



Zoning Board of Appeals

October 16, 2014 - **Minutes**

New Bedford Main Public Library, 613 Pleasant Street

PRESENT:

Ian Comerford (*Chairman*)

James Mathes (*Vice-Chairman*)

Allan Decker (*Clerk*)

John Walsh

Leo Schick

Also in attendance:

Dan Romanowicz, Commissioner Building and Inspectional Services

Assistant City Solicitor Kregg Espinola

Jennifer Gonet

MEETING CALLED TO ORDER by Chairman Comerford at 6:05 pm.

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

PUBLIC HEARINGS:

A motion was made (JM) and seconded (JW) to take Case # 4105/4151 out of order. Motion passed unopposed.

CASE #4150/4151 – Variance/Special Permit

A motion was made (AD) and seconded (JM) that the following be received and placed on file with regard to both of the above named cases: communication dated 6/27/14 from the Commissioner and Inspector of Buildings; communication from the Office of the City Planner dated 10/14/14; the appeal; the plan submitted; that the owners of the lots as indicated are the ones deemed by this board to be those affected; and the action of the clerk in giving notice of the hearing is hereby ratified.

Motion passed unopposed.

Chairman Comerford declared the hearing open.

Edward Redmond, of Preferred Realty Services 475 Union Street, addressed the board. He noted this was a continuation of an ongoing hearing from August. He stated the project was originally denied for 8 units. After significant changes and redrafts based on communications, recommendations from the City Planner, and concerns from abutters and neighbors, the project is now a 6 unit dwelling. He stated that earlier in the month, the Planning Board voted 5-0 that the project was significantly changed, allowing it to come back before this board for variances.

Mr. Redmond stated the definition of real estate is the land described by the metes and bounds and more deeply identified by the deed. Real property are buildings, attachments to the land. He stated the real property, the building, now complies 100% with the ordinance and he now seeks no variance.

Mr. Redmond stated the two existing non-conforming conditions at this site are the

7,000 sf dormant building used as commercial space, and the land. He stated the building was acquired by him in 2013. He stated the land does not conform to the present dimensional requirements, and is the subject of the relief sought.

Mr. Redmond stated the revised plan meets all criteria regarding open space, off-street parking, and loading. He noted the landscaping plan was reviewed by the planning board and some conditions would be put forward, such as a possible fence, lighting cut sheets, bike racks and drainage. He noted that DPI correspondence has required a pre-construction meeting on the drainage plan. He noted those plans have been done, but questions remain on impervious asphalt and the relocation of dry well overflow.

Mr. Redmond read into the record that the Historical Commission has found the property is not on the National Historic Register and the structure has no noted historical significance. He stated having been dormant for many years, the structure is in poor condition due to extensive deferred maintenance. Restoration and preservation efforts would be impractical.

He stated he has comments from the City Planner from the original hearing, stating the project is an allowed use, provides re-use of a vacant property, provides less impervious coverage than the existing structure, and given those considerations the project would be an improvement for the neighborhood without substantial detriment to the public good, with a recommendation for 6 units.

Mr. Redmond, in addressing the five requirements for granting a variance, stated the shape of the lot was created prior to the zoning ordinance and cannot change. He stated it is a mixed use business zone with numerous uses available. He cited that due to circumstances affecting the land/structure literal enforcements would involve substantial hardship, financial or otherwise, to the petitioner, further stating that the only way he could increase the lot is to buy land and there is no abutting land for sale. He stated the desired relief would have no nullifying or substantial impact to the intent of the zoning ordinance. He stated the desired relief can be granted without substantial detriment to the public good. He stated the property has outlived its life, having been a dry cleaners, a church, and a food processing facility, all without parking. He stated he has provided all the off-street parking needed and the proposed building is 60% less impervious area than the existing building.

Mr. Redmond stated he has a full set of the plans and welcomed questions. 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, Eric Stotts of 214 Court Street, a direct abutter addressed the board. He provided the board a letter containing his expected comments as well as pertinent documents.

A motion was made (AD) and seconded (JM) to receive the correspondence and attachments from Eric Stotts dated 10/16/14. Motion passed unopposed.

Mr. Stotts stated that variances are governed by MGL 40A, §10, and the courts have repeatedly found that no variance can be granted unless all requirements of the statutes are met, and that a failure to establish any one of them is fatal. He stated he would provide four instances where the applicant has fallen short of these rigorous standards.

Mr. Stotts stated the applicant claims "to change or reconfigure the existing parcel to comply with the frontage requirements would be impractical". Mr. Stotts stated this alone is not grounds to be considered a hardship under the statute, and in *Tsagronis v. Board of Wareham*, the Supreme Court held that the shape of the land criterion is not met merely because the particular lot has insufficient frontage. It goes on to say that failure to meet dimensional requirements does not satisfy the odd shaped criterion of the statute.

Mr. Stotts stated that at the April ZBA meeting on the original application, the board denied the applicant, including among its reasons that the denial did not constitute a hardship for the applicant. He stated this condition has not changed. Additionally, any hardship suffered by the applicant in this case was self-imposed. *Rush v. Turnbull* states when one purchases realty with the intention to apply for variance, he cannot contend that restrictions cause him such peculiar hardship that entitles him to zoning relief. *Adams v. Brolly* speaks to the same point, stating that a property owner cannot obtain a variance by creating his own hardship. Mr. Stotts stated that this is exactly what this applicant has done. He knowingly purchased a non-conforming property, knowing he would have to raze the structure, with the expectation of getting a variance, thus creating his own hardship.

Mr. Stotts continued that the statute also states the variance may be granted when “A literal enforcement of the provision of the ordinance or by-law would involve substantial hardship, financial or otherwise. Included in the items submitted, Mr. Stotts stated there was a sales report showing the value of the property assessed, as well as what the applicant paid for the property. He stated the applicant paid \$45,000.00 for a parcel worth \$186,600.00. Mr. Stotts asked the board to consider what is the financial hardship in this situation.

Mr. Stotts said the statute states desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the ordinance or bylaw. He noted the applicant, within his application, had stated desirable relief if granted would be consistent with the surrounding parcels. Mr. Stotts urged that the board consider the surrounding parcels and intent of the ordinance.

Mr. Stotts stated the applicant has applied for a 6 unit building on this mixed use business zoned property. He stated the area properties are not of the same ilk. Mr. Stotts indicated he had attached a map and displayed a color coded illustration showing Map 51. He stated the parcels in yellow are Res B, those in green are Res A, exclusively single family, and the few at the bottom are mixed use business. He stated this shows the area as predominantly single-family and two-family homes, and a 6 unit complex is not consistent with surrounding parcels as alleged by the applicant.

Mr. Stotts stated the intent of the bylaw is to make sure that exactly this sort of thing does not happen. He went on to say an out-of-state developer has come in to try to put a large building on a small parcel in direct contradiction to what is in the area and to what common sense says should be built there. Mr. Stotts stated the ordinance is a safeguard to just this situation and the allowance of this variance would set a dangerous precedent to other out-of state developers to come in and try to do that same in our city.

Mr. Stotts noted the permit granting authority can impose conditions, safeguards and limitations both of time and of use. He appealed to the board that if they find no merit in his other arguments, they limit any residential building placed on this property to a two family home in keeping with the area. Chapter 9, Appendix B of the zoning code states you can have one unit for every 10,000 sf for a single-family home and 5,000 sf for a two-family home and one unit for every 1,000 sf for a multi-family home. He stated the purposeful inclusion of both single family and two family homes says that the creators of the code envisioned a situation where one would have a single or two family home on a mixed use business lot. While building a two=family home on a mixed use business parcel may not be as profitable for the owner, there is precedent to support this restriction. The decision of *MacNeil v. Town of Avon*, a land case where the plaintiff was seeking a multi-unit building without the proper frontage, the judge stated “There is no constitutional requirement that a landlord be able to devote each square foot of his property to some use” and that “She is not necessarily entitled to make the most profitable use thereof”. Mr. Stotts continued by stating that just because the applicant wants to build a large building on a small piece of land, does not mean the town needs to approve the variance.

Mr. Stotts reiterated that all of the requirements under the statute need to be met in order for the board to grant the variance, and a failure to establish any one of them is fatal. He stated he has given four substantive reasons why this board should deny this variance, and he urged the board to do so.

In response to Mr. Comerford's further invitation to be heard in opposition, Nancy Andrade of 407 Union Street, stated Mr. Stotts had covered everything. She added that this is an important issue as the neighborhood has 3 mixed use business properties; two for sale and one to be developed by the city in the area. She cited 475 Union, 471 Union Street. She stated that though Mr. Redmond said there was no other property for sale, 471 is a mixed use business property for sale.

Ms. Andrade stated the city owned property at 478/480 Union Street is a large parcel of land which can only put in one unit of residential housing that could be 3 stories. She is concerned about any merge between the property in question tonight and 471 Union Street, another large building that was Dartmouth Medical. She encouraged the board to think this over.

In response to Mr. Comerford's further invitation to be heard in opposition, Richard DeSouza of 468 Union Street stated the building overpowers the rest of the neighborhood. He was also concerned about the issue with the school and buses parking. He is also concerned about the worsening problem of water going down Union Street. He does not think it's right for this location.

In response to Mr. Comerford's further invitation to be heard or recorded in opposition, Jose Pao of 10 Newton Street stated he is against this project and does not think it fits in the neighborhood. He stated they have a problem with parking.

In response to Mr. Comerford's further invitation to be heard or recorded in opposition, Audrey Brown of 214 Court Street stated she is opposition for the reasons Mr. Stotts presented.

In response to Mr. Comerford's further invitation to be heard or recorded in opposition, Councilor Linda Morad stated this petition, which has been before the board several times, has no hardship but a self-made one. She stated the petitioner bought the property understanding the dimensions and knowing his plans for the property. Ms. Morad stated the nature of the project does not fit into the neighborhood and urged the board to consider that fact along with whether it was something they would want in their neighborhood. She stated that in her 9 year city council term she has seen these type of projects squeezed into a neighborhood and then the project developer goes away and the neighborhood is left with the project. She asked the board give that fact serious consideration. She stated this is a 10,084 sf. project, but the petitioner needs 18,000 sf for the proposed building. Ms. Morad stated the property frontage is 45' and the petitioner needs 150'. Not even close. She again stated there is no hardship here but a self-made hardship. She stated the soil and topography have been the soil and topography forever, and existed when the petitioner bought the property. He knew what he was buying. She stated he is asking the board to make a variance for him to build something that doesn't fit into the neighborhood. Ms. Morad stated her constituents showed that the bulk of the neighborhood properties are single and two family homes in addition to a couple of multi-family homes, not apartment buildings. She stated building this type of property in the neighborhood is a serious detriment. She went on to say it does not look like houses in the neighborhood or have the same flavor of neighborhood properties. She stated it is a use of the property that will generate tax dollars, but it does not fit. Ms. Morad stated the neighbors will be left with this property when the builder goes away. She stated it does not fit and asked the board to consider if this is what people of the City of New Bedford want. She contends the petitioner does not meet the terms of the variance and asks the board deny the variance and stop the project from going forward.

In response to Mr. Comerford's further invitation to be heard or recorded in opposition, Rene Nunes of 226 Court Street stated he is against the project as this is a very small lot and it will put the parking lot right beside his house. He stated he is worried about water drainage and people coming in late, as it is right at the line of his house.

Mr. Decker read into the record a letter of opposition to both Case #4150/4151 from Councilor Carey Winterson. A motion was made (AD) and seconded (JM) that said correspondence be receive and placed on record. Motion passed unopposed.

In response to Mr. Comerford's further invitation to be heard or recorded in opposition, Councilor Brian Gomes asked to be recorded in opposition for many of the reasons stated this evening.

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

In rebuttal, Mr. Redmond stated he understood the neighbors' concerns and while agreeing with some, he felt some were misleading and inaccurate. He disputed statements that he had created his own hardship. He stated this is a non-conforming existing lot created prior to zoning by-laws, which he did not create and is not subdividing or changing. He stated he disagrees with the statements that he has to raze the building, contending he does not have to raze this non-conforming building. He stated he could do repairs and request other uses, but he took into consideration the residential neighborhood. Mr. Redmond stated the current building, which as it sits is in full compliances, encompasses 70% of the lot, but he cannot conceive of a renter for that much space in that area without parking.

Mr. Redmond stated all lots on the map shown by Mr. Stotts are non-conforming existing lots. He stated references about lots across the street are in a different zone and he has no equity stake or interest in 471 Union Street.

He stated his direct abutter is a large building with one parking space for a three family, and his project is consistent with their height. He suggested he meets the requirements. He stated while knowing there was hardship, he did not create the hardship. He went on to say whether he bought the property or even a direct had bought the property, they too would be before this board.

Mr. Comerford confirmed that the proposed building will not be higher than the Victorian three family abutter on the corner. Mr. Redmond stated he was under the 40' requirement.

In opposition rebuttal Mr. Stotts stated that the building was rented in 2011, and despite Mr. Redmond's contention that he could not rent it out as is, he has stripped the building interior of all copper and precious metals. He stated this action by Mr. Redmond essentially resulted in him forcing himself to raze the building barring his installation of all new pipes and sheet metal. He stated Mr. Redmond's building is 4 stories and will have bedroom windows at the roofline, unlike the 3 story 3 family he referenced. Mr. Stotts again stated the applicant does not comply with Chapter 40A, §10. He stated there is no hardship. He stated Mr. Redmond bought the building knowing there was a risk and bought the building anyway because of the astronomical profits to be made if he could sneak this buy the board.

Mr. Redmond began to speak and was stopped by Mr. Comerford, who then closed the hearing.

Mr. Comerford invited Att. Espinola to share any helpful thoughts with the board.

Assistant Solicitor Espinola stated it was his understanding that there has been no building permit for this location since 2003. Though the seafood plant sought a variance and a church occupied the building, the last record found is 2003.

He stated with regard to a self-created hardship typically that occurs when the owner of a property divides the property and seeks a variance on one or both of the new parcels due to that division. He stated that since most of these area properties are non-conforming, it could have a dangerous and chilling sales affect to say that this is self-created hardship.

Mr. Comerford confirmed that referring to any non-conforming property as a self-imposed hardship could affect development of properties throughout the city. Att. Espinola did not want to overstate the case or have his comments have an opposite effect, but many area properties could fall under that term in the event that anyone buying such a property is also creating their own hardship. He again explained the typical self-made hardship as a property owner subdividing his property and then seeking variance on one or both of those newly subdivided parcels, as opposed to merely purchasing an existing non-conforming property.

Mr. Comerford stated he felt it was a thorough plan with good intentions for the neighborhood, and is better than an empty building that is falling apart.

Mr. Mathes agreed. He appreciated the neighbors' concerns. Mr. Mathes did not feel the petitioner had tried to sneak anything by the board. He felt that the parking issues he had raised originally on this petition had been addressed by the petitioner. Mr. Mathes also noted that he had traveled by the area on various days and at various times and had found available parking spaces each time he drove by on all the surrounding streets.

Mr. Comerford concurred that that was his experience as well and that now all tenants would have assigned spots, but noted that the parking issue is not before the board at this time with the petitioner.

Mr. Decker and Mr. Mathes expressed concern that the site plan review process and drainage issue was not yet completed and would need to be a condition of any vote.

Mr. Walsh also expressed agreement with Mr. Mathes' and Mr. Comerford's parking observations, as did Mr. Schick.

Mr. Comerford contended this project does not affect the zoning district as there are multi-family homes, a school and businesses in the neighborhood/area.

There being no board discussion on the matter, a motion was made (AD) and seconded (JM) to grant Appeal #4150, a motion to grant a variance under provisions of the city code of New Bedford to Preferred Realty Services LLC (386 B Third Beach Road Middletown, RI 02842), relative to property located at 475 Union Street, Assessor's Map Plot 51, Lot 269 in a Mixed-Use-Business Zoned District, to allow the petitioner to raze the building and reconstruct six (6) residential units as per plans filed, which will require a variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720 Appendix B, with the following conditions: that the site plan review process be completed to the satisfaction of the City Planning Board, and 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 #4150/4151 – Special permit/Variance

The hearing being **previously** opened, Mr. Comerford invited the petitioner to address the board.

Mr. Redmond thanked the board for its support and kind words and assured the board he took pride in his work and was not an absentee owner. He stated the property in 2003 was used as a fish processing plant on the Court Street side. He stated a variance was granted for a loading zone. He stated the project's elimination of the loading zone may even free up additional parking.

Mr. Redmond noted the proposed curb cut. He stated in 2003-2004 a curb cut was applied for and granted, but the company went out of business and the application was never followed up on. Mr. Redmond assumed that some traffic studies were done at that time related to the loading dock and loading zone.

Mr. Redmond stated he prefers tom access the property off of Court Street as it is a one way and not as heavily traveled as Union Street. He stated the majority of school buses park and load up past Newton Street. He stated busses don not park in front of his proposed curb cut. While buses do go by, it will be on off hours to the coming and going of his working residents. He noted there is an existing curb cut on Union Street which will be closed.

He stated numerous corner lots throughout the city have fronting on two streets and access is granted at other than the legal address. He stated his application results as his desired access is not the property's legal address on Union Street He stated he believes a 224 Court Street is a fire department notation. He stated this property is the width of a city block with frontage on two streets.

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

In response to Mr. Comerford's invitation to be heard/recorded in opposition, Eric Stotts of 214 Court Street, an immediate abutter, addressed the board. He stated the applicant had made an erroneous statement as there are buses that park on Court Street and travel south. He drew the board's attention to a nine year old student, present this evening, who could attest to that fact. He stated when returning home between 1:45 -2:45 he changes his route as there are buses there.

Mr. Stott stated that the board seems to be in agreement that there is plenty of parking, and as such he cannot speak to that.

In response to Mr. Comerford's further invitation to be heard/recorded in opposition, Rene Nunes of 226 Court Street, stated he has a problem with the parking lot which is proposed to be right beside his house. He stated he has owned his home for fourteen years and has invested a lot of money into his property, and if this parking lot is right beside his house his property value will drop tremendously. He stated there are more students in the school and the buses park in front of his garage on Newton Street. He again stated that his main concern is the value of his home. He stated he has worked hard on his property. Mr. Nunes stated that while the proposed building looks beautiful, he will never recoup the money from his home with a parking lot next to it, and he has consulted realtors. He stated he has plowed snow and is concerned where this property's snow will go. He is concerned about noise because he works early hours. He stated that at his age he doesn't need aggravation. He just wants to enjoy his house. He feels it is too small a lot for this project and this parking lot will be right beside his home.

In response to Mr. Comerford's further invitation to be heard/recorded in opposition, Audrey Brown of 214 Court Street, and president of the PTA, stated she is well aware of where the school buses area from picking up her son every day. She said she now has a secure wall that will be changed to hedges and is concerned about security for her family and pets. She expressed her opposition.

In response to Mr. Comerford's further invitation to be heard/recorded in opposition, Nancy Andrade, 470 Union Street, commented that the property for sale at 471 Union Street will produce 8-10 cars on Union Street. She says the neighborhood has a constant mix of cars coming and going. She expects parking problems with three neighborhood projects, once 471 is sold and 478/480 is developed. She stated that if her home was abutting the parking lot she would want a jersey barrier, not cobblestone.

In response to Mr. Comerford's further invitation to be heard/recorded in opposition, Councilor Linda Morad stated that she felt the board had made its mind up in April and predetermined the outcome here. She suggested abutters file in superior court to override the decision and have someone look at the project and see it does not belong in this neighborhood. She noted she is opposed to parking in the rear and hopes the traffic commission will address the radius of the curb cut on Court Street.

In response to Mr. Comerford's further invitation to be recorded in opposition, the following responded:

Councilor Brian Gomes
Richard DeSouza of Union Street

In rebuttal, Mr. Redmond reminded the board he has yet to go for site plan review, and will need to fully comply with any of their provisos. He addressed the two abutters most affected by his project, stating he will be protecting many of the existing trees. He also noted the planned row of arborvitaes should completely screen the parking. He mentioned fencing as a possible alternative to the cobblestone reveal.

Mr. Redmond stated comments had been made by an abutter that a fence be installed rather than a privet hedge. He again noted this abutter's home is set back on their lot away from the parking and contains a lot of screening vegetation.

Mr. Redmond stated that the building's present deterioration is more of a detriment of value than his proposal.

There was no response to an invitation for opposition rebuttal. As such, Mr. Comerford closed the hearing.

Mr. Comerford inquired of Mr. Romanowicz as to the legal frontage of the rear parking. Mr. Romanowicz stated that a special permit is needed when one cannot get access from the frontage. He stated the only way to avoid that is to place parking access on the right or left side of the property. He stated that because parking access is not in the front of the property, he cannot issue a permit without relief from the board. Mr. Romanowicz stated he did not know the reason for the zoning ordinance.

Mr. Schick asked if these would be residential units or sold as condos. The applicant stated this will be market rate housing, owned fee simple; an apartment building. He clarified the units are available for market rate rent. Mr. Schick asked if these would be Section 8, to which the applicant again replied market rate rent. When asked for clarification, the applicant responded that it would not be a housing voucher, but private housing, market rate, with expected monthly rents at \$1,250 for the 2 bedroom/2 bath approximately 1,000 sf units with the 125 sf basement storage units.

There being no further questions or discussion, a motion was made (AD) and seconded (JM) to grant Appeal #4151, a motion to grant special permit under provisions of the city code of New Bedford, to Preferred Realty Services LLC (386 B Third Beach Road Middletown, RI 02842), relative to property located at 475 Union Street, Assessor's Map Plot 51, Lot 269 in a Mixed-Use-Business Zoned District, to allow the petitioner to raze the building and reconstruct six (6) residential units as per plans filed, which will require a Special Permit under Chapter 9 Comprehensive Zoning Sections 3100, 3110, and Section 3149, with the following conditions: that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds, and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Motion passed 4-1

CASE #4159 – Variance

A motion was made (AD) and seconded (JM) that the following be received and placed on file with regard to the above named case: communication dated 9/19/14 from the Commissioner and Inspector of Buildings; communication from the Office of Planning dated 10/2/14; the appeal; the plan submitted; that the owners of the lots as indicated are the ones deemed by this board to be those affected; and the action of the clerk in giving notice of the hearing is hereby ratified.

Motion passed unopposed.

Mr. Comerford invited the petitioner or his representative to address the board.

Tye Andrade, owner of 110 Pine Grove Street, stated he is seeking a variance to build on his corner lot at Pine Grove and Appleton Streets. Having bought the lot two years ago, his intent was to build on the property as his

family increased. That having occurred, he is now looking to increase the property's living space to fit his current needs. He stated he loves the neighborhood and does not want to move.

Mr. Comerford confirmed that size of the addition to be some 900 sf. The applicant expects it to be between 600-700, a 20'x15' two car garage and master bedroom above it.

In response to Mr. Comerford's invitation to be heard or recorded in favor, Councilor Brian Gomes asked the board to grant the variance. He noted Mr. Andrade's love for the neighborhood, felt the project was in keeping with the neighborhood, and it affords Mr. Andrade the opportunity to raise his family in the neighborhood.

In response to Mr. Comerford's invitation to be recorded in favor, the following responded:

Councilor Linda Morad

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

In response to Mr. Comerford's invitation to be heard further, Mr. Andrade declined to make any further comments to the board.

Mr. Comerford closed the hearing.

After brief discussion, Mr. Decker noted the city planner's concern with the width of the driveway and its encroachment to the city's right of way. Mr. Andrade responded that it was his belief it was a minimal encroachment, perhaps a foot, and he is building right against the property line, resulting in his appearance this evening.

Mr. Decker informed Mr. Andrade that the city planner's recommendation is that he decrease the driveway width to 18'. Mr. Andrade acknowledged his awareness of the recommendation.

In response to a setback inquiry by Mr. Comerford, Mr. Romanowicz stated setback was 12' on one side and 10' on the other side.

There being no further discussion, a motion was made (AD) and seconded (JM) to grant Appeal #4159, a motion to grant a variance under the provisions of the city code of New Bedford to Tye J. Andrade (110 Pine Grove Street, New Bedford, MA 02745) relative to property located at 110 Pine Grove Street, Assessor's Map Plot 127C, Lots 263 & 264 in a Residential-A Zoned District, to allow the petitioner to erect a two car garage with a 2nd floor extra bedroom with a ¾ bathroom as per plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2750 and 2755 with the following conditions: that the driveway opening be decreased to the allowed width of 18' and the city's right of way be restored, and that the project be set forth according to plans submitted with the application and that it be recorded at the Registry of Deeds, and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Motion passed 5-0

CASE #4160 – Variance

A motion was made (AD) and seconded (JM) to open the above named case and that the following be received and placed on file with regard to the above named case: communication dated 9/19/14 from the Commissioner and Inspector of Buildings; communication from the Office of Planning dated 10/2/14; the appeal; the plan submitted; that the owners of the lots as indicated are the ones deemed by this board to be those affected; and the action of the clerk in giving notice of the hearing is hereby ratified.

Motion passed unopposed

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

Ken Ferreira, of Ferreira Engineering, addressed the board on behalf of Lifestream. He stated the corner property is located on Nauset Street where Purchase Street comes to an end and Myrtle Street. He displayed the existing buildings on Myrtle and Nauset as well as the proposed addition. He stated that Lifestream is a provider of adult daycare with a variety of programs for adult children with intellectual and other learning disabilities. He stated the facility is open from 8:00 – 4:00, and is well staffed with trained counselors. Mr. Ferreira explained that clients are dropped off in the morning and picked up at approximately 3:00pm.

Mr. Ferreira explained the second floor houses corporate offices. He stated they are proposing to expand the 936' building at the end of the structure to increase the programs offered. This expansion will increase the staff with three additional staff employees and thirteen additional clients. Mr. Ferreira noted they had already applied for site plan review.

Mr. Ferreira went over the proposed addition pointing out a gravel area, paved parking, et cetera. He displayed a detail drawing of the addition, noting the current area is an unused blacktop area. He stated the proposal will change this area to include the addition, lawn, shrubbery and planting boxes. He noted 38 spaces are required and they will have 40. He stated the proposal contains two three car drop off areas and two handicap spaces.

Mr. Ferreira then displayed a blow up of the facility showing the addition plantings by G. Bourne Knowles. He stated there is existing lighting on the buildings which provide lighting to the parking lot, but again noted the facility closes at 4:00 pm.

With regard to placement of the proposed addition, Mr. Ferreira explained it was moved back because there was a desire to landscape and improve appearance, as well as maintain 25+ feet off of Myrtle Street, which caused the addition to be only 11.15' off of Nauset. He stated the existing building is 4.98 and 5.49. He stated there was a situation with a major electrical line coming in off of Nauset Street which had to be avoided.

After showing some additional sheets illustrating elevations and some interior placements, Mr. Ferreira again noted this extension will allow for more client services and clients. He then invited questions from the board.

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 or recorded in opposition.

There being no further comment from Mr. Ferreira, Mr. Comerford closed the hearing.

Mr. Decker confirmed the status of the site plan review. Mr. Ferreira added that he had met with officials from the Planning Office to review the project, which will reduce site runoff.

There was brief discussion among the board on whether to include a condition in their motion with regard to site plan review.

Mr. Mathes noted that Lifestream was a quality organization providing necessary services in the community.

Mr. Comerford agreed.

A motion was made (AD) and seconded (JM) to grant Appeal #4160, a motion to grant a variance under the provisions of the city code of New Bedford to Lifestream Inc. (444 Myrtle Street, New Bedford, MA 02746), John Latawiec (P.O. Box 50487 New Bedford, MA 02746), and Kenneth R. Ferreira (46 Foster Street, New

Bedford, MA 02741) relative to property located at 30 Nauset Street, Assessor's Map Plot 97, Lot 186 in an Industrial-B Zoned District to allow the petitioner to erect a 936 square foot addition (36'x26') as per plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710 Appendix-B, 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

A motion was made to delay the acceptance of minutes and then withdrawn.

Mr. Comerford announced that the next Zoning Board Meeting is scheduled for November 20, 2014 at 6:00 p.m..

There being no further business, the meeting was adjourned at 7:49 p.m..