

ZONING BOARD OF APPEALS
Brooklawn Park Senior Center
1997 Acushnet Avenue
Thursday, April 23, 2015

MINUTES

PRESENT:

Ian Comerford (*Chairman*)

Allen Decker (*Clerk*)

Debra Trahan

Robert Schilling

Leo Schick

Also in attendance:

Dan Romanowicz, Commissioner of Buildings and Inspectional Services

Jennifer Gonet

MEETING CALLED TO ORDER by Chairman Comerford at 6:06 p.m.

Mr. Comerford announced a conflict for Ms. Trahan concerning Case #4176. Ms. Trahan recused herself from the proceedings on this matter. Mr. Comerford went on to explain that leaving four members hearing the matter, the applicant would need an affirmative vote from all remaining members. He offered the applicant the choice of going forward or postponing their hearing. The applicant elected to go forward this evening.

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

PUBLIC HEARINGS:

CASE #4176 – Special Permit

A motion was made (AD) and seconded (RS) that the following documents be received and placed on file: the communication dated 3/30/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 4/15/15; 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 a hearing as stated be and is hereby ratified.

Motion passed unopposed.

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

Gary McGowan and Ryan Lemmer of 35 Wood Duck, Acushnet, MA, addressed the board as RG Pizza Enterprises, Inc. petitioning in order to open a Little Caesars. Mr.

Lemmer reviewed special permit criteria, stating that there are social and economic needs served by this proposal. He stated they will be bringing a low cost food item to the local southend neighborhood. He stated that traffic flow and safety have been addressed and noted the location is within a shopping center, known as the Seabra Center. Mr. Lemmer stated parking is adequate with a number of spaces on both sides of the building.

Mr. Lemmer stated there were no issues with regard to utility adequacy.

Mr. Lemmer stated that Little Caesars matches with the middle income class of individuals in south New Bedford, and as such matches the neighborhood character and social economic structure.

Mr. Lemmer stated they see no impacts on the natural environment, as they produce nothing that would damage the environment.

With regard to fiscal impact, Mr. Lemmer stated Little Caesars typically brings in an annual revenue of about one million dollars per year with an employee base of about twenty-five new jobs for New Bedford.

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

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

Mr. Comerford stated he felt it was a pretty straight forward proposal for a building that had been vacant for some time, which will also create jobs and contribute to the tax base.

Chairman Comerford declared the hearing closed.

Board members discussed the new motion format.

An amended motion was made (AD) and seconded (RS) to grant Appeal #4176, a motion to grant a special permit under the provisions of the city code of New Bedford to R & G Pizza Enterprises, Inc., C/O Ryan Lemmer (35 Wood Duck Road Acushnet, MA) and 37-31 Rockdale Avenue LLC (200 South Street New Providence, NJ) relative to property located at 37 Rockdale Avenue, Assessor's Map Plot 19, Lot 49 in a Mixed Use Business Zoned District, to allow the petitioner to open a Little Caesars fast food restaurant/take-out establishment as per plans filed, which will require a special permit under Chapter 9, Comprehensive Zoning Sections 2000, 2200, 2210, 2230 Appendix-A, and 5300-5330 & 5360-5390. In accordance with City of New Bedford Code of Ordinances, Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. This determination includes consideration of each of the following: the social, economic or community needs being served by this proposal, which include the fact that this would be a fast food restaurant/take-out facility offering options to the southend of New Bedford and the residents thereof; traffic flow and safety, including parking and loading, are addressed because the property is located in an existing shopping center which has established parking, loading, and traffic flow as currently exists, which will not be changed by this project; said shopping center provides

adequate utilities and other public services to enable the functioning of said business; the proposed use fits with the neighborhood character and social structures and the needs of the community in the immediate and surrounding area; the impacts on the natural environment are neutral; and the potential fiscal impact, including impact on city services, the tax base, and employment, are exhibited by the addition of up to twenty-five new jobs and the bringing in of approximately a million dollars of revenue by the franchisee. Therefore, 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.

Mr. Schilling suggested that as the presentations seem to specifically reference every item mentioned in the motion, the board's motion might simply incorporate the presentation, where there is no objection, as it may streamline the new process.

Mr. Comerford noted that not every petitioner will address every requirement of the special permit. He added that the format change is to have the board make the determination and state the actual effects on social and economic issues, traffic flow, et cetera.

Roll Call Vote was as follows:

I. Comerford - Yes	R. Schilling - Yes
A. Decker - Yes	L. Schick - Yes

CASE #4177 – Variance

A motion was made (AD) and seconded (DT) that the following documents be received and placed on file: the communication dated 3/30/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 4/15/15; 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 the action of the clerk in giving notice of the hearing as stated be and is hereby ratified.

Chairman Comerford declared the hearing open.

Joseph and Eileen Raposa of 59 Evelyn Street, Dartmouth, addressed the board. Mr. Raposa stated he is renting the two-family home they used to live in. He stated that overloaded circuits caused an electrical fire and as a result he had to bring the building up to code. He stated he was told by the city inspector that he would have to apply for a variance for the third floor. He stated the second and third floors are one unit with three bedrooms. He stated he is bringing the electric up to code, putting in a new heating system, and wants to put sheetrock to make it a living area.

In response to Mr. Comerford's inquiry on whether the space was currently unfinished, the applicant stated they are in the process of doing the first and second floor. He stated they were awaiting the allowance of the variance to proceed to the third floor.

In response to an inquiry by Mr. Comerford, Mr. Raposa stated the fire was significant and the second and third floor were completely gutted. He stated all new wiring was needed to bring the building up to code, such as hard lining new smoke detectors.

He again stated the inspector told him he could do no work until this process before the board was completed. He stated he did not understand why the process was taking so long, as he needs to get the work done so he can get income coming in from the property.

In response to Mr. Comerford's question on the use of the third floor prior to the fire, the applicant stated it was used as bedrooms.

Ms. Trahan stated it was probably not on record. Mr. Romanowicz added the applicant had no permits for the third floor.

In response to an inquiry by Mr. Comerford, Ms. Raposa stated they had owned the house for sixteen years. Mr. Raposa added that his son and daughter had bedrooms on the third floor when they lived in the house, which was the way it was being used when he bought the property.

Mr. Decker explained that the board has had several of these type of petitions come before them recently and that the city is trying to ensure that the property is two units of livable space and not three. He confirmed that the applicant will tie-in the second and third floors. The applicant confirmed that the only access to the third floor is through the second floor. He stated it will not be a three-family.

Mr. Comerford clarified with Mr. Romanowicz that a story becomes a story if it is habitable. He stated if the attic space were only storage it would be a two-family house. He noted that city records state it is a two-family, and this process will address any life and safety issues.

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

Chairman Comerford closed the hearing.

There being no questions from the board, members discussed the contents of a motion.

A motion was made (AD) and seconded (DT) to grant Appeal #4177, a motion to grant a variance under provisions of the City Code of New Bedford to Joseph E. and Eileen Raposa (59 Evelyn Street Dartmouth, MA) relative to property located at 69 Sycamore Street, Assessor's Map Plot 65, Lot 265 in a Residential B Zoned District to allow the petitioner to perform code upgrades and to renovate the third floor for a cottage style set up as per 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 conditions, shape or topography which essentially affect

the land or structure in question, but which do not generally affect the zoning district in which the land or structure is located. The circumstances in this case are that the structure is being renovated from fire damage and is being brought into compliance with existing codes of the City of New Bedford. And that due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant. The hardship in this case is that enforcement of the zoning ordinance prevents use of the third floor and the combination of the third and second floors allows the intended use, allowing the petitioner to re-let the property and provide income to them. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law, and that desirable relief may be granted without substantial detriment to the public good. 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.

Roll Call Vote was as follows:

I. Comerford - Yes	R. Schilling - Yes	D. Trahan - Yes
A. Decker - Yes	L. Schick - Yes	

CASE #4178 – Special Permit

A motion was made (AD) and seconded (DT) that the following documents be received and placed on file: the communication dated 3/30/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 4/15/15; 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.

Chairman Comerford declared the hearing open.

Att. Chris Saunders, 700 Pleasant St., addressed the board on behalf of Michelle Conlan who presently resides at 7 Westview St., Westport MA, and is soon to be residing at 591 County Street. He stated the applicant is seeking to operate a home business on County Street. She presently operates a dog grooming business, Go Fetch, presently located on the corner of Kempton and Jenny Lind Street in New Bedford. Att. Saunders stated that Ms. Conlan wishes to keep the business within New Bedford but move it to her home. He stated the business will essentially remain the same at the County Street location, which has four off-street parking spaces. The future location is a single family home on the corner of County and Maxfield streets, adjacent to Dillon’s Restaurant.

Att. Saunders stated the primary hours of the “by-appointment only” operation will be 8:00 a.m.– 5:00 p.m. Tuesday thru Saturday, but requested occasional Monday service if needed. He stated Ms. Conlan has ten appointments per day on average. He stated dogs are dropped off between 8:00 a.m. and noontime, and picked up between noontime through 4:00-5:00 p.m.. He stated the Kempton Street location currently has 5 shared

parking spaces and is a more concentrated business location, but still as sufficient parking to meet the demands. Att. Saunders stated drop off and pickups usually take about ten minutes. He stated dogs will be held inside the facility/home, which is air conditioned, so windows will be shut and eliminate any barking dog concerns for the neighborhood. He stated the lot was recently rezoned from Resident A to Mixed Use Business.

Att. Saunders said business deliveries are generally by UPS and not large trucks. He stated the business would have a regulation compliant sign.

He stated per Section 5320 and 5321 this will allow the continuance of an existing business within the city, a positive impact. He stated the proposal has a safe and adequate off-street parking plan per Section 5322 with no overflow into the neighborhood.

Att. Saunders stated the project requires no additional utilities, and the business will not have a detrimental impact on the neighborhood character or social structures. He again stated any dog barking will be controlled with closed windows. He stated the proposal will have no adverse impact on the natural environment and has no build out but for fire repair from a basement fire.

He stated that as outlined in 5326, the business will have a positive impact by increasing the tax base.

He stated Ms. Conlan currently lives in Westport, but grew up in New Bedford and is now returning to the city. He requested the board grant the permit.

In response to a question by Ms. Trahan, Att. Saunders stated there would be no boarding of animals, simply grooming.

Mr. Comerford requested that that be a condition of approval.

Mr. Decker asked Mr. Romanowicz to confirm that the property is in a mixed-use business zone. Mr. Romanowicz stated the property was Residential B but received a zoning change through city council making it Mixed-Use Business.

Mr. Decker inquired whether the home occupation by special permit section applies to mixed use business as well. Mr. Romanowicz indicated it does as people are coming into the house.

In response to a question by Mr. Decker, Att. Saunders confirmed the building had been there for at least five years. Att. Saunders also indicated the closing for this property is conditioned upon the special permit.

Mr. Decker asked how much of the structure would be occupied by the home business. Att. Saunders stated it does not take up more than 30% and will be the only home occupation on the premises with only one other employee.

Mr. Decker confirmed that the sign will be in conformity with existing regulations. Att. Saunders stated it would be, believing it to be 3 s.f..

Mr. Decker asked if the home business would involve the storage or use of hazardous materials in quantities greater than those association with normal household use. Att. Saunders stated it would not.

In response to Mr. Comerford's invitation to speak in favor, Councilor Linda Morad addressed the board, stating she was in support of the petition before the board and asked for its approval. She stated she has known the petitioner for several years as she had at one time resided in the far northend. She stated Ms. Conlan has operated this successful business for several years and is a strong member of the community which Councilor Morad hopes will continue in the city. She stated the profession is a good one with several operations within single-family homes throughout the city. She stated it will not be a detriment to the neighborhood and will fit well.

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

Mr. Comerford stated he lives in the neighborhood and feels it will be a good addition.

Chairman Comerford declared the public hearing closed.

There being no further discussion by the board, a motion was made (AD) and seconded (LS) to grant Appeal #4178, a motion to grant a special permit under the provisions of the City Code of New Bedford to Michelle Conlan (7 Westview Street Westport, MA) and Steven Alves (591 County Street New Bedford, MA) relative to property located at 591 County Street, Assessor's Map Plot 58, Lot 149 in a Mixed Use Business District to allow the petitioner to operate a dog grooming business as a home office at the premises as per plans filed, which will require a special permit under Chapter 9, Comprehensive Zoning Sections 2500, 2520-2528, and 5300-5330 & 5360-5390. In accordance with City of New Bedford Code of Ordinances Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. This determination includes consideration of each of the following elements: the social, economic or community needs are being served by this proposal in that this is the relocation of an existing business and keeps the existing business in place within the City of New Bedford; that the traffic flow and safety, including parking and loading, are addressed by the fact that the premises has four available off-street parking spots expected to be used for an average of ten minutes at any one time; that the adequacy of utilities and other public services are in place as this is an existing structure; it is determined that this fits within existing neighborhood character and social structure; the impacts on the natural environment by the operation of this business are neutral; and the potential fiscal impact, including impact on city services, the tax base, and employment are such that this is actually getting a residential property back in functioning conditions and thereby increasing the City of New Bedford tax base. Additionally, in accordance

with the City of New Bedford Code of Ordinances Chapter 9, Section 2520, the board finds that the following conditions have been satisfied: that the occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto, which has been in existence for at least five years without extension thereof; that not more than 30% of the combined floor area of the residence or any qualified accessory structures shall be used in the home occupation; that only one home occupation may be conducted on the premises; that the home occupation may serve clients, customers, pupils, sales persons or the like on the premises if the board of appeals determines, as we have, that the neighborhood will not be detrimentally affected; that not more than one person, not a member of the household, shall be employed on the premises in the home occupation; that an unlighted sign of not more than 3 s.f. in area may be permitted; the visibility of the exterior storage of materials or other exterior indications of the home occupation or other variation from the residential character of the premises shall be minimized through screening or other appropriate devices; that parking generated by the home occupation shall be accommodated off-street, other than in a required front yard, and such parking shall not occupy more than 35% of the lot area; and that the use or storage of hazardous materials in quantities greater than those associated with normal household use shall be subject to design requirements to protect against discharge to the environment, which will not be the case in this instance. Therefore, with the following conditions: that the boarding of animals not be allowed, 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.

Roll Call Vote was as follows:

I. Comerford - Yes	R. Schilling - Yes	D. Trahan - Yes
A. Decker - Yes	L. Schick - Yes	

CASE #4179 – Variance

A motion was made (AD) and seconded (DT) that the following documents be received and placed on file: the communication dated 3/30/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 4/15/15; 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 the action of the clerk in giving notice of the hearing as stated be and is hereby ratified.

Motion passed unopposed.

Armando Pereira of Comprehensive Design Build Services of West Wareham addressed the board. He presented photos to the board.

A motion was made (AD) and seconded (DT) that the petitioner's photographs be admitted to the record. Motion passed unopposed.

Mr. Pereira stated the applicant has dimensional issues. He stated there are two combined lots, 40' each, providing 80' of frontage, with 100' required. He stated the lot

is required to have 10,000 sf and this lot has 7,175 sf, putting the applicant some 2,825sf short of requirements.

Mr. Pereira stated the rear dimension is required to have 30' and they have a total of 25'8", again a 4'4" differential.

Mr. Pereira stated they have pushed the building 20' back per requirements. This allows for parking in front of the building. Additionally, there is a garage space, single car, allowing for two parking spots off-street. He stated pulling the building forward, as all neighborhood homes are, (4-5' from front property line) would not have accommodated the parking scenario. They pushed it back to make it legal and reduce rear setbacks.

Mr. Comerford asked Mr. Pereira to point out the location of the lot, which he did.

Mr. Pereira stated the plan is very straightforward with living space on the first floor and bedrooms on the second floor. The dwelling is basically a two-story. He oriented the board to the photos which he represented has two-story dwelling units in the area. He said they opted for a townhouse design rather than a two-family with one family on the upper level and one on the lower.

Mr. Pereira stated the first photo is an aerial view showing where the site plan would fit in. He stated the next photos shows a boutique shop on the left-hand side. He stated the zone is mixed-use, but the applicant chose to put in a dwelling unit rather than add more commercial spaces into the area. He stated this will also limit the number of vehicles going through the neighborhood.

Mr. Pereira stated there is a single-family two-story structure abutting the lot. Going towards Acushnet Avenue there is a brick building on the corner adjacent to the lot. Going to the back side there is another two-family unit as well. He stated the two buildings are owned by the trustee of the subject property. He stated he included two photos taken from Acushnet Avenue looking back towards Tacoma and the corner units to illustrate the quality of construction the applicant will put in. He stated the owner will not build anything that is not appropriate to the neighborhood. He stated the two-family was dilapidated and the applicant brought it up to its present condition, as well as the improvement for the corner building.

Mr. Pereira indicated the whole area is owned by the same trustee who is looking to improve the neighborhood.

Mr. Comerford asked how long the applicant had owned the property. A female responded 2010.

Mr. Comerford inquired of the status of the lot when purchased. Mr. Pereira stated it was the two empty lots together.

Ms. Trahan noted that the petitioner himself was not present this evening. She stated the board needs to know from the petitioner what the hardship is. She stated the petitioner purchased this in 2010. She stated while Mr. Pereira is representing what a good job he will do, he cannot say what the owner's hardship is. Mr. Pereira stated the hardship on the parcel itself is the undersize.

Mr. Pereira stated the issue has been going back and forth since 2010. He stated they stopped working on the property due to economic conditions and considered putting in retail stores in back with parking, but felt that due to adjacent businesses, a duplex residential unit would be more appropriate for the neighborhood. He stated the photos show that diagonally across the street is a yellow two-family with another duplex on the southern corner of Ashley Boulevard and Tacoma.

Mr. Comerford noted that while Ms. Trahan would like to see the petitioner present to state his hardship, he believed his architect could do that. He stated meetings with the city solicitors' office have yielded that just because someone buys a property within five years which doesn't have proper setbacks, that can sit as what the hardship is for that property. He stated if the project works for the neighborhood, the board can look at that as a hardship. That being said, Mr. Comerford stated that squeezing a two-family house into the lot does not work for him. He stated he sees no need for it. It is not for the owner himself. He stated the applicant is some 30% below the required square footage.

Mr. Pereira stated this is an undersized lot with a frontage issue, but it was designed to pull back from the property lines. The requirement calls for 12' on each side. He stated the applicant has 14'10" on one side and 19'10" on the other. He stated they had tried to take into consideration the proximity to the abutting lots.

Mr. Schilling asked of the applicant had encountered any neighborhood resistance. Mr. Pereira stated he was not able to speak on that. He stated he had not spoken to the neighbors and was unaware whether the owner had.

In response to Mr. Comerford's invitation to speak in favor, Vera Vadeboncour, of 3 Kendall Lane, East Freetown addressed the board. She stated the applicant is her brother, who is likely in flight at this time. She stated he apologized for not being present. She is hopeful the board will grant this special permit.

In response to Mr. Comerford's further invitation to speak in favor, Councilor Linda Morad stated that in light of the board's concerns, she would ask that the board take into consideration that the petitioner has owned this parcel of land and the abutting parcels for quite some time. She stated he has beautified the neighborhood as the pictures show. She stated there was a very dilapidated home and dilapidated commercial structure on the corner of Tacoma and Acushnet Avenue, which are now both beautiful properties generating taxes for the City of New Bedford. She stated one was vacant and the other abandoned. Ms. Morad stated that she believed with the board's guidance something nice could be built that will not be detrimental to the neighborhood. She agreed there are several multi-family facilities in the area, as well as a rooming house in close proximity.

She asked the board to work with the petitioner and to grant approval to build something on the vacant lot.

Mr. Comerford stated he respected Ms. Morad's opinion and therefore wanted to ask her if this was a necessity in the area.

Ms. Morad stated there is a need for housing in the northend, whether it be single families or something like a townhouse condo. She stated the northend is booming and people want to move into the area. She stated the petitioner had no problem filling the home they had renovated. She believes that will be the same in this instance. She felt families look for opportunities such as this in order to relocate here, whether condo purchases or rentals.

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

In response to Mr. Comerford's invitation to speak in opposition, Mr. & Mrs. Gary Medeiros of 1023 Tacoma Street addressed the board. Mr. Medeiros stated they live next-door and would border the subject property. He stated there are already parking problems in the area. He stated the house is too big. He stated it is an undersized lot and the house is huge. He stated a house would be nice, but this is huge. He stated parking in front of the building means parking between the sidewalk and the building. He stated there are two car stalls and two families. He felt a parking study should be done on the street. Mr. Medeiros stated he had lived in the neighborhood for forty years and knows the street well. He stated he had watched area businesses like Honey Dew and Dartmouth Dental be built.

Mr. Medeiros stated Mr. Fernandes is a good person who he has no qualms with, but he feels the building is rather large.

Mrs. Medeiros stated the property was bought in 2010 and the applicant fixed the house and the business, which is now a parking problem. She stated this beauty salon has six hairdressers with only enough parking for four cars. She stated the beauticians park half on the sidewalk because the street is so narrow. She stated with the boutique and the tenements there is no way to go down the street if someone else is coming up it, even though it's a two-way street. She felt the applicant should make the subject lot a parking lot.

Mrs. Medeiros stated concern that the structure will be higher than her property and heavy rain storms will bring water to her yard. She asked if the structure was going to have a full basement.

Mr. Pereira stated it would.

Mrs. Medeiros again stated her issue with the road and the parking. She stated that with construction and trucks there is no way people will be able to go up and down the street.

Mr. Medeiros stated his personal belief is that a two-family is really crowding the area. He stated people from the brick building on Acushnet Avenue all park on this street so their cars won't get hit on the Avenue. He stated the people who live in the area can't even find a place to park in the evening. He again stated there should be a parking study done or the street should be widened.

Mr. Comerford thanked Mr. & Mrs. Medeiros for their comments.

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

Mr. Comerford invited rebuttal.

Mr. Pereira stated that with regard to any consideration of using the parcel for parking for the corner lot, the ownership is completely separate. He stated the structure setbacks are being met as far as side yards, and the petitioner is looking for setback relief in the back. He stated two spaces per unit are the parking requirements, and this proposal has one parking spot inside the garage and one outside in the front, keeping all vehicles on the lot.

Mr. Pereira stated that with regard to putting a single family on the lot, the square footage could be the same as the proposed duplex. He stated parking was a consideration and resulted in the pushing back of the structure to provide City of New Bedford requirements for parking spots of 10'x20'.

Ms. Trahan stated that Mr. Pereira said there was separate ownership, but the deed includes all four lots. She stated if now separate, it would mean it was bought all together and then separated. She stated this is her problem with the hardship.

Mr. Pereira stated that was a discussion between the owner and his attorney.

Ms. Trahan again noted the applicant was not present to answer questions. She stated the deed shows it was bought together and then got separated, leaving a lot too small to build on. She stated that is a created hardship.

Mr. Comerford stated he had asked the applicant this before and he asked the applicant to be straightforward. He stated he had asked Mr. Pereira at a previous hearing if the 3rd floor was occupied, to which he said it was not. He stated he had asked if the lot was split and Mr. Pereira stated it was not split.

Mr. Pereira stated it was two lots combined by the city.

Ms. Trahan explained to Mr. Comerford that in this situation she has trouble with the hardship because they bought all the lots and chewed it up after 2010, creating their own hardship.

Mr. Pereira stated in regard to being asked to be straightforward, he is being brought in only as the designer, and cannot relate conversations between the applicant and his attorney. He stated he believes the two lots were combined into one.

Ms. Trahan stated she is seeing one deed with four lots upon it. If it was bought as one and the applicant then split off two and says now he has a hardship with what's left over, that is not a hardship.

Mr. Pereira again stated that is between the attorney and the petitioner.

Mr. Comerford asked if Mr. Pereira would like to postpone to have the attorney come in. He stated he felt the applicant has some pretty big questions that need to get answered for the board.

Mr. Pereira elected to postpone the matter to the next hearing and asked for an extension to get the questions answered.

Ms. Trahan consulted Ms. Gonet on whether the owner had to sign the extension.

Mr. Comerford left the hearing open and postponed it to a further date, stating the next board meeting would be May 28th.

CASE #4180 -Variance

A motion was made (AD) and seconded (DT) that the following documents be received and placed on file: the communication dated 3/30/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 4/15/15; the Certificate of Appropriateness issued from the Historical Commission of the City of New Bedford dated 2/25/15; the Notice of Decision from the Planning Board of the City of New Bedford clocked in 4/15/15; 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.

Chairman Comerford declared the hearing open.

Att. Robert Feingold, 700 Pleasant Street, Bank of America Building, New Bedford stated he was very pleased to be before the board representing BayCoast Bank, which has worked for two years with the Standard Times on this project. He stated the bank wanted a downtown building that was more visible and accessible to its customers. He stated these are two good and important businesses in New Bedford that have come together in a collaborative way to make a great improvement.

Att. Feingold introduced Site Engineer Steve Gioisa, BayCoast Chief Financial Officer Jim Wallace, Stephanie Moran of Poyant, and Mike Jopee for the Standard Times. He stated that Mr. Gioisa would go into project details. He stated that in going through the process with city departments they have provided accommodations. He said they will be doing extensive landscaping on both the Standard Times and state properties.

He explained that originally the applicant wanted a 15' pylon sign on Rte. 18. He stated both Historic and planning people expressed that was not aesthetic for the historic zone's introduction, and as such the petitioner accommodated them. He stated these are two big businesses who really need visibility on Rte. 18. He stated there are no other visible signs.

Att. Feingold stated the shape of the lot and its topography, the slope, are the unique conditions that justify a variance. He stated the site lines of the lot require the sign to be a little bigger than normally required. He stated this is a unique aspect in its relation to Rte. 18. He stated the absence of good signage will result in financial hardship, as these are retail businesses, and both businesses need a sign. He stated the by-law is 25' per sign, but assumes one business, not two. He stated consistent with the purpose of the by-law, the applicant should have 25 sf. He stated they do not believe this in anyway hurts anyone and does not derogate from the by-laws' purpose.

Steve Gioisa of Sitech Engineering 448 Faunce Corner Road, Dartmouth, stated he was a southend New Bedford resident. He stated he travels Rte. 18 every morning and evening. He stated the application is for a variance on the sign, on the Rte. 18 frontage of the property. He displayed an exhibit depicting the property outlined in yellow.

He stated the unique aspects of the property are that it is bordered on three sides by roadways; the Elm Street garage blocking visibility to the site on the west; and the unique shape tapering down to Rte. 18 with a building constructed on the far western end. As such, he stated, visibility is extremely limited, also because of topography, not only of the subject lot but of adjacent land. Mr. Gioisa stated visibility is very important for these businesses along the Rte. 18 approach. He stated the ramp approaching the New Bedford/Fairhaven Bridge is climbing in grade with a significant embankment separating the property from visibility of vehicles coming southerly on Rte. 18. He stated these topographic features create a unique condition that warrants consideration of the requested relief for the sign.

Mr. Gioisa presented a diagram depicting the existing Standard Times building, Elm Street, Rte. 18 and the Rte. 6 approach ramp, as well as the parking facility located to the east of the existing building. Displaying the location on the diagram, he stated the applicant is looking to create a sign location adjacent to Rte. 18. He stated there is the required setback from the right of way line of Rte. 18, and have incorporated the sign into the facility landscaping.

Mr. Gioisa also expressed how the design has evolved after a number of meetings with city officials, the planning board and the historic commission. He stated that after considering many signs, the applicant has proposed a sign that from its base will have a height of about 10'. The sign document itself is only 8'. He stated its placement and incorporation will be into the landscaping upon a two foot retention wall. He stated instead of a sign on a post, this sign will be integral to the landscaping along Rte. 18. He stated the applicant will do extensive low level plantings around the sign, which will

extend into a portion of the state highway layout near the corner, creating a very robust front landscaping condition, which is currently barren grass.

Mr. Gioisa again stated the design had married the sign into the landscaping, and in taking direction from some city officials they moved away from a typical pylon sign with interior illumination to a sign with no illumination within. He stated indirect spotlights will shine on the sign, making it more low key and in keeping with the specific neighborhood. He stated the applicant's efforts have been to beautify the intersection and create a significant entry point to the downtown historic district.

Mr. Gioisa stated the Poyant design has taken into account the current Standard Times Building architectural features, carrying color and shape. He stated even the brick in the small wall is designed to match brick in the existing building.

Mr. Gioisa felt the other significant feature ensuring the sign has adequate visibility is the size, which is the specific relief sought. He stated Rte. 18 traffic flows at a pretty good clip and reducing the height of the sign and fighting the topography of the adjacent Rte. 6 embankment, the size requested is important to create a viable notification to customers approaching the site that this is where the BayCoast Bank facility and the Standard Times Building is located.

Mr. Gioisa reiterated the applicant believes they have a unique condition based on topography and shape. The intent of the ordinance is to provide adequate signage without being overly intrusive in the neighborhood, which is the reason for the size limitation. Mr. Gioisa argued that the site has two businesses, and is the first business coming into the downtown area with Rte. 18 frontage. The applicant feels they have accomplished the intent of the bylaw. He stated the proposed sign is modest in comparison to the very large building. He stated there would be no detriment or negative impact on the neighborhood because the design incorporates both historical features and input from important agencies within the city.

Mr. Decker inquired if the exterior lighting would be on continuously through the evening. Mr. Gioisa stated that either the Historical Commission or the planning board put limitations.

Att. Feingold stated the building sign would be limited to 10:00 p.m., but stated there were no limitations on the ground sign. He also stated that the bank branch will be on the 1st floor, consisting of 7,000 sf. He stated the normal branch size is 3,000 sf. He stated the bank has adopted a hub policy with offices for the president and executive vice president within this branch. He stated this will not be a normal branch and felt it important that the board know that in order to appreciate why the sign is so important.

Mr. Decker noted the traffic light at the Elm Street intersection as well as the cobblestone effect, and inquired of the speed limit in that location. Mr. Gioisa stated he believed it went as low as thirty-five to forty miles per hour as you approach the downtown intersections.

Att. Feingold noted that the light tends to slow the traffic somewhat when red.

Mr. Decker expressed concern about the size of the sign. He stated he knew there was a good deal of effort in dealing with the size of the sign, but he does not put too much credence in the fact that there are two businesses in the structure as a reason to double the sign size. He stated city council or ordinance could have taken into account sign size based on number of businesses involved, and it was not addressed. He stated this sign size is double what is currently permitted. He expressed appreciation that it was not a post sign, given the character of this gateway property to the National Historic District. He stated he understood the need for viability. In response to an inquiry by Mr. Decker, the applicant stated this location would be in place of the William Street branch.

Mr. Gioisa stated they had met with Mass DOT regarding the site because of the proposed plantings within the right of way. He stated Mass DOT has also considered the visibility issues, and after meeting this week they expressed they are very much in favor of the aspects of the work in and adjacent to the Rte. 18 approach.

Mr. Feingold stated they had asked the applicant to consider adopting. He explained a pylon sign is way up, and this sign on the retaining wall is way down.

In response to Mr. Decker and Ms. Trahan expressing confusion with the pylon sign notation, Mr. Gioisa explained the detail before the board is the sign proposed for the location.

In discussion with Ms. Trahan, Mr. Decker explained the 8' sign is on top of a 2' retaining wall.

Mr. Comerford asked if the plan had been accepted by both Historical and the Planning Board.

Mr. Gioisa stated it had, the applicant having met first with the Historical Commission, who reviewed the exact sign detail before the board this evening, and it was part of their approval. He stated the exact same submission went before the planning board, who also approved. He stated there was a need for a special permit from the planning board for a sign in general. He noted the planning board permit is subject to obtaining the necessary relief from this board.

Mr. Comerford expressed that if the Planning Board and Historical Commission had both signed off on it, it held a lot of weight for him, and as such he had no issue.

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 speak or be recorded in opposition.

Chairman Comerford declared the hearing closed.

Ms. Trahan expressed that her concern is if the building gets sold down the line, but has permission to put a sign, that sign could change and should be included in the motion.

There was discussion on the wording to include in the motion. Mr. Comerford sought clarification on the 10:00 p.m. limit, which Ms. Moran expressed was only on the building signage.

After discussion, Mr. Decker explained the board concerns about approving a sign with no restriction in the event of an ownership change, and how to address that concern with restrictions in the motion.

A motion was made (AD) and seconded (DT) to grant Appeal #4180, a motion to grant a variance under the provisions of the City Code of New Bedford to BayCoast Bank (330 Swansea Mall Drive Swansea, MA) and Local Media Group, Inc. f/k/a Down Jones Media Group, Inc. f/k/a Ottaway Newspapers (25 Elm Street New Bedford, MA) relative to property located at 25 Elm Street, Assessor's Map Plot 53, Lots 27 & 289 in a Mixed Use Business District to allow the petitioner to erect a ground sign which will exceed maximum amount of square footage allowed by Section 3255 as per plans filed, which will require a variance under Chapter 9 Comprehensive Zoning Sections 3200, 3201, 3250, and 3255. The Board finds there are circumstances related to the soil conditions, shape or topography which essentially affect the land or structure in question, but which do not generally affect the zoning district in which the land or structure is located. The circumstances being the shape, the uniqueness of the lot, and the topography in hindering adequate visibility of the sign. And that due to these circumstances especially effecting the or structure, literal enforcement of the provisions of the Zoning Ordinance or By Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant. The hardship being that the businesses need visibility to attract and direct customers and clients to said businesses. The 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 applicants abide by the Certificate of Appropriateness issued by the City of New Bedford Historical Commission dated 2/25/15, that the applicant abide by the Notice of Decision by the Planning Board of the City of New Bedford clocked 4/15/15, that said ground sign have no movement or illumination other than the ground spotlighting applied for this evening; 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.

Roll Call Vote was as follows:

I. Comerford - Yes	R. Schilling - Yes	D. Trahan - Yes
A. Decker - Yes	L. Schick - Yes	

CASE #4181 – Variance

A motion was made (AD) and seconded (DT) that the following documents be received and placed on file: the communication dated 3/30/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 4/15/15; 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 hereby is ratified. Motion passed unopposed.

At Mr. Comerford's invitation, Mary Rapoza, 129 East Clinton Street, New Bedford addressed the board. She stated she has an older New Bedford home built in 1895 with a 9' clearance on the north side (her backyard) as well as a 9' clearance on east side (side yard). She stated she has a 4' front yard and a good sized yard on the west side. She stated she has no outside structure for storing her lawnmower or bicycle, and currently these items must be brought up the cellar stairs. She stated she is looking to put in a 5'x7' shed on her existing concrete pad, which is the driveway going into the backyard where the previous owner had stored a boat. She stated she uses the area as a patio and the small shed will go right there. She stated it is approximately 13' to the neighbor to the west and about 30' from the north property line.

Mr. Comerford asked the petitioner to express the hardship being faced. Ms. Rapoza again stated she has to haul her lawn mower up stairs.

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

Chairman Comerford declared the hearing closed.

There being no issues expressed by board members, a motion was made (AD) and seconded (LS) to grant Appeal #4181, a motion to grant a variance under provisions of the City Code of New Bedford, to Mary S. Rapoza (129 E. Clinton Street New Bedford, MA) relative to property located at 129 East Clinton Street, Assessor's Map Plot 45, Lot 219 in a Residential A Zoned District to allow the petitioner to erect a 5'x7' shed as per plans filed which will require a variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2750 and 2755. The Board finds that there are circumstances related to the soil conditions, shape or topography which especially effect the land or structure in question, but which do not effect generally the zoning district in which the land or structure is located. The circumstances in this case are that the property has no existing outside storage. And that due to these circumstances especially effecting the land or structure, literal enforcement of the provisions of the Zoning Ordinance or By Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant. The hardship as stated is that currently any outdoor equipment to be used either on the premises or elsewhere has to be brought from the cellar up the stairs, which is difficult and time consuming. 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 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. Comerford noted for the board that, as usual, the board receives submission from the City Planner or Commissioner of Buildings regarding previous cases held. He stated this was Case #803, which was granted in 1946.

Roll Call Vote was as follows:

I. Comerford - Yes	R. Schilling - Yes	D. Trahan - Yes
A. Decker - Yes	L. Schick - Yes	

NEW BUSINESS:

Mr. Comerford requested a motion regarding acceptance of the minutes.

A motion was made (AD) and seconded (LS) to accept the minutes of the meeting of February 26, 2015 concerning cases 4169, 4170, 4171, 4172, 4173 and 4174, as well as the minutes from the meeting of March 26, 2015 concerning cases 4175. Motion passed unopposed. Mr. Decker abstained from voting on the March minutes in light of his absence at that meeting.

There being no further business to come before the board, Chairman Comerford announced the next Zoning Board meeting scheduled for May 28, 2015. He then adjourned the meeting at 8:05 pm.

(Whereupon proceedings concluded)