

**ZONING BOARD OF APPEALS
Main Library New Bedford
Pleasant Street
Thursday, February 26, 2015**

MINUTES

PRESENT:

Ian Comerford (*Chairman*)

James Mathes (*Vice Chair*)

Allen Decker (*Clerk*)

Leo Schick

Also in attendance:

Dan Romanowicz, Commissioner of Buildings and Inspectional Services

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

Mr. Comerford informed the applicants that with only four board members present, applicants would need a unanimous vote for their petition to be granted. Mr. Comerford offered applicants the opportunity to continue their matters to the next board meeting. No applicants responded.

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

PUBLIC HEARINGS:

CASE # 4169/4170 –Variance/Special Permit

A motion was made (AD) and seconded (JM) that the following documents be received and placed on file: the communication dated 1/26/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 2/25/15; the appeal package; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; lastly, that the action of the clerk in giving notice of the hearing as stated be and is hereby ratified. Motion passed unopposed.

Chairman Comerford declared the hearing open and invited the petitioner to the podium.

Armando Pereira, P.O. Box 578 West Wareham, MA, project designer addressed the board. He stated the project owner was also present. He stated the property formerly had

to three-family dwellings upon it. He stated it has been a vacant lot for quite a few years. He stated the applicant is looking to put a single-family raised ranch style home on it with access from Delano Street. He stated that after looking at the property, Delano Street was the safest way to access a driveway.

He displayed the plan that was to be contained in board member packets and stated the plan was straightforward. He noted the stock plan shows the garage facing South Second Street, which will be flipped over at the time of construction having access from Delano Street.

Mr. Pereira stated this straightforward house contains a lower level with open storage and garage access, and an upper level consisting of a family room, dining room, kitchen and three bedrooms.

He stated that the site view shows the house facing South Second with the club on the corner, with the driveway off of Delano Street. He noted the proximity to the corner has been influenced by backyard restrictions.

In an effort to streamline the process, Mr. Comerford suggested opening the hearing for Case #4170 as well, as the presentation will be the same.

With regard to Case #4170, a motion was made (AD) and seconded (JM) that the following documents be received and placed on file: the communication dated 1/26/15 from the Commissioner of Buildings & Inspectional Services; the communication from the Office of the City Planner dated 2/25/15; the appeal package; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and that the action of the clerk in giving notice of the hearing as stated be and is hereby ratified.

Motion passed unopposed.

Mr. Comerford declared the hearing on Case #4170 open.

Mr. Pereira stated the lot complies with what was built on the site when it was built. But today's standards required 20' in the front and 30' in the rear. The applicant has a 26' deep unit for the site, leaving 21' in the back and 7.02' in front. He noted the site was ideal for this size building. He stated previous multi-families had a backyard of 10'. He noted there were additional single-family dwellings in the area. Mr. Pereira stated in the alternative, a long thin narrow building would fit on the site, but would likely be unused.

In response to a board inquiry on the length of time the lot had been vacant, Carlos Madeira stated seven years.

In response to Mr. Comerford's inquiry on whether the applicant had purchased the property as a vacant lot, Mr. Madeira stated at the time of purchase the lot was two three-

family houses. He stated he originally wanted to build a tri-plex, which did not fit in the area. At that point he looked to pick a house that would go with the area, such as a single-family. He stated the two houses caught on fire after his purchase, resulting in the vacant lot.

Mr. Madeira clarified to Mr. Comerford that he had purchased the property after the two houses caught fire.

Mr. Decker clarified that the plan as submitted by Ken Ferreira shows the driveway access on Delano Street. The applicant confirmed that fact. Mr. Decker noted that, if approved, that is the plan the applicant will be held to.

In response to Mr. Comerford's invitation to speak in favor, Ward Councilor Joseph Lopes asked to be recorded in favor of the proposal. He stated this project will be a fine neighborhood addition to replace the vacant lots. He stated the applicant had a track record of producing amazing buildings within the city, with quality products and tenants. He stated he fully supports the petitioner.

In response to Mr. Comerford's further invitation to speak in favor, Councilor-At-Large Linda Morad echoed the comments of Councilor Lopes. She stated Mr. Madeira has been a New Bedford property owner and runs a fine business in the city as well. She stated this vacant lot will be beautified and provide affordable housing and be positive for the neighborhood and the city.

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

Mr. Comerford closed the public hearing.

Mr. Comerford stated he felt the project was a good one, and expressed his concern with seeing vacant city lots. He also was in favor of this as a single-family home, with so many multi-family units already within the city.

There being no further comments from board members, a motion was made (JM) and seconded (AD) to grant Appeal #4169, a motion to grant a variance under the provisions of the city code of New Bedford to Madeira Construction, relative to property located at WS South Second Street, Assessor's Map Plot 25 Lot 85 in a Residential-C Zoned District, to allow the petitioner to erect a 24'x48' single family with a 2' overhang and a one car garage under as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 Appendix-B, 2750, 2751, and 2753, 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.

With regard to the motion made regarding dimensional requirements only, voting was as follows:

I. Comerford - Yes A. Decker- Yes
J. Mathes - Yes L. Schick - Yes

With regard to Case #4170, a motion was made (JM) and seconded (LS) to grant a special permit under the provisions of the city code of New Bedford to Madeira Construction, Inc., relative to property located at WS South Second Street, Assessor's Map Plot 25 Lot 85 in a Residential-C Zoned District, to allow the petitioner to have a curb cut for a driveway with access from Delano Street as plans filled, which will require a Special Permit under Chapter 9, Comprehensive Zoning Sections 3149 and 5300-5330 & 5360-5390, 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.

With regard to the motion made, voting was as follows:

I. Comerford - Yes A. Decker - Yes
J. Mathes - Yes L. Schick - Yes

CASES # 4171 – Variance

A motion was made (AD) and seconded (JM) that the following be received and placed on file: the communication dated 1/26/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 2/25/15; communication from City Councilor Steve Martins dated 2/24/15; the appeal package and the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and that the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

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

Armando Pereira, P.O. Box 775 West Wareham, the project designer, addressed the board. He submitted photos for submission to the board.

A motion was made (AD) and seconded (JM) that the petitioner's photographs be accepted into the record. Motion passed unopposed.

Mr. Pereira stated the petitioner was going for a dimensional issue, noting that in the particular subject zoning area, the petitioner is allowed 2.5 stories, or three if religious

education or instructional buildings. Mr. Pereira explained the subject building is 2.5 stories. He stated the state building code and zoning board by-laws state that a story is a part of a building between the top finished floor or roof next above. He stated that it also reads a ground story is the lowest story entirely above the mean grade of adjoining ground.

Mr. Pereira stated that New Bedford has no definition for a basement, but there is a definition of a story above grade type of thing which is a basement above grade would be anything that would be 6' or more above. So that in looking at this project, it gets a little confusing on how the zoning is written. However, he stated this is a two-family dwelling. Where they are basically trying to get the cottage set-up. He directed the board to the plans, and stated that with minor alterations on the second floor, the applicant could prevent it from becoming a three-family. He stated that was his biggest concern on a project like this. He stated that in looking at existing conditions on Sheet A1.2, there is a door at the top of the stairs, and the stairs continue all the way up to the attic. He stated Part B of the layout has the applicant introducing a door at the top of the stairs with no access from that stairway up to the attic. The existing upper rooms, which have the original plaster, become part of the second floor.

Mr. Pereira could offer no explanation as to why the attic space had been segregated from the second floor, but stated the applicant is looking to be able to use that space for additional bedrooms or a space used by the second floor apartment.

Mr. Pereira stated they are looking to make the second floor bigger and prevent use of the third floor as a third unit. That being said, Mr. Pereira again raised the dimensional of 2.5, which could be classified as a three if the basement were included. He sought some clarification from the Mr. Romanowicz.

At Mr. Comerford's invitation, Mr. Romanowicz stated it is only considered a four when it is habitable space. He stated using the top area makes it another story. The basement being used only for storage is not considered a story. In the particular area, only 2.5 stories are allowed, which has brought Mr. Pereira before the board for use of the top floor. Mr. Romanowicz explained that in the past, prior to the ordinance, many people sought to convert a 2.5 story to a 3 story or 3 family with merely a special permit.

Mr. Pereira stated he understood and said they were looking to prevent the third apartment by tying it down and introduce a cottage style; meaning living space on the lower level and useable space above for bedrooms.

Mr. Comerford noted the plans for third floor indicate existing bedrooms to remain, sitting area. He inquired if the third floor was a finished area. Mr. Pereira stated it was, but with untouched plaster and no bathroom. Mr. Pereira stated the plans were carefully prepared to make sure it could not be made into a separate livable unit.

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

Mr. Comerford declared the hearing closed.

Mr. Decker expressed that he liked the tie-in of the third story to the second floor living space.

Mr. Comerford agreed and noted the project would not add any parking burden. There being no further comments or questions from board members, a motion was made (JM) and seconded (LS) to grant a variance under the provisions of the city code of New Bedford to Dana B. Lewis relative to property located at 67 Chancery Street, Assessor's Map Plot 45, Lot 461 in a Residential-B Zoned District, to allow the petitioner to create a cottage setup between the second floor and attic as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 Appendix B, and 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.

VOTE:

I. Comerford - Yes	A. Decker- Yes
J. Mathes - Yes	L. Schick- Yes

Mr. Romanowicz clarified for Mr. Comerford that these type of buildings were built for two families with upstairs storage. He stated that back in World War II, many of these houses were converted to have the boys return home, having beds for them upstairs. Had the zoning ordinance for the area been Residential C and the plans submitted met all the building codes, the applicant would not be before this board.

CASES # 4172 – Variance

A motion was made (AD) and seconded (JM) that the following be received and placed on file: the communication dated 1/26/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 2/25/15; the appeal package and the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and that the action of the clerk in giving notice of the hearing as stated be and hereby is ratified. Motion passed unopposed.

Mr. Comerford declared the hearing open and invited presentation to the board.

Armando Pereira, P.O. Box 775, West Wareham, submitted photos to the board.

A motion was made (AD) and seconded (JM) that the petitioner's photographs be accepted into the record. Motion passed unopposed.

Mr. Pereira stated this project was the same scenario as the last case. He stated it was a similar scenario, with a basement, first, second and attic, again, used the same way. He stated that 8.1.1 the petitioner took the option of separating the first and second floors on the first floor, the upper level space getting tight. He stated the first floor would be reconfigured by moving a door that goes into the apartment, moving the outside door approximately 4' over, putting the door separating the 1st and 2nd floors right on the 1st floor landing on the back of the building. The front would remain as is with doors on the 1st floor and 2nd floor.

Mr. Pereira stated this project ends up with one existing bedroom on the 1st floor. The 2nd floor, with one bedroom, will be more utilized, with two bedrooms up above and an existing storage area. Recouping the upper level makes it a more valuable piece of property for the area.

In response to an inquiry by Mr. Comerford, Mr. Pereira stated the house, purchased mid 2014 or early 2015, was currently vacant. He stated there is an open building permit in place and a structural permit for the lower level.

Mr. Comerford felt this case struck him somewhat different than the last case. Mr. Pereira stated it really was not, but this property does currently have a door at the bottom of the 1st floor stairs going to the attic.

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

Mr. Comerford declared the hearing closed.

There being no further comments or questions from the board, a motion was made (JM) and seconded (LS) to grant a variance under the provisions of the city code of New Bedford to Deolinda Barbosa relative to property located at 58 Hazard Street, Assessor's Map Plot 72, Lot 7 in a Residential-B zoned district, to allow the petitioner to create a cottage setup between the second floor and attic as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, and 2720 Appendix-B, and 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.

VOTE:

I. Comerford - Yes	A. Decker- Yes
J. Mathes - Yes	L. Schick- Yes

Chairman Comerford called for a five minute recess at 6:59 pm.
Proceedings resumed at 7:05 pm

CASES # 4173 – Variance

A motion was made (AD) and seconded (JM) that the following be received and placed on file: the communication dated 1/26/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 2/25/15; the appeal package and the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and that the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.
Motion passed unopposed.

Mr. Comerford declared the hearing open and invited presentation to the board.

Dana Pickup, 239 Huttleston Ave., Fairhaven addressed the board. He stated the existing house has an 8' x 11' deck on the rear of the house. He stated it was a double deck, being a raised ranch with a walkout. Petitioner is seeking to remove the existing deck and build a 10'x 20' deck on the first floor and a three-season sunroom on the second floor attached to the house.

Mr. Comerford confirmed that the current deck is 8' feet off the house. Mr. Pickup conformed and noted the current deck is 11' wide. Mr. Comerford inquired that the project will make the deck 10' off the house and 20' wide. The applicant confirmed this to be true.

Mr. Comerford noted that would leave a 20' rear yard setback, 30' being required.

In response to Mr. Comerford's invitation to speak in favor, Robert Pinto, owner of 986 Kensington Street, stated he had bought the house at foreclosure on 2010 and did some repairs to it. He stated he and his family currently live there and are looking to do the larger deck and sunroom just to improve their quality of life. He expressed he plans on residing there for a long time and is just trying to make a nicer home for his family to live in.

In response to Mr. Comerford's further invitation to speak in favor, Councilor at Large Linda Morad, stated she has known the Pintos for several years. She stated they bought the home when it was in disrepair and have brought the property into a very nice single-family home where they are raising their family. Ms. Morad stated the Pintos own several other parcels in New Bedford that are very nicely maintained. She noted there are no neighbors present in opposition, as the Pintos have spoken to their neighbors, and Ms. Morad reports speaking with several neighbors who are in favor of the project. She stated she is in support of the project.

In response to Mr. Comerford's invitation to speak in favor, Councilor Joseph Lopes, stated he has known Mr. Pinto for some twenty-five years and is in favor of his proposal. He described Mr. Pinto as a strong family man in the community trying to make improvements to his home.

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

Mr. Comerford closed the hearing.

There being no comments or questions from the board, a motion was made (JM) and seconded (LS) to grant a variance under the provisions of the city code of New Bedford to Robert S. Pinto and Evelina M. Pinto relative to property located at 986 Kensington Street, Assessor's Map Plot 137A, Lot 41 in a Residential-A Zoned District, to allow the petitioner to remove the existing deck and build a 10'x 20' sunroom with a deck below as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 Appendix-B, 2570 and 2753, and 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.

VOTE:

I. Comerford - Yes	A. Decker- Yes
J. Mathes - Yes	L. Schick- Yes

CASES # 4174 – Variance

A motion was made (AD) and seconded (JM) that the following be received and placed on file: the communication dated 1/26/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 2/25/15; the appeal package and the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and that the action of the clerk in giving notice of the hearing as stated be and hereby is ratified. Motion passed unopposed.

Mr. Comerford invited the petitioner to address the board.

Brian Conceicao, 92 Oak Street, representing Mr. & Mrs. Polvino, addressed the board. He stated the Polvinos currently have an existing carport which can only hold a single car. He stated there is a shed built into the rear of the carport. He stated they are seeking to remove the existing carport and shed and construct the proposed garage as submitted.

He stated that in order to accommodate a two-car garage the minimum width would need to be 24', which brought about the zoning issue.

Mr. Conceicao stated the abutting neighbor on the side of the garage has been spoken to and viewed the plans, and the neighbor has no issue. He stated the photos show the neighbor's house is approximately 20' away. He stated the Polvinos recently moved to the area four years ago, being Philadelphia natives, to help their daughter, a single mother, raise their granddaughter. He stated the driveway is currently sloped and in weather conditions, the current set-up being one car behind the other, it becomes pretty slick. For this reason the Polvinos are looking to get their vehicles out of the weather in the winter, and solve Mr. Polvino's difficulties in getting to doctor appointments and therapy for his medical issues.

In response to Mr. Comerford's invitation to speak in favor, Councilor Joseph Lopes stated the petitioners are looking to make improvements to their home. He stated he knows the Polvino's son-in-law very well and he supports the petition and keeping families in New Bedford.

In response to Mr. Comerford's further invitation to speak in favor, Devon Burns of 71 Grant Street, son-in-law of the Polvinos, addressed the board and stated he live about a block away from the Polvinos. He stated the single-family home neighborhood has many carports and garages, including a neighbor with an existing two-car garage. He stated this project will be beneficial to his father-in-law, enabling him to get to and from the house easier, especially in the winter time, with his leg condition. He felt this would benefit their quality of life in New Bedford.

In response to Mr. Comerford's further invitation to speak in favor, Councilor at Large Linda Morad, asked to be recorded in favor of the petition.

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

Mr. Comerford closed the hearing.

Mr. Comerford expressed that he found the petition straightforward and was all for good family people staying in New Bedford.

A motion was made (JM) and seconded (LS) to grant a variance under the provisions of the city code of New Bedford to Thomas and Anna G. Polvino relative to property located at 28 Alva Street, Assessor's Map Plot55, Lot 246 in a Residential-A zoned district, to allow the petitioner's proposal to remove the carport and shed, then build a 24'x33' attached garage as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 Appendix B, 2570 and 2755, and 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.

VOTE:

I. Comerford - Yes

A. Decker- Yes

J. Mathes - Yes

L. Schick- Yes

NEW BUSINESS:

A motion was made (AD) and seconded (LS) to accept the meeting minutes of January 22, 2015 related to cases 4165, 4166, 4167 and 4168. Motion passed unopposed.

Mr. Comerford noted there would not be discussion this evening on fees. He stated the next Zoning Board of Appeals meeting will be Thursday, March 26, 2015 at 6:00 pm.

There being no further business to come before the board, Chairman Comerford adjourned the meeting at 7:20 pm.