



Zoning Board of Appeals

February 18, 2016 – 6:02 PM - **Minutes**

New Bedford City Hall, Room 306

133 William Street

PRESENT: James Mathes (*Acting Chairman*)
John Walsh (departed at 6:43pm)
Debra Raffa-Trahan
Robert Schilling
Sherry McTigue

ABSENT: Allen Decker (*at start, arrived at 6:45pm*)

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.

SCHEDULED HEARINGS

ITEM 3 - CASE #4217

Public hearing on the petition of: YWCA of Southeastern Massachusetts Inc. c/o Gail Fortes (20 South Sixth Street New Bedford, MA) and Marc R. Deshaies, Esq. (115 Orchard Street New Bedford, MA) who have submitted a petition for a Special Permit under provisions of Chapter 9 comprehensive zoning sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430-2432 (nonconforming structures, other than single-and two-family structures), and 4500-4572F (Downtown Business Overlay District DBOD); relative to property located at 20 South Sixth Street, assessor's map 46, lot 69 in a Mixed Use Business [MUB] zoned district and Downtown Business Overlay District [DBOD]. The petitioner proposes to expand the existing structure to enable it to provide needed social services and daycare, meeting rooms for programs services and single resident occupancy units on the upper floors as plan

With respect to Case #4217, a motion was made (JW) and seconded (DT) 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 2/12/16; communication from City Councilor Linda Morad dated 2/11/16; 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.

Motion passed unopposed.

Chairman Mathes declared the hearing open.

Att. Marc Deshaies explained the three parts of the special permit being sought this evening; namely, the expansion of the prior non-conforming structure, permission for single resident occupancy units under the Downtown Business Overlay District, and a request for reduction of dimensional requirements and green space.

Att. Deshaies reviewed the details of the expansion under 2430 related to the current building involved in the project. He explained the evolution of the YWCA organization and its outreach to the community. He stated the organization is looking to locate its program services and administration under one site. He then described the details of the proposed two-story additional building, which will have no elevator, but will be ADA compliant.

Att. Deshaies noted the existence of a restriction on the property under the Mass Historical Society and stated all work proposed will be reviewed by them. He stated again that the first matter to be determined is whether the expansion and alteration are more detrimental to the neighborhood than what exists presently.

Att. Deshaies noted the property is located in a mixed use business district and the DBOD. He referenced meetings between Mr. Romanowicz and the Planning Board office to address the plan for residential units, which he stated basically consists of a bedroom, and, in light of the lack of definition in our by-laws, is therefore allowed under the state building code.

Att. Deshaies addressed the third part of the special permit, namely a reduction in setback requirements from 10' to 6.72', a reduction from 12' to 8', and in the rear from 10' to 6', and the front from 20' to 14.58'. Additionally, he stated they are seeking a reduction in green space from 35% to 23%, as well as a blanket waiver on off-street parking. He stated there are currently 15 spaces leased on a lot south of the building, and have a projected increase of 10 on-site employees upon completing the project.

Att. Deshaies stated they do not expect excessive noise during the construction phase that will impact the neighborhood, and welcomed construction time restrictions from the board. He noted operation hours from 8:00am to 6:00 pm.

Att. Deshaies noted trees to be removed in the project and stated that working with DPI will result in the planting of new trees and the reconstruction of sidewalks to include a grass ribbon. He stated the applicant will consult an arborist to look into trimming existing trees

in an effort to keep them. He again stated they are working with the state and local Historic Commissions.

Mr. Mathes stated the board had received the planning board conditions.

In response to questions from Ms. Trahan, Att. Deshaies estimated a construction phase of twelve months. He stated the resident rooms are for women in transition, aged eighteen and older, and is permanent housing.

In response to Mr. Mathes' invitation to speak or be recorded in support, Julie Parker, Wood Street, Swansea, stated she was Vice President of the Board of Directors. She reiterated the project will bring YWCA services under one roof, and will provide an opportunity for more services for the New Bedford Community. She expressed her full support of the project.

There was no response to Mr. Mathes' further invitation to speak or be recorded in favor. 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 (JW) and seconded (DT) to grant a special permit on Case #4217, under provisions of the city code of New Bedford to the YWCA of Southeastern Massachusetts Inc. c/o Gail Fortes (20 South Sixth Street New Bedford, MA) and Marc R. Deshaies, (115 Orchard Street New Bedford, MA) relative to property located at 20 South Sixth Street, Assessor's Map 46, Lot 69 in a mixed use business zone district and DBOD to allow the petitioner to expand the existing structure to enable it to provide needed social services and daycare, meeting rooms for program services and single resident occupancy units on the upper floors as plan filed requiring a special permit under provisions of Chapter 9 Comprehensive Zoning Sections 2400, 2410, 2430-2432, and 4500-4572F.

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 the following: the social, economic, or community needs served by the proposal; and according to the applicant, the proposal will provide an afterschool daycare center and learning facilities in the immediate downtown area of the city where none exist presently. There is a need for childcare services in the area of the subject property. Second, traffic flow and safety, including parking and loading. According to the applicant, the property is located adjacent to School Street on the south and South Sixth Street on the west, with no change in traffic flow on said streets. The property currently houses the administrative office of the petitioner, and there is no off-street parking and no ability to generate off-street parking on the property. There is adequate on-street parking for the petition's proposed use of the property. Next, adequacy of utilities and other public services. The property is serviced by utilities, both public and private, including water and sewer. Next, the neighborhood character and social structures. The property is located in the area of 19th and 20th century homes that have been converted to professional offices or used as multi-family properties. The petitioner's proposal is to expand the existing structure

to enable it to provide needed social services and daycare to the community in general and the downtown area in particular. Next, the impacts on the environment. Impacts in this case are neutral. Potential fiscal impact. The petitioner is a 501CE tax exempt entity and thus the project is neutral. All municipal services exist at the property and adequately service the needs at the property, including a fire and sprinkler system, and as such there will be no detrimental impact on city services. The number of employees will increase, as new program services will be delivered at the property by the petitioner. Also, according to the City of New Bedford Code of Ordinances Chapter 9, Section 4500-4572F the Board finds the proposed project complies with the requirements and that the proposed project does not cause substantial detriment to the neighborhood after considering the following potential consequences: noise during construction and operational phases, pedestrian/vehicular traffic, environmental harm, and visual impact caused by the character and scale of the proposed structures. Where relief for parking requirements have been sought, the applicant has demonstrated that reasonable efforts have been made to comply with parking requirements. The conversion of the existing structure the Zoning Board of Appeals finds that the proposed project protects the city's heritage by minimizing removal or destruction of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. With the following conditions: That the project be set forth according to plans submitted with the application, and that it be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Mr. Mathes commended the leadership and staff of the YWCA for bringing this complicated project forward and offered his kudos.

Roll-call vote as follows:

Board Member Walsh - Yes

Board Member Trahan - Yes

Chairman Mathes – Yes

Board Member McTigue – Yes

Board Member Schilling – Yes

Passed 5-0

Proceedings recessed briefly at 6:43 pm

(Board Member Walsh exited the meeting and Clerk Allen Decker entered the meeting)

Proceedings reconvened at 6:50 pm

ITEM 4 - CASE #4219

Public hearing on the petition of: Marcel Vieira (7 Eastland Terrace New Bedford, MA) and Attorney Richard J. Manning Jr. (167 William Street New Bedford, MA) who have submitted a petition for a Variance under provisions of Chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-B, height of buildings-# of stories); relative to property located at 7 Eastland Terrace, assessors map 74, lot 10 in a residential-a [RA] zoned district. The petitioner is seeking the approval needed to obtain the necessary permits for the finished basement as plans filed.

A motion was made (AD) and seconded (DT) that the following be received and placed on file: the communication dated 1/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 2/12/16; correspondence from Councilor Kerry Winterson dated 2/4/16, noting an attendance conflict, but expressing his support of the application; 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 the action of the clerk in giving notice of the hearing as stated be and hereby is ratified

Chairman Mathes opened the hearing.

Att. Richard Manning, 167 Williams Street, submitted pictures which he then described. He stated that some years ago, his client, Mr. Vieira hired a contractor to complete some additional living space in the basement. Att. Manning stated that after paying some \$20,000 two rooms were created along with a kitchen area and bath.

A motion was made (AD) and seconded (DT) to receive the photos. Motion passed unopposed.

Att. Manning stated that his client, Mr. Vieira, thought the contractor had properly permitted the work performed. He noted there is no separate basement entrance, but a rear bulkhead allowing access. He stated the basement renovation issues were discovered through a rental Mr. Vieira made after moving out of the property and the Section 8 tenant inspection revealed the renovation problem.

Att. Manning stated his client, who now again resides in the property, was unaware of the issue and is not seeking to create a two-family. He noted that under zoning three stories of habitable space now exist instead of the 2.5 permitted, which, absent a variance, would require his client to rip out the \$20,000.00 worth of basement renovations that were done, a financial hardship. He submitted the shape of Mr. Viera's lot makes any duplication impossible because of setback requirements. Att. Manning reiterated the outside of the house will remain the same, a single family. He stated this was an innocent homeowner who unknowingly created the situation. He agreed the wiring and plumbing will have to be inspected, and if not to code requirements will have to be complied with.

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

Chairman Mathes closed the hearing.

There was board discussion regarding past instances where it was conditioned that the building department can make an inspection every two years to confirm there has been no conversion in the use. The petitioner was agreeable to the condition. Mr. Romanowicz noted that condition will be listed on the permit given.

Ms. Trahan explained that with no egress, insurance companies can deny payment when there are problems and these illegal renovations exist.

There was further board discussion about additional conditions, as well as the problem often created often when the homeowner shifts responsibility to a contractor rather than themselves.

A motion was made (AD) and seconded (DT) to grant Appeal #4219, a motion for Variance under provisions of the City Code of New Bedford to Marcel Vieira (7 Eastland Terrace New Bedford, MA) and Attorney Richard J. Manning Jr. (167 William Street New Bedford, MA) relative to property located at 7 Eastland Terrace, Assessors map 74, Lot 10 in a residential-A [RA] zoned district, to allow the petitioner to seek the approval needed to obtain necessary permits for the finished basement as plans filed, which requires a Variance under provisions of Chapter 9 comprehensive zoning sections 2700, 2710, and 2720 Appendix-B.

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 the lot is undersized, and adding to the existing structure for living space is not possible. Second, due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant. The hardship in this case is that removal would be expensive and the homeowner would lose the benefit of the existing finished basement area that he believed had been done properly by the contractor he hired. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law, and that desirable relief may be granted without substantial detriment to the public good. With the following conditions: that at the discretion of the city's Building Inspector's Office, there may be inspections of the premises as to its use every two years, 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 Schilling - Yes

Board Member Trahan - Yes

Chairman Mathes – Yes

Board Member McTigue – Yes

Clerk Decker– Yes

Passed 5-0

ITEM 5 - CASE #4220

Public hearing on the petition of: DPM Development Corporation (70 Lambeth Street New Bedford, MA) who has submitted a petition for a Variance under provisions of Chapter 9 comprehensive zoning, sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-b, minimum lot size & minimum frontage); relative to property located at NW corner of Meadow Street and

Acushnet Avenue (also known as NS Meadow Street), assessor's map 137 lot 279 in a mixed-use-business [MUB] zoned district. The petitioner proposes to erect a 28' feet x 28' feet single family dwelling as plans filed.

A motion was made (AD) and seconded (DT) that the following be received and placed on file: the communication dated 1/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 2/12/16; the appeals 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 the action of the clerk in giving notice of a hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairman Mathes opened the hearing.

Steve Gioiosa, of Sitec Engineering, Faunce Corner Road, addressed the board on behalf of Dan Moniz of DPM Development. He displayed the 5,400 s.f. parcel of land on the plans, and the frontage on both Acushnet Avenue and Meadow Street. He stated the lot complies as a legal commercial lot in the district, and noted the existence of other commercial businesses in the area.

Mr. Gioiosa stated the applicant is seeking to be more compatible with the neighborhood of single family homes, though residential use adds restrictions the applicant would not have to deal with in the commercial use he is permitted. Mr. Gioiosa stated that with a lot size of 5,400 s.f. and 60 s.f. of frontage, the applicant is seeking relief on the dimensional requirements.

Mr. Gioiosa then discussed residential setbacks, building footprint and green space requirements. He then displayed the proposed plans and stated they were well below the footprint requirements, well above the green space requirements, and had greater setbacks than required. He stated the subject property has been before the ZBA in the past. He noted that previous input from neighbors has led the applicant to relocate the driveway entrance.

Mr. Gioiosa noted by way of topography the sloping of the land and grade changes which he stated creates a hardship on a commercial development of the site. He stated building a house will require very little grade change and will be a significant reduction in environmental impact, as well as density and intensity on the lot. He stated that with regard to any detrimental effect on the neighborhood, the proposed residential project is a better fit in the neighborhood, eliminating the impervious area, lighting and the potential dumpster, all normally associated with a commercial use. He noted the project creates a residence smaller than two of the abutters. He requested the board's consideration.

Ms. McTigue noted correspondence received from an abutter.

A motion was made (AD) and seconded (SM) to receive and place on file correspondence of 2/18/16 by Clifton Hathaway.

Motion passed unopposed.

In response to Mr. Schilling, Mr. Gioiosa stated the finished home would be put on the market.

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

In response to Mr. Mathes' invitation to speak or be recorded in opposition, Alex Oliveira, 4371 Acushnet Avenue, noted a driveway easement on the western side. He stated there is already a water issue and he was concerned about any leveling of sloping ground. He stated it was close to his property and he is opposed. He also noted his concern about any increase in traffic.

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

Chairman Mathes invited rebuttal. Mr. Gioiosa stated the easement area referred to on the western edge of the property will remain undisturbed. He stated that the roof runoff and site drainage will be directed into an on-site recharge system, per DPI requirements. Mr. Gioiosa stated that drainage towards the neighbor had been taken into account in the grading plan, and a swale will be created. He stated that a single family home will generate less traffic than a commercial enterprise.

Mr. Oliveira declined the opportunity for rebuttal.

Mr. Mathes inquired if planning staff had required the development of a landscaping plan and if the applicant was amenable to such a condition. Mr. Gioiosa welcomed the condition.

Chairman Mathes closed the hearing.

A motion was made (AD) and seconded (DT) to grant Appeal #4220, a motion to grant a variance under provisions of the City Code of New Bedford to DPM Development Corporation (70 Lambeth Street New Bedford, MA) relative to property located on the NW corner of Meadow Street and Acushnet Avenue (also known as NS Meadow Street), Assessor's map 137 Lot 279 in a mixed-use-business [MUB] zoned district to allow the petitioner to erect a 28' feet x 28' feet single family dwelling as per plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning, Sections 2700, 2710, 2720 Appendix-B.

The board finds first that there are circumstances related to the soil condition, 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. The circumstances are that the topography of the specific lot is such that it would require significant grading to support a commercial use, and a residential use resulting in much less of a grading. 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. In this case, literal enforcement would result in extensive land alteration significant additional lot

coverage by the building for commercial use due to ADA compliance, and much less green space than as proposed. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law, and that desirable relief may be granted without substantial detriment to the public good. With the following conditions: that a landscaping plan be developed in consultation with the planning department a part of the permitting process, 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 Schilling – Yes	Board Member Trahan - Yes
Chairman Mathes – Yes	Board Member McTigue – Yes
Clerk Decker– Yes	

Passed 5-0

ITEM 6 - CASE #4221

Public hearing on the petition of: Marco D. Sousa (2 Merrimac Avenue New Bedford, MA) who has submitted a petition for a Variance under provisions of Chapter 9, comprehensive zoning section 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations appendix-b, side yards), 2750 (yards in residential districts) and (side yards); relative to property located at 2 Merrimac Avenue, assessor's map 72, lot 218 in a residential-b [RB] zoned district. The petitioner proposes to erect a 14' x 12' addition as plans filed.

A motion was made (AD) and seconded (DT) that the following be received and placed on file: the communication dated 1/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 2/12/16; the appeals 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 the action of the clerk in giving notice of a hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairman Mathes opened the hearing.

Marco Sousa, Merrimac Ave, stated he had no idea what non-conforming was when it was mentioned regarding his 1,200 s.f. house with no yard and an existing deck that does not get any sunlight, making the deck slippery and easy to fall on. He is seeking to enclose the deck with windows all the way around. He stated he needs 12' feet and has only 9' feet.

Mr. Decker confirmed that the work had already been performed.

Mr. Mathes confirmed with Mr. Romanowicz that Merrimac Avenue was a city street.

Ms. Trahan confirmed with Mr. Romanowicz that he had observed the construction which was presently to code.

Mr. Sousa stated there is no opposition to his plan, as he and his neighbor are trying to clean up the neighborhood.

In response to Mr. Mathes' invitation to speak or be recorded in favor, Aaron Mann, of 81 Merrimac Avenue is a neighbor, and stated he has no problem with the proposed project.

In response to Mr. Mathes' further invitation to speak or be recorded in favor, Nakita Barros, Merrimac Ave, spoke on behalf of her parents. She stated her parents believe any improvement or enhancement is a benefit.

In response to Mr. Mathes' further invitation to speak or be recorded in favor, Att. Matt Thomas spoke on behalf of a rear abutter Our Lady of Purgatory Church. He looked to confirm that the water runoff would not be directed to the Lebanese Center property. The applicant confirmed there would be no additional water. Att. Thomas stated that as long as there was no water runoff to come onto the Lebanese Center property, they are not in opposition.

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

Chairman Mathes closed the hearing.

Ms. Trahan noted that in the past it was conditioned that any water runoff problem would be the homeowner's responsibility. The applicant had no problem with such a condition.

Mr. Schilling expressed that he was impressed that abutters had waited some two hours to express their support.

A motion was made (AD) and seconded (DT) to grant Appeal #4221, a motion to grant a variance under provisions of the City Code of New Bedford to Marco D. Sousa (2 Merrimac Avenue New Bedford, MA) relative to property located at 2 Merrimac Avenue, Assessor's map 72, Lot 218 in a residential-b [RB] zoned district to allow the petitioner to erect a 14' x 12' addition as plans filed, which requires a variance under provisions of Chapter 9, comprehensive zoning sections 2700, 2710, 2720 Appendix B, 2750.

The board finds first that there are circumstances related to the soil condition, 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. The circumstances are that the shape of the undersized lot only supports enclosing the existing deck as additional living space to the structure. 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. In this case, the homeowner has no other reasonable use of the deck due to mold and mildew issues and a lack of sunlight to address those. Third, the desirable

relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law, and that the desirable relief may be granted without substantial detriment to the public good. With the following conditions: any issues with water runoff creating problems for abutters will be resolved by the property owner appellant; 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 Schilling - Yes

Board Member Trahan - Yes

Chairman Mathes – Yes

Board Member McTigue – Yes

Clerk Decker – Yes

Passes 5-0

OLD BUSINESS:

ITEM 7 - APPROVAL OF MINUTES

A motion was made (AD) and seconded (DT) to approve the meeting minutes from January 21, 2016, concerning Cases 4126, 4203, 4215, and 4218 as presented.

Motion passed unopposed.

NEW BUSINESS:

Ms. Trahan suggested developing some way to take less lengthy cases first.

Mr. Mathes informed the board that he cannot attend the 3/24/16 meeting.

ITEM 8 – ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 7:55 p.m..

Date of Next Meeting: March 24, 2016