



## ***Zoning Board of Appeals***

May 28, 2015 - 6:05 P.M. – **Minutes**  
New Bedford City Hall, Room 314, 133 William Street

### **PRESENT:**

**Ian Comerford** (*Chairman*)

**Allen Decker** (*Clerk*)

**James Mathes**

**Robert Schilling**

**Leo Schick**

### ***Also in attendance:***

*Dan Romanowicz, Commissioner of Buildings and Inspectional Services*

*Jennifer Gonet*

*Assistant City Solicitor Kreg Espinola*

MEETING CALLED TO ORDER by Chairman Comerford at 6:05 p.m.

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

A motion was made (AD) and seconded (JM) to take Case #4179, Case #4183 and Case #4182 out of order

### **PUBLIC HEARINGS:**

#### **CASE #4179** – (opened at the previous meeting)

A motion was made (AD) and seconded (JM) to remove from the table Case #4179 and proceed. Included in this motion is that the following document be received: correspondence dated 5/28/15 from Councilors Martins and Morad in support of the application.

Motion passed unopposed.

Mr. Comerford indicated there was some confusion at the last meeting and apologized to Mr. Pereira for any comments made that reflected poorly upon him professionally. He stated that was not his intention. Mr. Comerford stated that he was seeking information for the board members that was unavailable at the time. Mr. Comerford expressed that he hoped the information would be available today and the applicant could proceed.

Mr. Pereira inquired if this was based upon the e-mail he had sent, to which Mr. Comerford replied affirmatively. Mr. Pereira stated that at the last hearing there were questions about what was going on with the lots that were beyond his ability to respond and answer to questions of how they got segregated. He stated he had spoken to the owner of the property and his legal counsel, both of whom were present. Mr. Pereira then turned comments over to legal counsel.

Att. Michael Medeiros of 286 Union Street, New Bedford addressed the board on behalf of petitioner David Fernandes. He stated Mr. Fernandes and his wife own the property in capacity as trustees of Tacoma Street Realty Trust. Mr. Medeiros stated his understanding was that the board may have had a question on whether there was a lot created on the part of his client to actually come before this board. He stated he was the attorney who represented Mr. Fernandes in the acquisition of the property and had conducted a full title examination, as

required under title standards for representation in a real estate transaction. He stated the title exam he had conducted revealed that as far back 1933 these two parcels were actually held separately; in that they were in the deed described separately. Lots 259 and 260 were described as Parcel 1 in the 1933 deed, and in the very same deed Parcels 261 and 262 were a second parcel separately described.

Att. Medeiros stated he had the title examination before him and noted there were approximately 3-4 different conveyances that were always a first parcel and a second parcel. He stated the first parcel was consistently described from 1933 on as being Lots 259 and 260. The second parcel being described as Lots 262 and 261. He offered to show the board and counsel the documents. He then invited any questions.

In response to Mr. Comerford's invitation to speak or be recorded in favor, Coouncilor Joseph Lopes asked to be recorded in favor.

In response to Mr. Comerford's further invitation to speak in favor, David Fernandes, the property owner, stated he was trying to invest in something on the lots as he pays taxes for it. Mr. Fernandes noted that as his lawyer had stated the lots have been separate for the longest time and they don't create any lots.

In response to Mr. Comerford's further invitation to speak or be recorded in favor, Mr. Fernandes' son of 47 Deers Lane, Dartmouth, MA asked to be recorded as voting in favor. He stated that like his dad had said, the lots have been separated since the property was originally purchase by them. He stated it was not their doing; that it was not like they had bought it as one and decided to separate or divide the properties in their favor. He stated they purchased what was there and nothing more.

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

In response to Mr. Comerford's invitation to speak in opposition, Ron Rego of 1014 Tacoma Street, the property across the street from the lot in question. He stated his primary concern was the parking situation. He stated the property Mr. Fernandes owns originally consisted of a single-family home and a small store run by the property owner. He stated that when Mr. Fernandes bought it he made changes to the property. Mr. Rego stated Mr. Fernandes has done a nice job of fixing up the existing buildings that were in bad disrepair. He stated that the parking situation has become horrendous. Mr. Rego stated that the single-family home is now a two-family home. He stated the bigger issue is that the small store has become a hair salon now with six hairdressers. He stated the parking situation has gotten bad, and the parking behind the building can only accommodate three cars, even though there are six workers and all their clients. Mr. Rego stated he now rents his property and no longer lives there, but when visiting his property on the weekend he cannot get a space in front of his house. He again stated he is already concerned about the parking situation and another two-family house going on that lot will only worsen the situation.

In response to Mr. Comerford's further invitation to speak in opposition, Gary and Jean Medeiros, abutters, stated this would be a pretty big house, which no one wants going right next to their house. He stated they see all the parking problems just mentioned. He stated his opinion is the street can't take a two-family house and he sees serious parking problems. He stated he is worried about the size of the proposed building and he opposes it.

Jean Medeiros stated she opposes the variance for the size of the property.

In response to Mr. Comerford's further invitation to speak in opposition, Josh St. Gelais of 1024 Tacoma Street stated he has been there since 2006 and agrees with Mr. Medeiros about the traffic. He stated with the new businesses on the corners a lot of parking spills onto his street. He stated the cut of the curb will lose spots and with two extra families it will probably be a problem with parking, especially when it snows. He stated it was a

nice quiet street when he bought his property and it's now a busy street as it is. He stated it will be more of a nuisance with a couple of more families living there and their guests.

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

Chairman Comerford opened the floor for rebuttal.

Mr. Pereira stated that the parking issue came up last time and one of the setbacks we're having an issue with is the rear line. We've looked at it and taken it into consideration. As the plan shows, there is a garage for each unit with a 20' setback from the front, meeting the criteria. A two-family requires two spots per family, and we are providing the four spots. Mr. Pereira stated the driveway could be 16'-20', and the same would be required for a single-family with a 12-16' curb cut, as would a shopping plaza. So, no matter how the property is developed, you are going to lose one parking spot with the curb cut. Understandably guests will have to find parking elsewhere. Though it is an issue, it is development. Mr. Pereira stated that when the corner building was done, the required parking spots were provided on the property. Guests will tax the street, but they are temporary, not permanent. He stated they have met the zoning requirements

Att. Medeiros stated he had several deeds and asked if there was a specific one the board would like to see. Att. Espinola asked to see the examination.

Att. Medeiros noted that the two lots in question have been taxed separately from the other two lots, and are highlighted separately from the other two lots on the assessor's map, for at least the last 2-3 years.

A motion was made (AD) and seconded (JM) to accept the title examination provided by Att. Medeiros as part of this case. Motion passed unopposed.

In response to Mr. Comerford, Att. Espinola noted that he had not had a lot of opportunity to review the deeds, which go back to 1933. He inquired if the board had a specific concern.

Mr. Comerford stated the issue originally had come up from a board member not present this evening, but it came up as being recently separated. So, our concern was more of a self-imposed hardship, where they had one lot with a house on it and cut off the back or side yard and made a separate lot and then came to the board to build another house on it that's non-conforming. The board is looking to make sure that that is not the case.

Att. Espinola stated it will take further analysis to make a determination on that given what's been submitted in terms of a title examination as well as what's he's indicated about the assessor's billing and how it's been taxed. From the most recent deed it looks like, notwithstanding the fact that the parcels are separate on the deed, all of the land was deeded in a single transaction. So, that will take a bit of an analysis by the solicitors in order to advise the board on that specific issue.

Mr. Comerford noted there were time requirements to make a decision. He questioned whether June 25<sup>th</sup> would fall under those time requirements.

Mr. Medeiros stated that he believed it was 65 days from the filing of the petition.

Mr. Comerford stated he believed it was 100 days from filing.

Mr. Decker stated it appeared to have been filed March 27<sup>th</sup>. After conferring with Ms. Gonet, Mr. Comerford noted an extension had been signed at the last meeting.

Att. Medeiros stated he was not implying his client would not be willing to sign an extension if necessary for counsel to review the documents and not make a decision in haste. He asked to consult his client briefly.

Mr. Comerford asked if three properties were bought at one time.

Att. Medeiros stated it was two properties; 259 and 260, and 261 and 262. He stated he didn't want any confusion about common ownership. They've been commonly owned since 1933. It's just that no lots have been created. There was Parcel 1, 259 and 260. And 261 and 262, the property described as commercial in nature along with the single-family or two-family home, was Parcel 2. That has been consistently been brought forward.

Att. Espinola stated that under the ordinance it could be a merger of the lots. In fact, what Att. Medeiros says further complicates the issue, because the lots since 1933 have been held in common ownership. When held in common ownership, lots can be merged under that common ownership. It will take a determination as to whether the lots were held separate and distinct. Not just what's on the deed. We're hearing the lots were held by a single owner from 1933 forward, which does not help the case for a non-self-created hardship. There has to be a determination under the ordinance that the lots were held distinctly and separately, not just on the deed. One of the factor could be that the lots were taxed separately as has been represented. He stated they would need verification on that. The existence and maintenance of walls or fences along original lot lines; are they fenced off separately. If not, that's a factor. The placement of structures on the lots is a factor. It's an analysis that the zoning enforcement officer actually has to make in terms of whether they are held separately.

Mr. Comerford asked Att. Espinola if the owner that owned the property put a fence around Plot 1 and 2 that would not be separate and distinct with say a playground in the back. Then you are using that property. Att. Espinola stated that would be one factor to consider, among others, that in fact common ownership and they're not separate and distinct for purposes of zoning. Meaning the lots ultimately are merged, which means if you deed a portion of that lot later on that could be considered a self-created hardship.

Mr. Mathes stated that in watching the video and reading the minutes, Ms. Trahan was questioning if that happened, and we need to have that answered.

Att. Espinola stated ultimately the zoning enforcement officer makes that determination. Even if it was a self-created hardship, it doesn't negate the fact that this board could issue a variance, notwithstanding the fact that it's a self-created hardship.

Mr. Comerford asked if the board if they believed further investigation was Mr. Decker and Mr. Mathes felt it could create problems city wide if the board granted a variance knowing there was a self-created hardship.

Mr. Comerford noted that there had been opposition and therefore felt the board had a duty to further investigate. He stated that while he did not wish to push this matter off to a 3<sup>rd</sup> meeting, he felt it the right thing to do at this time. He examined the existing extension which provides for 90 days from April 23<sup>rd</sup>.

Mr. Medeiros invited Att. Espinola to contact him for any assistance or information. He stated he did not understand what a self-imposed hardship in this case could be. He stated in essence the property was purchased with both parcels and have always been together as both parcels, so there is really nothing different in that sense and there is nothing being created. He stated it was not as though the applicant created a new separate lot. It's always been separate, as shown by the deed.

Att. Espinola, reading from Bobrowski, explained that a self-created hardship situation typically arises when the owner of a large tract of land conveys to another a portion that therefore does not meet the minimum bulk requirements of then existing zoning requirements. With the result that the new owner cannot build without relief from the zoning regulations. That's the definition. This is the point.

Att. Medeiros stated that even if he hadn't conveyed it out, it would have been the same situation the moment he took title. Even his predecessor held it the very same way.

Att. Espinola stated he did not think it matters whether it was this owner or the previous one. Under our code of ordinances it doesn't matter how it's acquired. So, I point you to Section 2700, 2710, 2712-2712C, which is really what we're looking at as far as making a correct analysis to advise the board. Very specifically in the code of ordinances it says the manner in which said lots were acquired or the fact that said lots were separately described on a deed shall not be considered by a zoning enforcement officer making a finding. That's pretty clear as day. Whether or not the lots were together or separate on a deed has no bearing on the ultimate decision of whether it's a self-created hardship..

Att. Medeiros stated his only point is that the applicant did not create any new lot. There's no argument here that is essence there's common ownership. It had common ownership when they bought it. If there hadn't been common ownership we likely would not be here. It would have been a preexisting non-conforming.

Att. Espinola stated the applicant still would have had to come in for a variance. When there's common ownership it actually goes against what you're saying, because lots in the city ordinances tend to merge unless there are specific acts taken to make sure they don't merge. He stated he was not privy to such acts. Att. Medeiros stated it could be seen in the chain.

In response to Mr. Comerford, Att. Espinola indicated the findings would be determined before the next board meeting.

Mr. Mathes stated one thing he wondered was whether or not the owner spoke to the people in the neighborhood. He stated he was just curious if he had spoken to his neighbors about his plans and the size of the building.

Mr. Fernandes stated he knew he had two lots. He just wants to put something there. He bought the whole thing for his son and daughter. He stated his daughter live in one house, but might move over to the other house. Like a family over there.

Mr. Comerford asked if there was anything else to cover before postponing the matter to the next meeting on June 25<sup>th</sup>, possibly at city hall. He stated there would be no further notifications.

A motion was made (AD) and seconded (JM) to table Case #4179 until the June meeting of the Zoning Board of Appeals. Motion passed unopposed.

**CASE # 4183** - Variance

A motion was made (AD) and seconded (JM) that the following documents be received and placed on file: the communication dated 5/8/15 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 5/21/15; the appeal package and the plans 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 hereby is ratified.

Motion passed unopposed.

Chairman Comerford declared the hearing open.

David Amaral addressed the board, and stated he and his wife Lisa were the homeowners at 652 West Rodney French. He stated they purchased the property in June 2005. He stated they were looking to extend the existing footprint of the existing porch laterally across the front of the house.

Mr. Amaral stated that in his opinion what they are looking to do is very much in line with the rest of the neighborhood, if not even better than most of the neighborhood.

Mr. Decker asked Mr. Amaral, having heard the previous hearing, what in his words was his hardship, as that's the basis of getting a variance.

Mr. Amaral responded they had purchased the home to raise their family in, and over the years have done everything they could to beautify it and better the neighborhood. Mr. Amaral stated there was a property next door that's abandoned. He stated they are looking to raise their family and make the property livable for themselves. He stated the existing plan shows that in the original renovation they were allowed to install a double door. He stated the porch is slightly short of the double door. He stated it was always their intention to go across the front, like most people on the street, when they could afford it.

Mr. Comerford reiterated the conditions read at the beginning of the meeting, which includes that there has to be a specific hardship in order to build something against building code. It could be that you need access to the front of your house.

Mr. Amaral stated it is basically to access the front of the house better than you are currently able to do based on the size of the porch.

Mr. Decker stated the issue would be the front yard setback.

Mr. Comerford noted that the city planner had expressed that this would fall in line with the neighbors and the general character of the neighborhood.

In response to Mr. Comerford's invitation to speak or be recorded in favor, Lisa Amaral asked to be recorded in favor.

In response to Mr. Comerford's invitation to speak or be recorded in favor, Ward 6 Councilor Joseph Lopes stated he has known the Amaral Family for over a decade. He stated they have been committed to New Bedford, owning a house in both the southend and the northend, and have always expressed a desire to relocate to the southend. As the city planner stated, taking a drive down east or west Rodney French Boulevard will see that most of the homes do have front facing decks that would be in violation of the existing ordinances. Most of the homes on the west side have those front facing decks for a particular reason. The most beautiful sunsets in the city happen on the west side at night. The most beautiful sunrises happen on the east side. So people want to take advantage of what they're paying for. They're paying the most expensive property taxes in the city. They're paying flood insurance in the city. This is not a cheap place to live. We're talking about people willing to invest in that neighborhood. As the petitioner said, there is a house across the street abandoned for years now and going through probate court with seven liens upon it. That's a house actually deteriorating the neighborhood. We have someone willing to invest a sizeable investment in the city to raise their family here. We talk about bringing families into New Bedford who will keep their kids in public schools. This is couple in front of you that are productive members of the community. The husband has been a Whaling City baseball coach for years and the wife is active in the community as well. These are people we want to actually work with. It will fit in the neighborhood. In my five and half years I have seen this board grant similar variances to that which is requested. He asked the board look favorable upon the request to allow them to begin construction of their dream home.

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

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

Chairman Comerford closed the hearing.

There being no further questions or discussion by the board, the contents of any proposed motion were discussed.

Mr. Mathes stated that he wanted the new motion requirements filled in by the staff when the applicant comes in. The applicant, with guidance from professional staff, should be stating what the hardship is and the board should be ruling on whether they agree with it or not. It should be prepared for the board to look at and vote accordingly. Mr. Comerford and Mr. Schilling agreed. Mr. Mathes stated that the format will surely be helpful from a legal perspective, but properly prepared when presented to the board. The board should not be struggling to figure out the words, the board not being the applicant or the professionals. Mr. Decker agreed.

There was no affirmative response by board members to Mr. Schilling's question on whether any board member was opposed to Mr. Mathes' suggestions.

Mr. Comerford stated consultation with Jen Gonet would be productive in accomplishing Mr. Mathes' suggestions.

A motion was made (AD) and seconded (RS) to grant Appeal #4183, a motion to grant a variance under the provisions of the city code of New Bedford to David Amaral and Lisa Amaral (652 W Rodney French Blvd New Bedford, MA 02740) relative to property located at 652 West Rodney French Boulevard, Assessor's Map Plot 5, Lot 96 in a Residential-A Zoned District to allow the petitioner to make alterations to the front porch on the first and second floors as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 Appendix-B, 2750, and 2751. The board finds that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in questions, but which do not affect generally the zoning district in which the land or structure is located. These circumstances being that the position of the house forces the land owners to break required front yard setbacks. Secondly, that due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant. The hardship here is that other houses in the area have similar decks as that being proposed, and not having such a deck would decrease the property's resale value. Thirdly that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. Fourth, that the desirable relief may 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
A. Decker - Yes	L. Schick - Yes
J. Mathes - Yes	

## **OLD BUSINESS:**

### **CASE #4182**

Mr. Comerford noted this case was scheduled for public hearing. He stated the matter had come before the board a year ago. The owner was seeking to construct a garage with a twenty foot roof and the matter was denied by the board. The applicant went to the office of Mr. Romanowicz and changed the plans and stuck with the building code of 18'. The building was then built at 19'2" bringing the matter before the board again this evening. Mr. Comerford stated the building is already built but not to code. This evening's issue is only whether or not the

plans are substantially different, which would allow another public meeting to look at the plans and vote on a variance.

Mr. Decker clarified that this is a hearing on substantial difference. He stated if the board finds a substantial difference, that's the only piece of business this evening. The application would then go to the Planning Board.

Dave Silveira of Southcoast Architecture stated he understood and had brought information on the differences.

Mr. Comerford inquired of Mr. Romanowicz and Att. Espinola that if the board found there was not a substantial difference, what is the outcome of that. Would the garage have to be ripped down?

Mr. Romanowicz stated that it's not the building code, it's that the city ordinance states it cannot be over eighteen feet. It's stated on the building permit. So, if the board says there is not a substantial difference, they can have it taken down. That's within the board's discretion.

Mr. Espinola stated that the zoning enforcement officer would enforce that, which could ultimately end up court proceedings.

Mr. Schilling clarified that if the board is considering whether there is a substantial difference between what was originally proposed and denied and what has actually been built. He confirmed that if a substantial difference is found, it will come back for a zoning variance which the board will vote on. He stated the notion of tearing a garage down over a foot and a half seems like insanity.

Mr. Silveira stated the overage is only 8" in some places.

Mr. Comerford explained to Att Espinola that the board had not faced a situation where the structure has already been built. He asked if the board was looking at the plans of what was built. Att. Espinola stated it was. He explained that the only issue for public comment from the audience is on the issue of whether or not there is a substantial difference, anything beyond that is beyond the scope.

Dave Silveira of Southcoast Architecture, 34 Slocum Farm Drive, Dartmouth, MA addressed the board. He offered documents showing what was originally denied a variance, which was a 26' 11" proposed structure.

A motion was made (AD) and seconded (JM) to accept the rendering handed up by the petitioner. Motion passed unopposed.

Mr. Mathes clarified that this is a rendering of the original proposal.

Mr. Silveira stated this original proposal was not granted a variance based on building height, which per ordinance is 18' maximum. He stated the plans were revised and approved by the Building Department for this version with a flat roof with a maximum height of 18'.

A motion was made (AD) and seconded (RS) to accept the Rendering B submitted this date by the petitioner on the present finding discussion. Motion passed unopposed.

Mr. Silveira stated they switched over to a flat roof design and just basically redesigned the structure to meet the maximum possible height. He stated that unfortunately there were two errors in construction, the first being an additional course of block added by the mason, which wasn't noticed until later on by the building inspector. He stated the roofing contractor then added an additional 3"- 4" of built up roof on top. He stated the combination of those two items and oversight, when the building inspector came out and measured he stated it was over 18'. Mr.

Silveira stated he had taken measurements as well of both the front and the back, and offered those pictures to the board. He stated there are some places it is a couple of inches higher, but definitely under 19'.

A motion was made (AD) and seconded (LS) to accept the pictures as submitted by the petitioner. Motion passed unopposed.

Mr. Comerford confirmed with the petitioner that he believed it was closer to 18'. Mr. Silveira stated that in general on average the structure is over 18', but he did not believe it was over 19'. He stated that though it is over, they are not talking about feet, but inches.

Mr. Silveira stated the building commissioner had asked them to get a letter from a surveyor. He stated they could not get that because technically it is over by inches. He stated it is a technicality. He stated it's clear that the design and the construction is different than what was originally proposed. He stated the owner did not disregard the zoning board's recommendation and go out and build what he originally wanted to. He tried to conform and through an error in construction, this happened.

Mr. Mathes noted that what had come to the board from the planning office stated that at its highest point it is 19'2".

Mr. Silveira stated that was their opinion, but his measurements were with a tape measure to the roof. He stated it is over and the petitioner is not arguing that it is not.

In response to Mr. Comerford's invitation to speak to the change from the plans submitted, Ms. Vieira stated she lives next door, having built their home some forty-seven years ago. She stated if a younger person she would sell her house and move elsewhere. She stated she looks at this ridiculous building with a new garage practically against her fence and she faces discomfort and horror. She stated it is a green monster. She stated at this point she questions that they had a meeting similar to this in 2014. She stated they received a letter from the city stating it was denied, and that the gentleman had the option of another appeal. She stated they were never invited to that appeal, which was approved. She stated the only way they found out it had happened was because they saw the digging going on. She questioned why she was invited to the first one and invited to this one, but the one in the middle which made the most difference no one was invited.

Mr. Comerford reminded the speaker that this evening people are speaking to the change in the plan submitted. He stated there was another hearing once the petitioner changed their plans and met all the building code requirements. The building department signed off on it. He stated people only come before this board when they want to build something that doesn't meet building code requirements. If someone wanted to build something that was legally too close to your fence, they would have to come here and you would be notified. If they are building something that legally isn't too close to your fence, the building commissioner signs off on it and they can build. That's what happened and that's why you weren't notified. He stated that if the matter goes forward, she will be notified.

Ms. Vieira stated there was no courtesy notice to people.

Mr. Comerford stated the building department probably issues some 5,000 building permits per year. He stated courtesy phone calls cannot be given on all of those. It met city ordinances.

Ms. Vieira stated the invitation for this stated an additional was put to an existing garage. She stated there were eight garages when he purchased that building and he built a ninth one and on top of that what looks like an office space. She stated it was not built on an existing garage.

Mr. Comerford assured her the building commission would look into and make sure things were not built without permit per code.

Mr. Vieira stated you have to have a reason. He has eight garages to begin with and he will use the one he's building now for storage. How many garages do you need?

Ms. Vieira stated the petitioner does not reside in that area or that house. She stated the petitioner has a home outside the city of New Bedford and has a business not in the City of New Bedford. She stated she did not see the purpose of buying that home. She stated that no one in the house rents a garage. The garages are strictly for storage. How much storage does one person need?

Mr. Comerford stated it does seem like a lot of storage, but we will get into that if we have another hearing and you will be notified.

Mr. Schilling again clarified that the condition for that going forward is whether or not these two drawings are substantially different, and it appears to me that they are.

In response to Mr. Comerford's invitation to speak in opposition to the matter before the board, the change in the two drawings that were given, James Warren, an abutter, stated his question is the code is 18' and he's over that obviously at 19'2" so what is does in a case like this. Do you end up knocking it down or paying a fine?

Mr. Comerford stated the board can end up knocking it down.

Mr. Warren stated 18' is 18' and there is a code you stand by, and does the board allow them to go over that without doing anything about it. Does it stay that height out there or do you end up knocking it down.

Mr. Comerford stated a person can build over 18' if you obtain a variance. The board in this case said no to the original 26' building. The petitioner went forward and changed the plans and built an 18' building. With oversights in construction, the building ended up being 19'. The petitioner is coming back in front of us. If we do vote for a variance, then it would go to zoning enforcement. Usually the home owner would take that into some court as a suit.

There was no response to Mr. Comerford's further invitation to speak in opposition to the matter before the board.

Mr. Comerford offered the petitioner an opportunity for rebuttal, and stated he did believe there was a substantial change in the plans.

Mr. Silveira offered a rendering that shows the whole garage with storage above, which is not office space, but a two-story bump out addition with no plumbing. He stated they had obviously changed the design of the building to meet the ordinance. He mentioned again that there were two oversights in constructions. He stated he felt it would be detrimental to tear that building down because of a matter of a foot or even inches in some places. He stated the petitioner just wants to move forward and get the neighborhood looking normal again.

A motion was made (AD) and seconded (JM) to accept drawing A2 date 5/28/15 as submitted by the petitioner. Motion passed unopposed.

Mr. Comerford stated he believed it to be pretty clear that there are substantial changes to the plan submitted and he would have no problem signing off and having the petitioner back before the board so the board can look further into the plans.

In response to a question by Mr. Mathes, Mr. Romanowicz stated he had a building inspector put the tape on it and it was over 18’.

Mr. Mathes confirmed that the city had no specific measurement. Mr. Romanowicz confirmed that, stating they only know it’s over 18’.

Mr. Mathes stated it would be critical to know the city’s official measurement if this matter makes it back to before the board.

Mr. Silveira stated the client had hired Thompson Farland to do the land survey. He stated their survey determined various building heights depending on the grade. So, they’re the ones that prepared the application and may have taken an average or the highest point. They measured from the inside of the garage, but we measured from the grade on the outside. He stated he did not know which would be more of a benchmark.

Mr. Mathes stated he wanted the city’s opinion on what the height is.

A motion was made (AD) and seconded (JM) to make a finding concerning case #4182, a motion to make a finding under the provisions of the city code of New Bedford to Natalia F. Araujo of Shaw Realty Trust located at 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. The board finds that there are specific and material changes in the conditions upon which the previous unfavorable action was based. These changes are that the prior height of the building which was denied was 26’11”. The proposed height of the building is now 18’. This is a substantial change from the prior proposal.

Roll Call Vote was as follows:

I. Comerford - Yes	R. Schilling - Yes
A. Decker - Yes	L. Schick - Yes
J. Mathes – Yes	

Mr. Comerford conferred with Ms. Gonet to make sure abutters will be notified.

#### **NEW BUSINESS:**

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

A motion was made (AD) and seconded (JM) to accept the minutes of the meeting of April 23, 2015 concerning cases 4176, 4177, 4178, 4179, 4180 and 4181. Motion passed unopposed.

There being no further business to come before the board, Chairman Comerford announced the next Zoning Board meeting scheduled for June 25, 2015. He then adjourned the meeting at 7:40 pm.

(Whereupon proceedings concluded)