



Zoning Board of Appeals

July 30, 2015 - 6:10 P.M. – **Minutes**

City Hall, 133 William Street, New Bedford, MA Room 314

PRESENT:

Ian Comerford (Chairman)

Allen Decker (Clerk)

Robert Schilling

Horatio Tavares

Leo Schick*

James Mathes*

**members served for portions of this meeting*

Also in attendance:

Dan Romanowicz, Commissioner of Buildings and Inspectional Services

Jennifer Gonet, Assistant Project Manager, Planning Division

Kreg Espinola, Assistant City Solicitor

MEETING CALLED TO ORDER by Chairman Comerford at 6:10 p.m.

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

Mr. Decker explained the Board was in receipt of a number of requests for continuance so the Board would vote on the requests before opening any hearings.

CASE #4179

Mr. Decker informed the board that the attorney for the petitioner, Tacoma Street Realty Trust, had requested a continuance of the case to the next meeting. A motion was made (AD) and seconded (LS) to continue Case #4179 to the next schedule meeting of August 27th, 2015. Motion passed unopposed.

CASE #4188/CASE #4189

Mr. Decker stated correspondence had been received in regards to cases #4188 and #4189 relative to property located at 120-122 Oakdale Street from the attorney on behalf of petitioner requesting a continuance to the August 27th, 2015 meeting date.

A motion was made (AD) and seconded (LS) to continue Case #4188 & #4189 to the next schedule meeting of August 27th, 2015. Motion passed unopposed.

CASE #4192

Mr. Decker explained correspondence had been received from the Attorney on behalf of petitioner Bob's Tire Company that Case #4192, an appeal of a cease and desist order, be allowed to be withdrawn without prejudice. A motion was made (AD) and seconded (LS) to allow the petitioner to withdraw without prejudice. Motion passed unopposed.

OLD BUSINESS:

CASE #4190

Mr. Decker explained the case was originally opened at the June meeting of the board. A motion was made (AD) and seconded (LS) to remove from the table and reopen the matter of case #4190. Motion passed unopposed.

Chairperson Comerford then declared the hearing open and invited the petitioner to the podium.

Att. Chris Saunders of 700 Pleasant Street New Bedford, on behalf of the property owner New Bedford Housing Authority. Att. Saunders stated he would not rehash fully all that was presented last time but he would address a question that was raised at the last meeting by Mr. Schilling. He further stated he would answer any further questions or concerns the Board members may have as well as the highlights as to why the project meets the criteria for the Special Permit. Att. Saunders presented that the project is going from a thirty unit vacant property to a twelve unit in six duplexes property. Att. Saunders stated the project would transform the neighborhood and be a betterment for the neighborhood. Att. Saunders explained it would be a benefit to the residents who will move into the units as well as the neighborhood as the project includes cleaning up some hazardous material.

Att. Saunders addressed Mr. Schillings question regarding the definition of handicapped for the individuals who will be living in the units. Mr. Schilling interjected he also wished to know the screening process for residents as well. Att. Saunders stated there is no concrete definition, but the definition used by the DHCD is examples of persons with qualifying physical impairments that may substantially impede his or her ability to live in conventional housing shall include but not be limited to the following: 1.)one who is confined to a wheelchair, 2.) one who because of use of braces or crutches, or because of the loss of a foot or leg, or because of arthritic, spastic, pulmonary, or cardiovascular condition walks with significant difficulty or insecurity, or 3.) due to brain, spinal, peripheral nerve injury suffers from significant coordination defects, as well as other physical disabilities listed such as blindness, deafness, and developmental disabilities. Att. Saunders stated even some of those he just mentioned would not require a qualifier for special features that would be included in the Westwood units. Att. Saunders called attention to special architectural features of the units such as roll in showers, wider doorways to accommodate for wheelchairs, adjustable shelving, wheelchair access under sinks and cook tops for persons who qualify with physical impairments. Att. Saunders stated that is a catch all, not concrete, it would be on a case by case basis, but it would be for persons who have some type of physical disability who would be screened by the New Bedford Housing Authority. He explained they would make the judgment whether or not the tenant qualifies for placement within this facility. Using common sense, he stated, a person who falls within the criteria outlined would qualify for these units.

Mr. Schilling expressed in regards to wheelchairs, crutches, blindness, deafness he thought that New Bedford may have a great need for twelve units of this type of housing and the quality that can be provided by the Housing Authority. But, he also, stated he recognized that with SSI and SSDI there are 25% of the population that qualify as handicapped in one form or another, so his question is really what kind of screening process is there for these units. Mr. Schilling expressed concern for a sense of community in neighborhood near low income housing and cited recent newspaper articles about Harrington Park and statements of New Bedford as a community of choice, not of last resort. He expressed he was in favor of the units if they were for those such as in wheelchairs, blind, or deaf, and wished, if it was legally able to be done, to strictly limit these units for those individuals with physical disabilities. He felt that when it comes to disability law the flood gates are wide open. Mr. Schilling wanted to know if these units would serve the needs of physically disabled individuals in the community or just another set of twelve units of low income housing that would be a draw bringing people to New Bedford. Att. Saunders stated the twelve units are for persons with disabilities. Att. Saunders stated the New Bedford Housing Authority has no connection to the incident that occurred at Harrington Park. Att. Saunders stated that the park is approximately seven blocks away from these units and if you go seven blocks the other way it's his neighborhood and this is in the middle. Mr. Schilling stated that is his point, the previous Zoning Board meeting there was a project just about seven blocks away and almost two hundred people came out in opposition.

Att. Saunders agreed that he thought there was a need in the City for housing for persons with physical disabilities. Att. Saunders stated that as he and the Board members saw at the last meeting in regards to a case at Brigham Street, when people in the city are concerned about their neighborhood and their property they come out in droves. He expressed what was striking to him was that at the same meeting not one person came out to speak in opposition of this project. Att. Saunders stated this speaks volumes that between the time this case recessed

from the last meeting to this meeting, there has been little comments from city departments in regards to this proposal, which he felt speaks to the quality of the proposal before the Board today.

Mr. Schilling asked if the board could condition the approval to limit the units to persons with disabilities who require an adaptive device.

Att. Saunders explained that a person with a physical disability such as a pulmonary or arthritic condition may not need an adaptive device.

Chairman Comerford stated he thought this discussion was going nowhere as the Board would just run into legal issues; he requested that they move on from this topic.

Chairman Comerford questioned Att. Saunders about his statement that there is a need for these units. He asked how many public housing units there are currently in New Bedford. Att. Saunders stated he believed there are 2,500 currently. Chairman Comerford asked how many people live in public housing in the City. Att. Saunders clarified if the Chairman was asking about housing for persons with physical disabilities. Chairman Comerford asked in general. Att. Saunders spoke about the amount housing for persons with physical disabilities. Att. Saunders expressed problems using the standard units with regular bathtubs and such for persons with physical disabilities. He reiterated these units are designed specifically for persons with physical disabilities to address their situation. Chairman Comerford asked about the percentage of persons living in public housing. Chairman Comerford stated he believed it to be around 10%. He stated public housing brings down house values in the area. He questioned when the trend of adding more public housing would end, regardless of the type of public housing such as elderly, persons with disabilities etc, and when enough would be enough.

Att. Saunders explained this proposal was actually reducing the number of units from what was previously at this site. He explained previously this site had 30 units, this proposal has 12 units. The units previously were elderly housing; this proposal is for persons with physical disabilities. Therefore, he stated, they are in essence actually constricting the number of units in the overall portfolio. He stated they are not building on new land, they are reconstructing on a site where they would have a matter of right to rehab and put back what they had; instead they are reducing the number of units and limiting the capability of who can go in there. He stated they are limiting it to the people who need it most, people who simply can't get around like most people can. He stated they are actually downsizing.

Chairman Comerford asked if the Board had any more questions for Att. Saunders. Chairman Comerford asked if Att. Saunders had anything else to present.

Att. Saunders wished to address the specific criteria necessary to grant the Comprehensive Permit/Special Permit. In regards to the criteria that the benefit to the City and the neighborhood outweighs any adverse effects taking into consideration the characteristics of the neighborhood, Att. Saunders pointed out the New Bedford Housing Authority owns property across the street from the proposal. The site itself is going down from 30 units to 12 units. He stated as the Board could see from the last meeting there wasn't any opposition to this, evidence that it would not have any adverse effects. Att. Saunders said, pursuant to section 5321 in regards to the rehabilitation of the deteriorating housing that's presently there, this proposal would have less density and a modern housing development, which will serve low income residents who have physical disabilities. He stated, that would promote a social, economic, and community needs for persons in the community that need good, safe, quality housing. Pursuant to section 5322, he explained the proposal had a safe and detailed traffic plan, accessing the lot via North Street and exiting on Hillman Street. He also stated the project provided adequate parking, one space per unit. Pursuant to section 5323, he stated, this project would not have any adverse impacts on city utilities or other service. It would improve the impervious surface area and improve the drainage that currently exists at the site, which would be a benefit to our utilities. Pursuant to section 5324, he explained, improving the blighted block would have a positive impact to the neighborhood character and social structures. Pursuant to section 5325, the project has a detailed safety plan to take care of existing contamination at the site. He furthered, the New Bedford

Housing Authority has a good track record citing their work at Hillside Court. Lastly, Att. Saunders expressed that pursuant to section 5325, the project would help the local economy, boost construction jobs and areas affiliated with construction, therefore having an overall impact. For these reasons, Att. Saunders stated the project met the criteria.

Att. Saunders stated that the project needs a site eligibility letter, and DHCD [Department of Housing and Community Development] has asked that if the Board were to vote favorable this evening that they note in the criteria of their approval that the project meets the criteria under the CMR [Code of Massachusetts Regulations]; which are that the New Bedford Housing Authority is a governmental agency under the statute, which it is. That any project conditioned under the Comprehensive Permit is conditioned under the New Bedford Housing Authority obtaining its funding from its subsidizing agency; and that the New Bedford Housing Authority has site control.

Mr. Schilling asked Att. Saunders if all the housing authority properties were handicapped accessible, he thought under law all public building had to be handicapped accessible. Att. Saunders said he could not speak to every unit but note some housing authority properties were built before the rules. He thought there was likely grandfathered status on some units. He expressed a belief that not all housing authority units had roll in tub or wide door widths that the proposed units would. He further stated he believed there are requirements that any new units have handicapped accessible requirements but he believed these proposed units go above that. He did not believe the requirements required such things as roll in showers, or countertops heights for wheelchairs to roll under them, but these units would have these elements.

Chairman Comerford invited anyone wishing to speak in favor to the podium. No one in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chairman Comerford invited anyone wishing to speak in opposition to the podium. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

With no further stated questions or concerns, Chairperson I. Comerford declared the hearing closed.

Chairperson I. Comerford asked the petitioner provide the CMR numbers referenced in the presentation to the Board. Att. Saunder provided 760 CMR 56.04 sub section 1 and provided clarification to Mr. Decker's question about what generally the section pertained to. He explained it was the eligibility requirements for their funding source. It was not required the Board cite it but it was asked if they would.

Mr. Decker asked the Board members to discuss the comment letter the Department of Public Infrastructure provided in their review of this project. He stated they had a list of fifteen factors they wanted incorporated into the project. He asked if there was a desire to incorporate the comments as a condition of approval. Mr. Schilling expressed he thought it was a general approval of the project. Mr. Decker said yes, a general approval but with very specific items to be addressed. Chairman Comerford stated he didn't read it but didn't think it should go in. Mr. Schilling stated he glanced over it but thought it was a general approval with certain specifications. Chairman Comerford expressed his understanding of the Comprehensive Permit procedure and his feeling that a comment letter didn't need to be incorporated as a condition of approval.

A point of information was called by Ms. Gonet. Ms. Gonet explained the comments received by the Board are the type of comments typically received by other Boards, the Planning Board for example. She explained with the Comprehensive Permit the Zoning Board is the only board to hear this case so they do not go before the other board. She stated therefore, they may want to take those comments into consideration.

Mr. Schilling stated his concern was that there are 2,500 units of housing 12 of which could be adapted in such a way that could be accessible to people in wheelchairs, in crutches, blind, deaf, and those type of adaptations could be made as percentage within the total portfolio. His concern is that it's just twelve additional units of housing as

he stated with litigation there is almost no way to stop somebody from bringing a law suit to get into the housing if they are on SSI or SSDI. He expressed he thinks it is an open area. He further stated he respects that if the Board wished to approve it that the conditions be made part of the vote to approve it.

With no further comments of discussion amongst the Board members Mr. Decker made a motion to approve the Comprehensive permit. Motion was seconded by Mr. Schick.

Mr. Decker motioned to grant a Special Permit and Comprehensive Permit under provisions of the City Code of New Bedford to: New Bedford Housing Authority (134 South Second Street New Bedford, MA) relative to property located at: 248,290-292, 296 Hillman Street; 257-261, 265 North Street; 123-131, 137-145 Liberty Street; and 304-328 Tremont Street, Assessor's Map 57 Lot 38 in a Residential-C Zoned District. To allow the petitioner to: demolish existing building and erect 12-units as plans filed, which will require a Special Permit under Chapter 9 Comprehensive Zoning Section 2210 (General), 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements-Appendix-B-Minimum Lot Size/Density of Dwelling Unites/Lot Frontage/Front Yard/Side Yard/Rear Yard/Lot Coverage by Buildings), 2750 (Yards in Residence Districts), 2751 (Front Yard), 2753 (Rear Yard), 2755 (Side Yard), 3100 (Parking and Loading), 3110 (Applicability), 3130 (Table of Parking and Loading Requirements-Appendix-C), 3149 (Special Permit for Vehicular Access to a Building Lot Accessed from Public Way that does not constitute frontage of the Lot), and 5300-5330 & 5360-5390 (Special Permit). Therefore, with the following conditions: That the New Bedford Housing Authority continues to maintain its qualifications under 760 Code of Massachusetts Regulations 56.04 sub-section 1. 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.

On a roll call the vote carried; with members A. Decker, H. Tavares, and I. Comerford voting in the affirmative, members R. Schilling, and L. Schick voting in the negative. (Tally 3-2)

During the roll call vote, Mr. Schilling expressed that while he understood and appreciated the effort to have facilities specifically for persons with physical disabilities from what he knows of the court system he felt this would just be twelve additional units. He stated he did not hear any specific way to keep the units for seriously physically handicapped people, and therefore he voted no. The board initially stated that the petition had failed but upon further review, it was determined that a simple majority was required and that the motion had passed.

RECESS (5 minutes)

After the hearing, the Board took a five minute recess.

During the recess Mr. Schick left the premises. Mr. Mathes arrived at this time and joined the Board for the remainder of the case hearings.

SESSION REOPENED (6:55pm)

Chairman Comerford reopened the session at 6:55 pm. Chairman Comerford explained Mr. Mathes had recused himself from the previous hearing and was not in the room during the hearing, he has since joined the Board for the remainder of the meeting.

CASE #4182

A. Decker motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated May 8th, 2015; the Communication from the Office of City Planner dated May 21st, 2015; the appeal packet; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. Motion seconded by J. Mathes. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

A. Decker motioned to receive and place on file additional communication from the Commissioner of Building and Inspectional Services, received July 30th, 2015. Motion seconded by R. Schilling. With all in favor, the motion carried.

Representative of the Petitioner: Mr. David Silveira of South Coast Architecture (34 Slocum Farm Drive Dartmouth, MA) stated the building is limited to 18' by the zoning code. He explained due to two errors in construction the final dimension of the height was measured at 19'1".

Chairman Comerford stated there has been a mistake in construction and the building was built a foot too high.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. No one in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chairperson I. Comerford invited to the podium anyone wishing to speak in opposition of the application. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Chairperson I. Comerford opened the floor for discussion between Board Members. J. Mathes thanked Commissioner Romanowicz and the Building Inspectors for providing specific measurements as requested by the Board. J. Mathes stated the measurements from the Building Department show it is a foot and four inches over the height allowed under code, which is still substantially less and different than what the applicant had proposed previously. He indicated he had no problem with what was presented. Chairperson I. Comerford asked if the rest of the Board agreed that it was a mistake in construction and comfortable voting in favor of the petition. A. Decker indicated yes and asked the Board Members' opinions on the criteria to grant the appeal. The Board discussed the criteria necessary to grant. The Board discussed the topography of the land around the building resulting in various measurements depending upon which part of the building was being measured. J. Mathes indicated the measurements provided by the Building Department show one location as less than 18' and the other measurements over the 18', so he could understand why there may have been a mistake during construction.

With no further stated questions or concerns, Chairperson Comerford declared the hearing closed.

Mr. Decker made a motion to grant the variance. Motion seconded by Mr. Mathes.

Mr. Decker motioned to grant a Variance under provisions of the City Code of New Bedford to: Natalia F. Araujo, Trustee of Shaw Realty Trust (123 Nye's Lane Acushnet, MA 02743); relative to property located at: 220-222 Shaw Street, Assessor's Map Plot 110 Lot 471 in a Residential-C Zoned District. To allow the petitioner to: constructed an addition to the existing garage with a building height of 19 feet 2 inches and the maximum allowed Building Height for an accessory structure in Residential-C District is 18 feet therefore this will require a Variance under Chapter 9, Comprehensive Zoning Sections 2330 (Accessory Structures) and 2333 (Height). The Board finds that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located; these circumstances are the challenges of the lot's topography resulted in challenging and difficult measurements of height. 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 is that because of a construction defect resulting in height of the garage roof exceeding the allowed maximum, to vote otherwise would require removal of the garage. 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. And, 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.

On a roll call vote, the vote carried with members R. Schilling, I. Comerford, H. Tavares, A. Decker, and J. Mathes voting in the affirmative, no member voting in the negative. (Tally 5-0)

PUBLIC HEARINGS:

CASE #4191

A. Decker motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated July 10th, 2015; the Communication from the Office of City Planner dated July 23rd, 2015; the appeal packet; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. Motion seconded by J. Mathes. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

The Petitioner: Mr. Jose Vega (170 State Street New Bedford, MA) wished to submit a letter from a doctor as well as 270 signatures from the neighborhood. He also stated his mother was with him this evening.

A .Decker made a motion to receive and place on file the communication received from Mr. Vega by the Board July 30th, 2015. Seconded by J. Mathes. With all in favor, the motion carried.

Mr. Vega presented that his late brother had started the project before his passing. Mr. Vega later hired a plumber and an electrician but due to money and health issues he put the project on hold. He further explained his other brother was doing work in the basement for him but also passed away before the work was finished. Mr. Vega expressed he previously had confusion about when he needed to get permits to do work in his home. So, he was present today trying to correct the situation. Mr. Vega explained the process he went through in filing paperwork with the City. Mr. Vega stated the finished basement is intended for his mother to live with him. He is trying to make the basement as comfortable as possible for his mother. He apologized for the mistakes he made in not getting the permits before. Mr. Vega stated he had filed for permits with the electrician and plumber at some point, but when he came back to find out about the permit to City Hall to two years later the City didn't have the paperwork. He filed paperwork again this year and is here today to straighten it out.

A .Decker asked for clarification from Mr. Vega that his intent for the space is living space. Mr. Vega stated yes, it is a single-family house and it will be all in one. He explained he didn't want his mother to have to go up and down the stairs, which is why he wanted to put a kitchen and a bathroom in the basement. A. Decker asked the petitioner to clarify why in the application he stated the space was for general use not as an apartment.

Mr. Vega explained that general because it's not a separate apartment as it is part of the one family house. He explained it was for his mother as part of the family.

Chairman I. Comerford stated regardless of what the application described, it's an apartment. He further stated it can't be an apartment and you can't just put a stove in the basement. Mr. Vega asked if it would be alright by the board if he took the kitchen out and left the bathroom. Chairperson I. Comerford stated the kitchen would have to go. He asked Commissioner Romanowicz if adding a kitchen would make it a two-family house. Commissioner Romanowicz stated the kitchen is already there. Mr. Vega stated he could take the kitchen out.

Chairperson I. Comerford believed this would make the property a multi-family. There was a discussion amongst the Board about the zoning of the property and if a two-family was an allowed use in the zone. It was identified as zoned residential B and two-family dwellings are allowed in that zone.

R. Schilling asked the petitioner about whom the two hundred signatures were from. Mr. Vega explained they were from all around the neighborhood and they were in support of it. R. Schilling stated that the kitchen would come out, the neighbors are in favor, and there will be accommodations for his mother in the basement, not a separate unit not to be rented out in the future.

Chairperson I. Comerford stated the petitioner may not want to charge his mother rent now but perhaps in the future she moves to Florida, for example, and then he wants to rent it. Chairperson I. Comerford expressed concerns for parking and stated it doesn't work. Mr. Vega stated he could take out the kitchen.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. No one in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chairperson I. Comerford invited to the podium anyone wishing to speak in opposition of the petition. No one else in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

With no further stated questions or concerns, Chairperson I. Comerford declared the hearing closed.

The Board members discussed making a condition of approval that the petitioner be required to remove the kitchen. Commissioner Romanowicz called the Board's attention to Massachusetts State Building Code that requires an escape window in the basement if there are to be any bedrooms in a basement. Therefore, he explained the petitioner will need to put an escape window. He also explained the petitioner will also need to add CO2 alarms. The Board considered making a condition that the petitioner follows Massachusetts State Building Code.

J. Mathes explained the discussion between the Board Members to the Mr. Vega. He explained the petitioner will be required to remove the kitchen, put in an escape window that meets State Building Code, and put in carbon monoxide and smoke detectors in the basement, before the City will sign-off on any of the work. Mr. Vega and Mr. Mathes briefly conversed about the process to get permits to do the required work. Mr. Mathes encouraged Mr. Vega to work with the City to ensure he get the specific information about the type of escape window he will need. The Board briefly discussed and decided the criteria and conditions to grant the variance. The Board decided to condition the approval that the existing kitchen in the basement be removed.

Mr. Decker made a motion to grant the variance. Motion seconded by Mr. Mathes. Mr. Decker made a motion to grant a Variance under provisions of the City Code of New Bedford to Jose A. Vega, Trustee of The Hazard Street Nominee Trust u/d/t (170 State Street New Bedford, MA) Relative to property located at: 170 State Street Assessor's Map 72, Lot 14 in a Residential-B Zoned District. To allow the petitioner to finishing the basement as plans filed, which will require a Variance under Ch. 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Appendix B- Table of Dimensional Regulations-Height of Buildings and Number of Stories). The Board finds that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located. These circumstances are that relief from the number of stories allowed in a residential B zoned district is needed. 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 is the zoning code currently prohibits the ability to provide care for an elderly family member. 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. And, with the following conditions, that the removal of the existing kitchen in the basement be done; 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. On the roll call vote, the vote carried 5-0 with members A. Decker, J. Mathes, I. Comerford, H. Tavares, and R. Schilling, voting in the affirmative, no member voting in the negative. (Tally 5-0)

CASE #4194

Board Members I. Comerford, A. Decker, R. Schilling, J. Mathes, and H. Tavares were present on the evening of the public hearing.

City of New Bedford Staff Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager) were present during proceedings for the subject case review.

A .Decker motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated July 10th, 2015; the Communication from the Office of City Planner dated July 22nd, 2015; the appeal packet; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. Motion seconded by J. Mathes. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

Representative of Petitioner: Nick Dufresne (398 County Street New Bedford, MA) of Thompson Farland Engineers and Land Surveyors, representing Mr. Mathew Arruda, explained the Variance request. He explained the applicant has requested a variance as the driveway will be located in the front of the house due to the shape of the lot there is no space on either side of the house to place a driveway. Therefore, he explained, they propose to have the driveway in front of the house.

Chairperson I. Comerford asked Mr. Dufresne if he knew why the zoning code does not allow you to park in front of a home. He further explained for safety purposes. Chairperson I. Comerford asked how this would be different. Mr. Dufresne explained the driveway is intended for the two owners to use and they will use caution at their property. Chairperson I. Comerford asked if Mr. Dufresne thought the driveway fit in the neighborhood. Mr. Dufresne stated he believed it does fit within the neighborhood, as the property is in the minority of properties without a driveway on the block. Mr. Dufresne further noted that another property in the neighborhood has a driveway in front of a dwelling as well and submitted a photograph.

A .Decker made a motion to receive and place on file the photograph submitted by the representative of the petitioner. Seconded by J. Mathes. With all in favor the motion passed.

Chairperson I. Comerford remarked that the driveway did not look too bad in front of the house in the photo submitted. He asked how many stories is the house. The property owner stated it is a two story cottage style. Chairperson I. Comerford stated he thought it is tough to find homes in New Bedford with driveways, for that fact he would be willing to vote in favor if the petitioner meets the criteria to grant the appeal. He asked the petitioner to address the criteria necessary to grant the appeal.

Mr. Dufresne stated due to the shape of the lot they are not able to put the driveway on either side of the house and it is a small lot, therefore he believes the shape of the lot applies in this case. Chairperson I. Comerford asked if there was a hardship. Mr. Dufresne expressed the hardship as difficulty in wintertime finding a parking space on the street.

J. Mathes asked Commissioner Romanowicz if there would be any review by other departments in regards to any requirement about the distance away from a fire hydrant for the driveway, after the meeting if approved tonight. Commissioner Romanowicz explained that before the final building permit is issued, the Department of Public Infrastructure (DPI) will receive information about the proposed curb cut. At that time if the curb cut isn't adequate for the fire hydrant, DPI will require the applicant to make the curb cut smaller. A. Decker confirmed with Commissioner Romanowicz that it could be required by DPI after the approval tonight. Commissioner Romanowicz confirmed yes.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. Mr. Bruce Feno (117 Clinton Street New Bedford, MA) stated he lives across the street. He explained the street isn't plowed well in the winter and side mirrors are broken all the time, therefore he was in favor of getting cars off the street into a driveway. Mr. Mathew Arruda and Robert Torres (118 E. Clinton Street

New Bedford, MA) were recorded in favor. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chairperson I. Comerford invited to the podium anyone wishing to speak in opposition of the petition. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

With no further stated questions or concerns, Chairperson Comerford declared the hearing closed.

Chairperson I. Comerford stated he believed there was a need for the driveway and he had no problem with it and asked what the Board Members thought. A. Decker asked for clarification about a comment that parking is only on one side of the street. It was clarified that during winter parking is limited to one side of the street. A. Decker confirmed all members understood DPI could still adjust the required curb cut if needed for the fire hydrant. The Board members all indicated they understood.

Mr. Decker made motion to grant the variance. Motion seconded by Mr. Mathes. Mr. Decker made a motion to grant a Variance under provisions of the City Code of New Bedford to Mathew Arruda (118 East Clinton Street New Bedford, MA). Relative to property located at: 118 East Clinton Street, Assessor's Map 45, Lot 451 in a Residential A Zoned District. To allow the petitioner to: construct a driveway in front of a dwelling as plans filed, which will require a Variance under Ch. 9 Comprehensive Zoning section 3000 (General Regulations), 3100 (Parking and Loading), and 3145 (Open air off street parking facilities may be located in a residential district, no open air off street parking space shall be located in front of the dwelling or principle building). The Board finds that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located. These circumstances are that the size of the lot does not allow for placement of the driveway on the side of the structure. 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 is that parking on the street is difficult and crowded from large demand of other users on the street. 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 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. On a roll call vote, the vote carried 5-0 with members J. Mathes, A. Decker, H. Tavares, R. Schilling, and I. Comerford, voting in the affirmative, no member voting in the negative. (Tally 5-0)

NEW BUSINESS:

A motion was made (AD) and seconded (RS) to accept the minutes of the meeting of June 25th, 2015. Motion passed unopposed.

There being no further business to come before the board, Chairman Comerford announced the next Zoning Board meeting scheduled for August 27th, 2015. He then adjourned the meeting.

(Whereupon proceedings concluded)