



Zoning Board of Appeals

January 21, 2016 – 6:02 PM - **Minutes**

New Bedford City Hall, Charles Ashley Meeting Room-1st Floor
133 William Street

PRESENT: James Mathes (*Acting Chairman*)
Allen Decker (*Clerk*)
Debra Raffa-Trahan
Leo Schick
John Walsh (departed at 6:30pm)
Sherry McTigue (arrived at 6:30pm)

ABSENT: Robert Schilling

STAFF: Dan Romanwicz, *Commissioner of Buildings and Inspectional Services*
Jennifer Gonet, *Assistant Project Manager*

1. CALL TO ORDER

Chair Mathes called the meeting of the City of New Bedford Zoning Board to order at 6:02 p.m.

2. ROLL CALL

A formal roll call was conducted confirming members present as stated above.

Chairman Mathes explained the process and procedures for those in attendance.

A motion was made (AD) and seconded (DT) to take Case #4216 out of order.
Motion passed unopposed.

SCHEDULED HEARINGS

3. CASE #4126

Public hearing on the petition of: Peter Cruz (133 Butler Street New Bedford, MA) and Bruce M. Foucart (813 Beverley Drive Alexandria, VA) who have submitted a petition for a Variance under provisions of Chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (general), 2750 (yards in residential district), and 2755 (side yards); relative to property located at 117 Swan Street, assessor's map 10, lot 134 in a residential B zoned district. The petitioner proposes to build an attached one car garage with a master bedroom above the garage as plans filed.

With regard to Case #4216, a motion was made (AD) and seconded (DT) that the following be received and placed on file: the communication dated 1/4/16 from the Commissioner of

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Buildings & Inspectional Services; communication from the Office of the City Planner dated 1/13/16; the appeal package; 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, and correspondence from the following individuals all speaking in favor of the petition:

Councilor Joseph P. Lopes dated 1/7/16

Patients J. Butler date 1/15/16

Jose & Bendita Cruz dated 1/16/16

Sandra Nunes dated 1/17/16

Dianna Tenny and Gerard LaPerriere received 1/19/16

Motion passed unopposed.

Chairman Mathes declared the hearing open.

Gus Raposa, a registered engineer with Raposa Engineering, addressed the board on behalf of Peter Cruz. Mr. Raposa, a former colleague of Mr. Cruz, disclosed that Mr. Cruz is a planning board member, and has chosen not present the project. He stated they are seeking a 12' variance on the side yard. He corrected a typo to read 9'. He offered a revised plan showing the project will not encroach any further than now exists.

A motion was made (AD) and seconded (DT) to receive the revised plan.

Motion passed unopposed.

He stated the lot is flat. He expressed the petitioner had spoken to the neighbors.

Mr. Decker confirmed the project would be on the left side of the property when facing the house from the street.

There was no response to Mr. Mathes' invitation to speak or be recorded in support.

There was no response to Mr. Mathes' invitation to speak or be recorded in opposition.

Chairman Mathes closed the hearing.

There being no discussion among board members, a motion was made (AD) and seconded (LS) to grant Appeal #4216, a motion to grant a variance under provisions of the city code of New Bedford to Peter Cruz (133 Butler Street, New Bedford, MA) and Bruce M. Foucart (813 Beverly Drive, Alexandria, VA) relative to relative to property located at 117 Swan Street, Assessor's Map 10, Lot 134 in a residential B zoned district to allow the petitioner to build an attached one car garage with a master bedroom above the garage as per plan filed, which requires a variance under the provisions of Ch. 9 Comprehensive Zoning, Section 2700, 2710, 2750, and 2755. The board finds first that there are circumstances related to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. These circumstances being that the placement of the existing house makes the side yard setback extremely difficult to comply with. Second, that due to those circumstances

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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 adherence to the ordinance prevents utilizing the full available useable square footage of the lot. Third, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. Fourth, that desirable relief may be granted without substantial detriment to the public good. With the following conditions: that the project be set forth according to plans submitted with the application, and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Board Member Walsh - Yes Board Member Trahan - Yes
Chairman Mathes – Yes Board Member Schick – Yes
Clerk Decker– Yes

Passed 5-0

A motion was made (AD) and seconded (JW) to take Case #4217 out of order.
Motion passed unopposed

4. CASE #4127

Based on correspondence submitted by the petitioners' attorney, a motion was made (AD) and seconded (DT) to continue this matter to the meeting of February 18, 2016.
Motion passed unopposed.

OLD BUSINESS:

5. CASE #4203

Public hearing on the Petition of: Panagakos Development c/o Michael Panagakos (133 Faunce Corner Road Dartmouth, MA) who have submitted a petition for a Special Permit under provisions of Chapter 9, Comprehensive Zoning relative to property located at 1771 Acushnet Avenue, Assessor's Map 108, Lots 42, 43, and 44 in a Mixed-Use-Business and Residential-C Zoned district. The petitioner is proposing to construct two (2) new commercial buildings as plans filed, which will require a Special Permit under Chapter 9, Comprehensive Zoning Sections 2400 (Nonconforming Uses and Structures), 2410 (Applicability), 2430-2431 (Nonconforming Structures, Other than Single-and Two-family Structures), 3149 (Special Permit for Commercial Parking in a Residential District), and 5300-5330 & 5360-5390 (Special Permit).

A motion was made (AD) and seconded (JW) that the following be received and placed on file: the communication dated 8/28/15 from the Commissioner of Buildings & Inspectional Services; communication from the Department of the City Planner dated 9/14/15; the appeal

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package as submitted; 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

Chairman Mathes declared the hearing open.

Steven Gioiosia, SITEC Engineering, stated this request for special permit is relative to commercial property located on the northwest corner of Bellville Road and Acushnet Avenue, and is the former Sullivan Brothers clothing store. Mr. Gioiosia displayed the current site illustration, including the parking area, and then the proposed development overlaying said illustration.

He noted this 12,600 s.f. site was split zoned, namely mixed use business and Residence C, with five off-street parking spaces and no green space.

The applicant plans to reduce the commercial use of the property by downsizing the two buildings. The plan also results in compliance of setbacks, provides for 23% greenspace, and increases on-site parking. The applicant will also provide an improved on-site drainage system, buffers, and improved street scape with rebuilt sidewalks and the addition of street trees.

Mr. Gioiosia noted the project had been approved by the Planning Board as well as the Traffic Commission.

Mr. Gioiosia then addressed the individual criteria needed for approval of the special permit.

Board Member Schick confirmed that the former building on the lot had been demolished.

In response to an inquiry by Board Member Trahan, Mr. Gioiosia stated that a determination had not yet been made as to whether the front building would contain one or two rental spaces, but noted it was likely to be a single tenant.

Board Member Decker inquired as to whether the applicant was amenable to including the Planning Board conditions into any approval of this board. The applicant stated they had already been met.

There was no response to Mr. Mathes' invitation to speak or be recorded in support.

In response to Mr. Mathes' invitation to speak or be recorded in opposition, Joe Araujo, owner of 22 Glennon Street, an 18 unit building behind the property in question; stated he had problems with the lighting involved, which will be on from 5:00a.m. to midnight, and will have a tremendous effect on his tenants. He expressed his concern about losing tenants. He stated he also did not believe the applicant needed a second commercial building, which was previously only a garage. He stated there will also be a problem with dumpsters coming in early in the morning, which will also affect the tenants.

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In response to an inquiry by Board Member Trahan, Mr. Araujo acknowledged he had not looked at the lighting plan before the Planning Board because he was on vacation, but had his attorney review it.

Board members discussed the lighting issue raised. Board members then discussed the lot zoning, residential versus commercial, in response to further concerns expressed by Mr. Araujo.

There was no response to Mr. Mathes' further invitation to speak or be recorded in opposition.

In rebuttal, Mr. Gioiosia addressed the lighting issues raised by Mr. Araujo. He stated the lighting is in the mixed use business zone and not the residential zone, and noted the increased distance from Mr. Araujo's property that this proposal provides. Mr. Gioiosia referenced that a lighting plan was required to be provided to the planning board.

Mr. Araujo did not exercise the board's offer for rebuttal. Chairman Mathes explained his position to Mr. Araujo.

Chairman Mathes closed the hearing.

The board discussed questions, concerns and comments.

A motion was made (AD) and seconded (LS) to grant Appeal #4203, a motion to grant a special permit under provisions of the city code of New Bedford to Panagakos Development (133 Faunce Corner Road Dartmouth, MA) relative to property located at 1771 Acushnet Avenue, Assessor's Map 108, Lots 42, 43, and 44 in a Mixed-Use-Business and Residential-C Zoned district, to allow the petitioner to construct two (2) new commercial buildings as per plans filed, which requires a Special Permit under Chapter 9, Comprehensive Zoning Sections 2400, 2410, 2430-2431, 3149, and Sections 5300-5330 & 5360-5390. In accordance with City of New Bedford Code of Ordinances, Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. This determination includes consideration of each of the following: First, the social, economic, or community needs served by the proposal are such that the community aesthetics served by the building's design and streetscape are improved. Second, traffic flow and safety, including parking and loading; the proposal proposes improved on-site parking and reduced square footage of commercial improvements, and these are seen as net benefits. Third, the adequacy of utilities and other public services; as designed, the proposal has adequate utility capacity through reduced intensity of use of the property. Fourth, the neighborhood character and social structures; in this case the proposal fits within the character of the neighborhood and improves the aesthetics thereof. Fifth, the impacts on the natural environment; in this case, the proposal proposes a net increase in greenspace on the property and improved on-site water runoff discharge handling capabilities. Lastly, the potential fiscal impact, including impact on city services, tax base, and employment; in this

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case, the proposal has continued commercial use of the property equating to a net benefit on the city's tax base and employment of the citizens thereof. In accordance with the City of New Bedford Code of Ordinances, Chapter 9, Section 2430, the board finds that the proposed change will not be substantially more detrimental than the existing non-conforming structures to the neighborhood. In accordance with the City of New Bedford Code of Ordinances, Chapter 9, Section 3149, the board finds that said parking is not detrimental to the public health and safety, and that said parking promotes a public benefit. Therefore, with the following conditions: that the project be set forth according to plans submitted with the application, and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Board Member Schick - Yes

Board Member Trahan - Yes

Chairman Mathes – Yes

Board Member Walsh – Yes

Clerk Decker – Yes

Passes 5-0

Board Member Walsh exited the meeting.

Board Member McTigue joined the meeting.

SCHEDULED HEARING CONTINUED:

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6. CASE #4215

Petition of: Heather Brito (47 Charlotte Street New Bedford, MA) and Melissa F. Coelho (4334 Acushnet Avenue New Bedford, MA), who have submitted a petition for a Special Permit under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations-appendix-A, #20-medical offices, center or clinic), and 5300-53330 & 5360-5390 (special permits); relative to property located at 4334 Acushnet Avenue, assessor's map 137B, Lot 76 in a mixed use business zoned district. The petitioner proposes to move her counseling practice to the proposed location as plans filed.

A motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 1/4/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 1/20/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and that the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairman Mathes declared the hearing open.

Mr. Greg Denis of C.S. Kelley Land Surveyors, who had done a property survey, stated the existing conditions on the property are expected to remain the same, but for a wheelchair off the back deck on the property. He noted there will be additional parking in the front.

Heather Brito, the applicant, stated she is looking to expand her practice by eventually adding two full-time and one part-time therapist at this location. She noted the volume of calls she has received representing the need for her services. She described the surrounding area offices and noted there had been no trouble, stating she felt she would be an asset to the city, noting she is the only certified Sand play practitioner in Massachusetts. She noted this was her second appearance before the board.

In response to an inquiry by Ms. McTigue, Ms. Brito explained her clientele estimates are based on three full time and one part-time therapist. She confirmed that her initial hours of operations are expected to be thirteen hours per day, and confirmed nine parking spaces on the property. Ms. McTigue expressed concern about any potential backing out onto the main street and there was discussion with the applicant addressing the same.

In response to Ms. Trahan, Ms. Brito stated hours of operation to be Monday-Thursday 8:00a.m. to 9:00 p.m., Fridays 8:00 a.m. to 7:00 p.m., Saturdays 8:00 a.m. to 4:00 p.m., and closed Sundays.

After consultation with Mr. Romanowicz, Ms. Trahan and Ms. Brito addressed the parking area material.

In response to Chairman Mathes' invitation to speak or be recorded in support, Meagan Ferreira of Dartmouth, MA, stated she is a nurse practitioner working in New Bedford, and refers a fair number of people to Ms. Brito, noting the shortage of area counselors. She stated she believed there would be less of an opiate problem in the city with more area therapists available.

In response to Chairman Mathes' further invitation to speak or be recorded in support, Jessica Lima, 310 Hersom Street, New Bedford, a registered nurse with the New Bedford School Department and an emergency room nurse at St. Luke's Hospital stated she is a patient of Ms. Brito's and has benefitted. She also noted the underserved area of such therapist practices.

In response to Chairman Mathes' further invitation to speak or be recorded in support, Ward Councilor James Oliveira stated he felt it was an appropriate use of the property and supported it.

In response to Chairman Mathes' further invitation to speak or be recorded in support, Councilor Linda Morad stated she lives in the immediate area and had previously spoken in opposition to Ms. Brito's last project. She stated Ms. Brito has addressed concerns and the councilor now supports her present project.

In response to Chairman Mathes' further invitation to speak or be recorded in support, Kevin Brito, husband of the applicant and a New Bedford resident, stated that this growth fulfills his wife's dream. He stated he is certain she would be beneficial to the area. He stated his wife is frustrated that she cannot help more people in her present Ashley Boulevard location.

There was no response to Chairman Mathes' further invitation to speak or be recorded in support.

There was no response to Chairman Mathes' invitation to speak or be recorded in opposition.

Chairman Mathes declared the hearing closed.

In board discussion Ms. McTigue again expressed her concern about parking egress and a potential motion condition was discussed. Ms. Brito expressed she was amenable to such a condition.

Board Member Schick confirmed that the present driveway is tar. Ms. Brito stated the pool was also gone from the property.

After further brief discussion by board members, a motion was made (AD) and seconded (LS) to grant Appeal #4215, a motion to grant a special permit under provisions of the city code of New Bedford to Heather Brito (47 Charlotte Street New Bedford, MA) and Melissa F. Coelho (4334 Acushnet Avenue New Bedford, MA), relative to property located at 4334 Acushnet Avenue, Assessor's Map 137B, Lot 76 in a mixed use business zoned district to allow the petitioner move her counseling practice to the proposed location as per plans filed, which requires a Special Permit under provisions of Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230 Appendix A, and Sections 5300-5330 & 5360-5390. In accordance with City of New Bedford

Code of Ordinances, Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. This determination includes consideration of each of the following: First, the social, economic, or community needs served by the proposal. The proposal is offering therapy services to an underserved population and is attempting to meet great demand. Second, traffic flow and safety, including parking and loading; the proposal meets parking needs for the property and ingress and egress will be addressed by special condition. Third, the adequacy of utilities and other public services; the proposal is neutral as to these elements. Fourth, the neighborhood character and social structures; the proposed use fits within the character of the neighborhood. Fifth, the impacts on the natural environment; this proposal is neutral as to that element. Lastly, the potential fiscal impact, including impacts on city services, tax base, and employment; this proposal proposes a use that is a continued contribution to the city's tax base. With the following conditions: the property parking spaces shall be laid out so that vehicles entering the street may do so facing the street, and that the project be set forth according to plans submitted with the application, and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Board Member Schick - Yes Board Member Trahan - Yes
Chairman Mathes – Yes Board Member McTigue – Yes
Clerk Decker – Yes

Passes 5-0

Mr. Mathes expressed that he was impressed with the applicant's presentation and those that appeared in support, and wished Ms. Brito luck in her much needed endeavor.

7. CASE #4218

Petition of: Maria C. Goulart (101 Seymour Street New Bedford, MA) who has submitted a petition for a Variance under provisions of Chapter 9 comprehensive zoning sections 3100 (parking and loading), 3110 (applicability), 3145 (no driveway in a residential district shall exceed eighteen (18) feet in width; relative to property located at 101 Seymour Street, assessor's map 4, lot 59 in a residential A zoned district. The petitioner proposes to widen the driveway to 22 feet as plans filed.

A motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 1/4/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 1/13/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and that the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Ms. Goulart stated she was seeking the variance to widen her existing driveway.

Board Member Schick confirmed that the 4' strip was on the right of the driveway if looking at the house. He inquired if that area sloped down, to which Ms. Goulart stated it was even and noted an existing garden in front of the driveway to the right which will be maintained.

Chairman Mathes noted a staff suggestion for a condition that the 4' buffer be maintained from the edge to the property line. The applicant expressed that that was her intention and would have no problem with that condition of approval.

In response to Chairman Mathes' further invitation to speak or be recorded in support, Jamie Goulart, son of the applicant, stated they are looking to extend the driveway in the event that his elderly grandmother will have to move in with the family, and they will need the room for cars. He stated if not granted, one car would have to park on the grass in order not to park the additional car on the street. He noted the flat area does not present a water runoff issue for the neighboring house on the right.

There was no response to Chairman Mathes' further invitation to speak or be recorded in favor.

There was no response to Chairman Mathes' invitation to speak or be recorded in opposition.

Chairman Mathes declared the hearing closed.

There being no discussion among board members, a motion was made (AD) and seconded (LS) to grant Appeal #4218, a motion to grant a variance under provisions of the city code of New Bedford to Maria C. Goulart (101 Seymour Street New Bedford, MA) relative to property located at 101 Seymour Street, Assessor's Map 4, Lot 59 in a residential A zoned district, to allow the petitioner to widen the driveway to 22 feet as per plans filed, which requires a variance under the provisions of Ch. 9 Comprehensive Zoning, Sections 3100, 3110, 3145.

The board finds first that there are circumstances related to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. These circumstances are that continued parking on the grassy area next to the driveway creates safety concerns for the residents and homeowners. Second, 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 not being able to widen the driveway for parking creates a continued safety concerns for the homeowners and their guests. Third, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. Fourth, that desirable relief may be granted without substantial detriment to the public good. With the following conditions: that the four foot buffer to the side property line be maintained, and that the project be set forth according to plans submitted with the application, and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Board Member McTigue - Yes
Chairman Mathes – Yes
Clerk Decker– Yes

Board Member Trahan - Yes
Board Member Schick – Yes

Passes 5-0

8. NEW BUSINESS:

ELECTION OF OFFICERS:

The proposed slate was as follows: Chairperson James Mathes, Vice-Chairperson Debra Trahan, and Clerk Allen Decker.

A motion was made (LS) and seconded (DT) to accept the slate as presented.
Motion passed unopposed.

9. APPROVAL OF MINUTES:

A motion was made (LS) and seconded (SM) to approve the December 7, 2015 meeting minutes.
Motion was unopposed, with Clerk Decker abstaining.

10. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 7:35 p.m..

Date of Next Meeting: February 18, 2016