14 be received and placed on file.  
Motion passed unopposed.

Mr. Comerford declared the hearing open.

Lou Kalife of Fairhaven addressed the board with regard to a variance on the west side of Rowe Street which seeks relief on the four foot of grass beyond the end of the driveway on the easement.

Mr. Comerford confirmed that the driveway was already installed.

Mr. Kalife explained that they were originally told by the city solicitor that it had to be two feet. Upon return, they were informed it had to be four feet. He stated the Board of Public Works wanted the entrance to the driveway to be on the easement because there is only 17' and he couldn't make the turn to get into the driveway. We'd have to go over the grass to get into the garage.

Mr. Decker requested details about the easement.

Mr. Kalife provided a copy of the easement and stated that Mr. Simmons holds the easement. In response to Mr. Comerford, Mr. Kalife stated the easement is to pass and repass.

Mr. Decker reported that he believed he had seen correspondence from the easement holders within the packet and Mr. Kalife confirmed that they were in attendance this evening.

In response to Mr. Comerford's invitation to be heard in favor, Chris Simmons addressed the board as an abutter. He explained that his parents had sold the property and had always intended to expand the lot by giving them a right of way to come thru the easement and not land lock the whole back yard of the property. He stated the intention had always been to come through the easement and turn into the garage, and they did not know it was a problem. He stated when the land was sold, it enabled them to have a nicer front yard and continue to use the easement as a driveway and just turn into their garage. He again stated they did not know, and he expressed that he was in favor of the variance.

He stated his elderly parents own the property through a trust and own and care for the property, and this provided them a little helpful money to finish out their lives.

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

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

There being no board questions for the applicant, Mr. Comerford closed the hearing.

Mr. Comerford stated that he felt it looked worse on paper, but was pretty straightforward.

Mr. Decker expressed that he was concerned about building on an easement, but the correspondence from the easement holders expressing their consent put him at ease. He added his disappointment that the driveway was installed prior to a resolution.

A motion was made (AD) and seconded (LS) to grant Appeal #4154, a motion to grant a variance under the provisions of the city code of New Bedford to Lou Kalife's Building Products, Inc., c/o Lou Kalife, President, 5 Kalife Drive, Fairhaven, MA, relative to property located on the west side of Rowe Street, Assessor's Map Plot 81, Lot 163 in a Residential B Zoned District to allow the petitioner to install a driveway and not leave the four foot required setback from the property line as per the plans filed, which will require a variance under Chapter 9, Comprehensive Zoning Section 2700, 2710, 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

#### **CASE # 4155** – Special Permit

A motion was made (AD) and seconded (LS) that the communication dated 7/25/14 from the Commissioner of Buildings and Inspectional Services be received and placed on file; that the appeal be received and placed on file; that the plan submitted be received and placed on file; that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; that the action of the clerk in giving notice of the hearing is hereby ratified; and that the communication from the City Planning Department dated 8/7/14 be received and placed on file.

Motion passed unopposed.

Mr. Comerford declared the hearing open.

Att. Chris Saunders, 700 Pleasant Street, New Bedford, addressed the board on behalf of the applicant Perfect Pizza, Inc., d/b/a Domino's Pizza. Att. Saunders stated that Mr. Hockert-Lotz was presently operating a Domino's facility on Route 6 and Jenny Lind Street and is proposing to move the operation to Rockdale Avenue and Mill Street where the former Bank of America was located.

He stated the existing strip mall at that location has five units and his client is looking to lease the southernmost unit next-door to Subway. He noted there is currently one other vacant unit on the property.

Att. Chris Saunders informed the board that they had appeared for site plan review and special permit before the Planning Board, the appeal period having just expired on the special permit. He stated the applicant is seeking a special permit from this board for a fast food designation and drive-thru.

Att. Saunders explained the applicant is revitalizing a vacant storefront. He noted his client has an establishment on the lower end of Rockdale Avenue as well. He felt the board was well familiar with how his client operates his businesses. He stated his client's current Kempton Street location is spotless, as is his southend location. He stated his client is invested in the City of New Bedford and want to stay in the city. Att. Saunders noted his client could locate in Dartmouth, as 75% of his business is delivery, but his wants to stay in New Bedford and revitalize a vacant storefront.

Att. Saunders stated his client will beautify the location.

Att. Saunders explained that though called a drive thru, it is more a pick-up. He explained his client's peak time is evenings and weekends. Customers can call ahead for their pizza, travel up North Street and enter the former drive thru lane for the bank onto a long stacking lane, pick up the pizza, and exit onto Mill Street traveling west.

Att. Saunders related to the board that they had discussed signage with the planning board for pedestrians. He stated they had ample parking and did receive the special permit for reduced parking/loading. He stated on a recent evening visit to the location the parking lot contained only two cars.

In response to a stacking lane inquiry by Mr. Decker, Att. Saunders confirmed cars would be off of the public street while waiting for their pick up. He stated they have more stacking than CVS and 10 times the stacking of the Hess Dunkin Donuts across the street.

Att. Saunders again reiterated the revitalization of an existing building and noted that the pre-existing drive thru provides a perfect fit.

Att. Saunders stated that with regard to criteria, the benefits to the city and the neighborhood outweigh the adverse effects. He stated this really alleviates any adverse effects on the surrounding neighborhood. He stated the Kempton Street location is in a residential neighborhood, with Jenny Lind Street being very narrow. He stated Councilor Carney, a Jenny Lind Street resident, expressed favor for the project at the planning board meeting. He stated this project takes traffic out of the Jenny Lind Street area, a concern for the residents there, and moves it to a more appropriate mixed use district and commercial area.

He stated this keeps business in New Bedford, has an overall positive impact on the entire surrounding area, and improves a vacant storefront. He invited questions from the board.

In response to Mr. Comerford's invitation to be heard in favor, Councilor Joseph Lopes asked to be recorded in favor.

In response to Mr. Comerford's further invitation to be recorded in favor, Councilor Martins responded.

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 be heard in opposition.

Att. Saunders, by way of further comment, asked the board to approve the special permit.

Mr. Comerford closed the hearing.

Mr. Schick noted this will get traffic off of Jenny Lind and Kempton and better position parking and customer service in the proposed location.

Mr. Mathes agreed this was a better location and was happy to see a vacant storefront fixed up. He agreed Mr. Hokert-Lotz really cares and works hard for the city. He expressed he really liked the proposal and thinks it's a great idea.

Mr. Decker commented on the excellence of the proposal submitted.

Mr. Schick noted that Mr. Hockert-Lotz is a great supporter of New Bedford non-profit groups as a contributor and helper, and Mr. Schick expressed his appreciation.

A motion was made (AD) and seconded (LS) to grant Appeal #4155, a motion to grant a special permit under the provisions of the city code of New Bedford to Perfect Pizza, Inc. D/B/A Domino's Pizza, P.O. Box 790 Mattapoisett, MA 02739, and North Mill Realty, Inc. c/o Dennis J. Pavao, 902 Purchase Street, New Bedford, MA 02740, relative to property located at 821 Rockdale Avenue, Assessor's Map Plot 55, Lot 67 in a Mixed Use Business Zoned District to allow the petitioner to relocate Domino's Pizza Outlet from 927 Kempton Street (Route 6) to 821 Rockdale Avenue as per the plans filed, which will require a Special Permit under Chapter 9 Comprehensive Zoning Sections 2200, 2210, 2230, 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

### **OLD BUSINESS**

A motion was made (AD) and seconded (LS) to approve the meeting minutes of June 26, 2014, July 17, 2014 and July 24, 2014 as submitted.

Motion passed unopposed.

Mr. Comerford noted the next meeting date is September 18, 2014 at 6:00 pm.

Whereupon Chairman Comerford adjourned the meeting at 6:50 pm.