

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

**MINUTES**

**PRESENT:**

**Ian Comerford** (*Chairman*)

**James Mathes** (*Vice Chair*)

**Robert Schilling**

**Leo Schick**

**John Walsh**

*Also in attendance:*

*Dan Romanowicz, Commissioner of Buildings and Inspectional Services*

*Jane Medeiros Friedman, Solicitor's Office*

MEETING CALLED TO ORDER by Chairman Comerford at 6:07 p.m.

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

**PUBLIC HEARINGS:**

**CASE #4175** – Variance

A motion was made (JM) and seconded (LS) that the following documents be received and placed on file: the communication dated 3/6/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 3/23/15; the appeal; the plans submitted; and, that the owners of the lots 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 as stated be and hereby is ratified.

Motion passed unopposed.

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

Richard Riccio, Field Engineering, 11D Industrial Drive, Mattapoisett, addressed the board on behalf of Koroskis. He stated the applicant is seeking a variance for reduction in frontage at the parcel located at the end of Dana Street in the city's north end.

He stated the Koroskis purchased the parcel from the Redevelopment Authority in August 2004 with the intent of constructing a single family home. In initial meetings

with the planning department, it was determined that the easiest way to get a building permit would be to discontinue a portion of Dalton Street.

He indicated that Dalton Street ran roughly west/east across Dana Street all the way to Lambeth. He stated that in discussions with the planning department he was told the most efficient way to be able to obtain a building permit was to discontinue Dalton Street in effect bringing the Koroski's property twenty-five feet closer to the constructed portion of Dana Street.

Mr. Riccio stated that after going through the discontinuance process, the completion of the discontinuation of Dalton Street occurred in May 2005. They then went through the notice of intent process with Conservation Commission, receiving an order of conditions in November 2005, which has been extended by the applicant and automatically extended under the Mass Permit Extension Act. He stated there was an amended order of conditions with the present plan, due to expire sometime in 2016.

Mr. Riccio continued that once receiving the order of conditions, they met with the building department to go over zoning issue that arose and the project was suspended while determining the status of the remaining piece of Dalton Street. The economic downturn further stalled the project from moving forward.

In 2011 they learned the city solicitor had issued an internal memo regarding the issuance of building permits on lots without adequate constructed frontage. He stated his understanding was that construction was allowed on lots such as the Koroskis with the extension of a private way and the recording of a rider on property, conditioning that the city took no responsibility for the maintenance of the way. He stated the 2011 memo ended that practice.

Subsequent to those 2011 meetings, additional meetings occurred with city department heads to determine the most efficient way to move forward to acquire a building permit for a single family dwelling, which brings the applicant to the current status today, stating the best way to move forward would be to construct an extension of Dana Street to the parcel to provide some constructed frontage. He noted wetlands on the lot prevent a full width extension of the roadway to the parcel.

He stated had they not discontinued Dalton Street potential would have existed to bring a subdivision road through, avoiding the wetlands.

Mr. Riccio highlighted the findings that must be made to grant a variance. With regard to shape and topography, he stated the circumstances with existing wetlands on and adjacent to the property developed during initial attempt to permit the property create a hardship for the Koroskis. He then noted the initial wetland line would have given more room, extending onto the property during review of the notice of intent.

He then referred to literal enforcement, stating the Koroskis purchased the property with the intent to develop a single-family dwelling on the vacant parcel, adding the property

back onto the city's tax rolls. He stated that during the permitting process a substantial amount of money has been spent by the Koroskis in attempting to ascertain the necessary approvals. He stated given the history of the project substantial hardship would develop with literal enforcement of the provisions of the ordinance.

With regard to derogating from the intent of the ordinance, the applicant felt relief could be granted without this occurring, as the subject parcel would meet all requirements of the ordinance with the exception of frontage. He stated the proposed driveway is adequate to provide access to one single-family dwelling, and due to existing wetlands further along Dana Street no additional lots could be developed off this driveway.

Lastly he stated that the applicant believed relief could be granted without detriment to the public good, as the single-family dwelling is consistent with area uses. He stated possible benefit to the public good, as the applicant proposes drainage improvements on Dana Street as part of the project, thereby minimizing runoff currently ponding at the end of the roadway. He stated a paved apron within the layout is planned to direct runoff towards the wetlands, as well as a crushed stone drainage trench along the proposed driveway.

Mr. Riccio stated that based on those criteria the applicant feels they meet the requirements for the variance and respectfully request approval. He then invited questions.

Mr. Walsh inquired whether the white area depicted between the end of Dana Street in gray was a private way or an extension of Dana Street. The applicant stated it would be a private way with a private driveway into the property within Dana Street layout. He stated DPI was onboard.

In response to Mr. Comerford's invitation to speak in favor, Kenny Koroski of 43 Lambeth Street, the owner of the Dana Street property, addressed the board. He stated he had purchased the property from the New Bedford Redevelopment Authority in 2004. He stated his purpose was to have the property developed to generate tax revenue for the city. He stated he would like the board members to take into consideration that he has been trying to develop the property for eleven years, and grant the needed variance so the property can generate tax revenue.

In response to Mr. Comerford's further invitation to speak or be recorded in favor, Councilor Linda Morad addressed the board. She stated she was approached by the petitioner during her first term as Ward 1 Councilor, and she worked with him and the redevelopment authority to acquire the land. She stated that as shown, shortly after a presentation was made to the city planning department, it was recommended the Koroskis discontinue the Dalton Street portion. She stated she moved that forward through the city council. Ms. Morad stated it now appears that 2004-2005 advice was perhaps not the best advice, but the petitioner has continued through his own expense to figure out a means to achieve his original intention to purchase the parcel and build a single-family home. She stated it is a single-family home neighborhood and the proposed construction

is consistent with other homes in the area. She stated the proposed drainage improvements will be a welcome relief to area residents currently experiencing issues. Ms. Morad asked the board for favorable consideration in granting the variance for two New Bedford taxpayers who attempted to do the project the right way.

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

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

Mr. Comerford closed the public hearing.

At Mr. Comerford's invitation, City Solicitor Friedman stated she was not familiar with the reason for the 2004 street discontinuance. She reminded the board that they had comments before them from both the building commissioner and city planner, and stated she shared their concern that a gravel driveway did not constitute frontage for a way. With regard to design, she stated they have eighteen feet of width which has been reviewed by the city, fire department and DPI, and she did not think the design was necessarily the problem as much as the fact that it is not paved, as it is the access for fire trucks/ambulances. She stated there would likely be less concern by the city were the street paved and not merely gravel. She stated that in its current form concerns exist.

Mr. Walsh stated that his concern is if the board is inclined to grant the variance the petitioner still could not build on the lot, based on his understanding of the law. He stated he was unsure whether it may be better to wait until the petitioner could build on the lot or to grant the variance on the condition that at some point in time the lot becomes buildable when access to the street is developed.

Mr. Schilling asked whether the New Bedford Redevelopment Authority were a city or private/non-profit organization.

Ms. Morad stated it was a quasi-government agency for the City of New Bedford, holding some land in the city which has been sold to people in the city to put the properties back on the tax rolls.

Mr. Schilling stated he had a bit of a problem with a quasi-public agency selling land to people for the purpose of putting it on the tax rolls and some eleven years later there are more and more obstacles thrown in its path. He felt as a board member he was looking at ways to speed up the process, as eleven years later this seems to be a nightmare.

Ms. Morad concurred that the project has been a nightmare, lasting this long, even with the suspension due to a period of economic downturn.

Mr. Schilling confirmed that the road has not physically changed.

Mr. Walsh noted that if the board is willing to grant the variance, it brings the petitioner a step closer, but still would not allow the petitioner to build on the lot.

Mr. Mathes stated he had no significant problem, but inquired whether the applicant had any problems with the listed conditions.

Mr. Riccio stated he understood the comments calling for pavement of the private way, the section within the layout and even upon the property itself.

Ms. Friedman stated it would if it is considered frontage.

Mr. Riccio stated it was difficult to get the project through the Conservation Commission with the paving, but felt they could design something acceptable. He stated the present design goes above and beyond what is typically required for the Wetlands Protection Act regarding a single-family home. He stated that if it is necessary that they pave what is within the layout for access he understands the requirement.

Mr. Mathes noted the requirement was cited by the city planner as one of public safety.

Mr. Riccio stated he understood and felt comfortable revisiting the Conservation Commission with that requirement, but wanted to be sure the petitioner did not pave more than necessary.

Mr. Comerford reiterated that the board sticks to public safety requirements and recommendations, and stated that as long as the applicant would pave the road to city code, he would have no problem with the petition.

Mr. Walsh inquired whether the paving of the private way constituted a street.

Ms. Friedman stated that the construction of the subdivision street would constitute a street. Right now there is nothing there.

Mr. Walsh stated that if paved, it becomes a street.

Ms. Friedman confirmed that to be true, if paved to city standards. She noted that you can have frontage on a private subdivision street, private way. She noted that the fire department review assumed it would be paved and would enable them a turn around on that lot. She stated if the lot is unpaved where the driveway is, she cannot speak for the fire department but envisions it being problematic in getting a building permit.

Mr. Riccio noted he would discuss the matter with the fire department and welcomed a condition in the variance that adequate access is provided the fire department.

Mr. Schilling noted that approval would still leave the fire department to address the existence of the paving and its adequate parameters before their sign off.

Mr. Comerford felt it was the zoning board that would address paving condition as part of their denial or approval.

Mr. Mathes stated when the Koroskis bought the property, it was considered a buildable lot. The city changed the rules and that has brought them through this process.

Mr. Schilling concurred and stated that was his reasoning for a minimum of conditions or further obstacles.

Mr. Mathes agreed, and stated the city planner had presented the conditions from the Conservation Commission and that the private way be paved to the property line which becomes frontage.

Mr. Comerford discussed potential board conditions.

Mr. Walsh inquired of Mr. Romanowicz whether the board's granting of the variance would in any way tie his hands with respect to issuance or non-issuance of a building permit.

Mr. Romanowicz stated he had made comments that the building permit should not issue until the street is paved. He stated that zoning states vehicular access to the property is needed, which does not exist currently.

Mr. Riccio stated the petitioner would have to do clearing to open the way up.

Mr. Comerford noted it had been quite a process for the petitioner and this was a tough case. He confirmed with Mr. Romanowicz that a permit would not be issued until the road was paved.

Mr. Mathes noted the introduction of a new motion format from the solicitors' office which now requires the circumstances/reasoning under which the variance was granted. The board discussed the format for a proposed motion.

A motion was made (JM) and seconded (LS) to grant Appeal #4175, a motion to grant a variance under the provisions of the city code of New Bedford to Kenneth & Arminda Koroski (43 Lambeth Street New Bedford, MA 02745) and Field Engineering Co., Inc. c/o Richard R. Riccio III (11D Industrial Drive P.O. Box 1178 Mattapoisett, MA 02739) relative to property located at ES Dana Street, Assessor's Map Plot 125A, Lot 473 in a Residential-B Zoned District to allow the petitioner to construct a 26'x44' single family home with a 12'x 12' rear deck as plans filed, which will require a variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, and 2720 Appendix-B. The board finds that there are circumstances relating to the soil, shape or topography which especially affect the land in question which do not affect generally the zoning district in which the land is located, these circumstances are location of wetlands; and that due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship,

financial or otherwise, to the petitioner, the hardship being the petitioner has only 18' of frontage, and under the rule the petitioner would not be able to build, and that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and that desirable relief may be granted without substantial detriment to the public good, with the following conditions: that the petitioner must update the plans submitted to reflect pavement of the private way; that the petitioner must meet the requirements listed in the order of conditions from the Conservation Commission; 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.

Mr. Mathes welcomed suggestions from the building commissioner on the new motion format used. Mr. Romanowicz had no suggestions.

Roll Call Vote was as follows:

I. Comerford - Yes	J. Walsh- Yes	R. Schilling - Yes
J. Mathes - Yes	L. Schick - Yes	

#### **NEW BUSINESS:**

##### **FEE SCHEDULE:**

Mr. Comerford reported that with regard to the fee schedule, fees were reduced the previous year by 30%. He stated the budget was directed and used on another matter. He stated the board currently has a minimum operating budget and as such there is no room at this time for fees to decrease. He welcomed comments, of which there were none.

##### **MOTION FORMAT:**

Mr. Mathes suggested the petitioner and/or staff draft the circumstances and hardship they are asking the board to consider, rather than having the board try to articulate it. He stated the board can then agree or disagree with the circumstances listed, or can modify them, but Mr. Mathes would like that articulation in advance, spelled out by the applicant prior to coming before the board.

Mr. Walsh agreed that responsibility for drafting that language should not lie with the board.

Mr. Comerford stated he would contact Ms. Gonet regarding the language requested by the board.

There being no further business to come before the board, Chairman Comerford adjourned the meeting at 6:49 pm.

Next Zoning Board meeting is scheduled for April 23, 2015.