Zoning Board of Appeals

August 27, 2015 - 6:00 P.M.– **Minutes**
City Hall, 133 William Street, New Bedford, MA Room 314

PRESENT:
James Mathes (Acting Chairman)
Allen Decker *(Clerk)*
Robert Schilling
John Walsh
Leo Schick
Horatio Tavares*
** Member was available and ready to serve on Cases #4188 & 4189 hearings. As the clerk confirmed the presence of a quorum, Mr. Decker indicated Mr. Tavares would not need to step in to serve on the case hearing. Mr. Tavares exited the premises.*

***Also in attendance*:**
Dan Romanowicz, Commissioner of Buildings and Inspectional Services
Jennifer Gonet, Assistant Project Manager, Planning Division
Kreg Espinola, Assistant City Solicitor
Dr. Joseph F. Souza, Translator

MEETING CALLED TO ORDER by Acting Chairman Mathes at 6:00 p.m.

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

OLD BUSINESS:

CASE #4179
Mr. Mathes informed the board that the representative 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 September 17th, 2015. Motion passed unopposed.

Mr. Gary Medeiros, stated abutter to Case #4179, requested to address the Board. Chairman Mathes allowed the request to address the board. Mr. Medeiros stated he has come to every meeting since April and cannot make it to the September 17th meeting. Mr. Mathes explained the petitioner can request the continuance.

CASE #4188/CASE #4189
Alternate Board Member H. Tavares was available and ready to serve on Cases #4188 & #4189 hearings. As the clerk confirmed the presence of a quorum, Mr. Decker indicated Mr. Tavares would not need to step in to serve on the case hearing. Mr. Tavares exited the premises.

Mr. Decker stated correspondence had been received by the Board from the Attorney on behalf of the petitioner requesting the petitioner be allowed to withdraw cases #4188 and #4189 without prejudice.

On a motion by Mr. Decker seconded by Mr. Schick to allow the petitioner to withdraw without prejudice the two cases, the vote carried; with members J. Walsh, A. Decker, R. Schilling, L. Schick and J. Mathes voting in the affirmative, no members voting in the negative. (Tally 5-0)

CASE #4195 & CASE #4196

Acting Chairman Mathes explained Case #4195 & #4196 were to be taken out of order. He informed those present the cases would heard concurrently as they both were in regards to property at 273 Cleveland Street, and Dr. Joseph F. Souza would be providing translation services during this hearing.

Mr. Decker motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated August 5th, 2015; the Communication from the Office of the City Planner dated August 20th, 2015; the appeal packet as submitted; the plan as submitted; 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 Mr. Walsh. With all in favor, the motion carried.

Acting Chairperson Mathes then declared the hearing open.

The Petitioners: Ms. Hermelinda Soler and Mr. Emilio Teixeira (273 Cleveland Street New Bedford, MA) husband and wife, addressed the board with translation assistance provided by Dr. Joseph F. Souza. Mr. Teixeira explained there had been bad communication between him and his wife. Mr. Teixeira constructed the shed himself and hired a contractor for the asphalt driveway. He thought they had a permit to do the work but he found out they didn't when the building inspector came. Mr. Teixeira explained he's a truck driver and does not have that much time, so his wife filed for the permit. He put the permit his wife got in the window but it was not the permit for the shed or driveway. He received a notice on his door and came to city hall where he found out he did not have the right permits.

Acting Chairperson Mathes confirmed the board members understood the situation. He confirmed with the applicant that he thought he had the right permits to do the work but in actuality he did not. Mr. Teixeira confirmed that was the case. The board members indicated they understood what had happened.

Acting Chairperson Mathes asked if the board members had any questions for the petitioners.

Following the petitioner's testimony, Acting Chairperson Mathes 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.

Acting Chairperson Mathes 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, Acting Chairperson Mathes declared the hearing closed.

Mr. Schick stated the applicant thought he had a permit. Mr. Mathes confirmed the petitioner thought he had the right permit but did not, it was a communication issue. Mr. Decker expressed concerns about the size of the driveway. Mr. Decker asked the petitioner to explain why so much asphalt. Ms. Soler explained they have three cars and a motorcycle so they need the space to park. Mr. Decker asked the Board about the staff comments. Mr. Mathes had some confusion about the comments on green space and asked about whether or not gravel was considered green space since it's permeable. Commissioner Romanowicz said gravel is permeable but green space is green space. Mr. Mathes expressed if the petitioner had gotten the correct permits it is likely this would have been done correctly. He further stated while it is in the power of the Board to make some of that work be undone such as remove some of the asphalt he was not in favor of that this evening. Mr. Mathes expressed it was clear a communication issue happened, the family is a hardworking family trying to improve their property, and there were not any abutter present so the neighborhood would seem to not have a problem with the project. He encouraged the family to be sure they get the correct permits before starting work in the future.

The Board members discussed the motion and criteria to grant the appeals.

On a motion was made by A. Decker, seconded by J. Walsh to grant a Special Permit under provisions of the City Code of New Bedford to Hermelinda Soler (273 Cleveland Street New Bedford, MA); relative to property located at 273 Cleveland Street, Assessor's Map 12 Lot 110 in a Residential-B Zoned District. To allow the petitioner to install a driveway, as plans filed, which will require a Special Permit under Ch. 9 Comprehensive Zoning Section 3100 (Parking and Loading), 3110 (Applicability), 3149 (Vehicular Access to a building from a public way that does not constitute frontage of the lot), and 5300-5330 & 5360-5390 (Special Permits). 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 Social, economic, or community needs which are served by the proposal: The Board found the proposal makes parking available for other users of the street. Traffic flow and safety, including parking and loading: The Board found the proposal provides for the removal of vehicles from parking on the street. Adequacy of utilities and other public services: The Board found that the adequacy of utilities and other public service were neutral as proposed. Neighborhood character and social structures: The Board found that this proposed use fits within the existing character of the neighborhood. Impacts on the natural environment: The Board found the impacts on the natural environment are not out of line. Potential fiscal impact, including impact on City services, tax base, and employment: The Board found that impact is neutral as proposed. Therefore, with the following conditions: 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; the vote carried 5-0 with members J. Mathes, A. Decker, J. Walsh, R. Schilling, and L. Schick, voting in the affirmative, no member voting in the negative. (Tally 5-0)

On a motion was made by A. Decker, seconded by J. Walsh to grant a Variance under provisions of the City Code of New Bedford to Hermelinda Soler (273 Cleveland Street New Bedford, MA); relative to property located at 273 Cleveland Street, Assessor's Map 12 Lot 110 in a Residential-B Zoned District. To allow the petitioner to erect a 10' x 10' shed as plans filed, which will require a Variance under Ch.9 Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Green Space-35%). 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 current location is the optimal location for the shed in accommodating the asphalt parking area. 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 the removal of improvements or portions therefore, presents a hardship to the petitioner. And, with the following conditions, 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 J. Mathes, A. Decker, J. Walsh, R. Schilling, and L. Schick, voting in the affirmative, no member voting in the negative. (Tally 5-0)

CASE #4193

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 the City Planner dated August 21st, 2015; the appeal packet as submitted; the plan as submitted; 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. Also, a collection of photographs submitted by the Department of

Inspectional Services be received and placed on file by the Board August 27th, 2015. Motion seconded by J. Walsh. With all in favor, the motion carried.

Acting Chairperson Mathes then declared the hearing open.

Petitioners: Mr. Ramon Mojica (39 Tabor Street Quincy, MA), and Mr. James J. Long (519 American Legion Highway Westport, MA) presented their appeal to the Board. It was stated Mr. Mojica is the President of this UHAUL facility and Mr. Long is a project manager for UHAUL locations in the area in regards to construction.

Mr. Long explained the reason the petitioners were here is that the items installed on the building were deemed billboards. Mr. Long further explained they are appealing this determination on their belief that the signs installed are banners and not billboards. Mr. Long expressed that he has seen many banner signs throughout New Bedford which he felt enhance the environment and landscape of the neighborhoods where they are. Mr. Long stated UHaul is friendly to the neighborhood and explained the signs face Rockdale Avenue and westerly. Mr. Long stated the western side of the building has soccer players because there are soccer fields in the area, which was taken into account for the design in order to enhance the neighborhood. The front of the building he explained is the young lady. He reiterated again that they are banners. Mr. Long stated he understood that the code is up to interpretation and therefore he and Mr. Mojica are before the Board this evening as they feel the interpretation is incorrect, they feel they are banners not billboards.

Mr. Long submitted three photos to the board stating the photos were of banners on the Zeiterion theater, on poles at the bottom of Union Street, and some banners as seen in many places in the city. Mr. Decker made a motion to receive and place on file the photographs submitted by the petitioner, motion Seconded by Mr. Walsh, with all in favor the motion passed.

Mr. Long stated as the Board can see, banners are used for enhancement and to attract. Mr. Long explained various work completed at the property since the current owners purchased the building such as a new roof, repaired brick work, some of which still needs to be repaired. Mr. Long stated the only concerns expressed by the neighbors, whom they reached out to, was at the back of the building facing the neighborhood. Mr. Mojica clarified, facing Hemlock Street. Mr. Long stated they kept the character of the building on that side of the building, the structure has been fixed and they did not put anything up, as that was a concern of the neighborhood. Mr. Long stated there was no one in opposition this evening, which indicated the banner are not a problem to the neighborhood. Mr. Long reiterated he believed they are banners and not billboards. He said they are tastefully done and beautify the neighborhood.

Acting Chairperson Mathes asked the Board if there were any questions for the petitioners. Mr. Walsh confirmed with the applicant that the property is used as a storage facility. This was confirmed. Mr. Walsh asked the petitioner if the banners were related to the storage facility. Mr. Long stated the banners have soccer a player on one side, the other side says “you store”, it doesn’t say UHaul or anything like that on the front of it. On the side it’s tasteful to dress up the brick because some of the brick is beat-up. Mr. Walsh stated on one side it does say something about “your storage”. Mr. Long said yes on front side it say “you store” on the side it’s just kids kicking soccer balls. It’s tasteful it’s not flashing lights for example.

Mr. Decker asked the applicant if the intention is to cover up the bricks in disrepair then why not use a beige or solid color fabric? Mr. Long explained that UHaul has over the past few years, at all of their buildings, are to have incorporated the same type of branding. UHaul’s branding includes enhancing the building and each having a similar look. They try to bring some of the neighborhood into the design such as the blue wave painted at the base of the building. Mr. Mojica mentioned that building used to be Kaplan painting supply, and behind the banners is a paint image from that business. He explained they tried not to get rid of the painted image that was behind there. He further explained at all their other buildings they typically will prime and paint over the existing brick, but at this one they wanted to leave that existing building sign and show that this is what it was previously.

Mr. Decker asked aren't you also trying to attract the eye of a passerby. Mr. Long stated yes absolutely. He explained that's exactly why he submitted the pictures to the board, he asked the Board to look at the photo of the Zeiterion theater. He stated they have four banners on that building to catch your eye to know what's coming. So, he said yes the banners are to catch your eye. It's a bit of everything, he stated, it's reimaging, enhancing the neighborhood, and it looks nice. He indicated the photo submitted showing banners waiving in front of the neighboring business Dominos is also to attract the eye and to attract business. Mr. Long stated he's been a small business owner for thirty years, and they are the back bone of America. He explained UHaul started way back when as a small operation and now is a big operation. So, they come before the board to ask for a balance to ask if they believe these are billboard or banners.

Mr. Walsh stated he agreed the objects are banners and not billboards. He further indicated it was his understanding the applicant would still have to get a building permit for the banners. Mr. Long expressed the applicants are willing to work with the board in what is required. He expressed again the locations where banners are also seen in the city and that these are not billboards.

Mr. Schilling asked the board members for a billboard doesn't the advertising have to be for something not at the site. Mr. Walsh agreed saying yes billboard advertising is but he doesn't see any advertising on these at the premises. Mr. Walsh stated he doesn't think this is a billboard. Mr. Schilling concurred, he also believed these weren't billboards. Mr. Mathes explained he drives by this property often. He stated he's seen these types of banners in other cities and thought they are pretty cool. Mr. Mathes further explained he thought these banners were attractive and did make this particular part of the city look good. He stated on the technical aspects he felt they are banners. Mr. Schilling referenced the City Planning comments which indicated the Board is to determine in this case if the objects are billboards and therefore a prohibited sign type. Mr. Walsh said if that's the discrete issue then we don't have a billboard.

Acting Chairman Mathes expressed the board was a bit ahead of themselves and if they didn't have any more questions for the petitioner there were procedures that need to be followed.

Acting Chairperson Mathes then 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.

Then Acting Chairperson Mathes 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, Acting Chairperson Mathes declared the hearing closed.

Acting Chairperson Mathes asked for a reading of the motion and if need be the board can have further discussion before the vote is taken.

Mr. Decker made a motion to grant the administrative appeal, the motion was seconded by Mr. Schilling. Mr. Decker motioned to grant the requested Administrative Appeal under provisions of the City Code of New Bedford, to James J. Long and Ramon Mojica (519 American Legion Highway Westport, MA); relative to property located at: 105 Rockdale Avenue, Assessor's Map 18, Lot 69 in an Industrial-B Zoned district. To allow the petitioner to obtain a building permit. The Board finds: that the items installed on the premises do not constitute a billboard or billboards. Therefore, with the following conditions: 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.

The board discussed whether or not the applicant needed to apply for a building permit for the banners. Commissioner Mr. Romanowicz stated yes the applicant would need to apply for a building permit. Mr. Walsh wanted to confirm the board was not waiving any requirements for the building permit process. Acting Chairperson Mathes stated the Board is making a finding this evening on whether or not the signs in question are a

billboard. There was a brief discussion to clarify the Boards understanding about the building permit process for sign types with Commissioner Romanowicz. There was a discussion for clarification purposes with Commissioner Romanowicz about the definition of a billboard under city code. Mr. Long interjected that the discussion was interesting but he respectfully asked the board to vote on the petition as presented this evening. He requested the board vote on whether or not the board thought the banners were billboards. Chairperson Mathes expressed he understood the petitioners request but when relevant information about similar things in the city is brought to the boards attention, such as the pictures submitted by the petitioner this evening, the board should discuss it during the meeting of the board. Chairperson Mathes expressed he thought it was a banner and indicated the material was not permanent in nature. Mr. Walsh confirmed with the board member that the applicant would still need to pull a building permit.

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

Chairperson Mathes informed the petitioners the motion passed and they will have to file for a building permit and pay the fees associated with that.

NEW BUSINESS:
The Board briefly discussed that a simple majority was needed for a Comprehensive Permit. There being no further business to come before the board, Acting Chairman announced the next Zoning Board meeting scheduled for September 10, 2015.

(Whereupon proceedings concluded)