



Zoning Board of Appeals

April 14, 2016 – 6:01 PM - **Minutes**

New Bedford City Hall, Room 306

133 William Street

PRESENT: **Debra Trahan** (*Acting Chairperson*)
Allen Decker (*Clerk*)
Horacio Tavares
Sherry McTigue
Leo Schick

ABSENT: None

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

1. CALL TO ORDER

Chairperson Trahan called the meeting of the City of New Bedford Zoning Board to order at 6:01 p.m.

2. ROLL CALL

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

Chairperson Trahan and Clerk Decker explained the process and procedures for those in attendance.

SCHEDULED HEARINGS

ITEM 1 - CASE #4222 - Petition of Juan E. Rodriguez (369 Cottage 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) and 3130 (table of parking and loading requirements Appendix-C business engaged in retail sale of goods and services); relative to property located at 245 Maxfield Street, assessor's map 58, lot 26 in a Residential-B [RB] zoned district. The petitioner is proposing to convert the use from a convenience store to a barber shop as plans filed.

In regard to Case #4222, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 3/4/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 3/9/16; the appeal 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.

Motion passed unopposed.

Chairperson Trahan declared the hearing open.

Esteban Rodriguez introduced his father, Juan Rodriguez, the property owner which was formerly a grocery store. He noted his father has been a part of the community for many years. He explained financial issues had closed the grocery store. He stated they have an opportunity to open a barber shop in the building. He stated his father's former longstanding business had been a grocery store even prior to Mr. Rodriguez's purchase. He stated he felt a barber shop at the location would be great for the community and would be the only one in the immediate area.

Mr. Decker clarified that the applicant is seeking a variance due to a lack of off-street parking for the business.

Esteban Rodriguez again referenced the former store that serviced customers with the same parking conditions. He stated he did not believe it would be a problem for the neighborhood.

In response to Ms. Trahan, Mr. Rodriguez explained that though he was not licensed, they had a licensed barber ready to come onboard, as well as a contractor.

In response to Mr. Schick, Mr. Rodriguez stated they anticipate five seats in the shop and they expect to hire additional barbers. Mr. Rodriguez noted the space right now is empty and awaiting this approval.

Ms. McTigue inquired as to the number of employees and any staggered shifts. Mr. Rodriguez stated they had not decided on staggered shifts, but expects employees to park further away from the shop to allow parking for customers.

Ms. Trahan clarified with Mr. Rodriguez that the licensed barber is relocating his business from Brockton.

Ms. Trahan noted that the paperwork listed seven chairs as opposed to the five stated. She explained the count of employees and customers being as high as twenty-one at one time, and expressed concern over a need for that many parking spaces. Mr. Rodriguez again referenced the prior operation on the grocery store and multiple customers who visited.

Ms. McTigue clarified the applicant's expectation that patrons would also be walking and not driving to the establishment.

Mr. Rodriguez noted the seven chairs were the maximum that could fit in the space, but they expect only four barbers to start.

Ms. Trahan inquired of the applicant's position should the board allow the application but reduce the number of chairs to four. Mr. Rodriguez stated they would talk to the barber.

In response to Ms. Trahan's invitation to speak or be recorded in favor, Moises Rodriguez asked to be recorded in favor.

There was no response to Ms. Trahan's invitation to speak or be recorded in opposition.

Chairperson Trahan closed the public hearing.

After a brief discussion among board members regarding the number of cutting chairs/sink chairs as well as tenant parking, Mr. Rodriguez asked the board to up the number to five chairs, and stated the establishment would be a male salon. There was discussion on the hours of operation.

A motion was made (AD) and seconded (SM) to grant Appeal #4222, a motion to grant a variance under the provisions of the city code of New Bedford to Juan Rodriguez (369 Cottage Street New Bedford, MA) relative to property located at 245 Maxfield Street, Assessor's map 58, Lot 26 in a Residential-B [RB] zoned district to allow the petitioner to convert the use from a convenience store/grocery store to a barber shop as per plans filed, which requires a variance under the provisions of Chapter 9 comprehensive zoning sections 3100, 3110 and 3130 Appendix-C.

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 creation of off-street parking reduces the available green space on the property and only provides up to two parking spaces. 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 is that the creation of sufficient parking is not possible given the size of the lot and the location of the existing structures. 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 fourth, that the desirable relief may be granted without substantial detriment to the public good. With the following conditions: that the business is limited to four cutting stations and one wet station; and that the hours of operation are limited to 10:00 a.m. to 6:00 p.m. Tuesday through Saturday and 10:00 a.m. to 8:00 p.m. on Fridays; 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 Tavares - Yes

Acting Chairperson Trahan – Yes

Board Member McTigue – Yes

Clerk Decker– Yes

Passed 5-0

ITEM 2 - CASE #4223 - Public hearing on the petition of Cheryl Giovannini (72 Topham 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-height of buildings# of stories-residential); relative to property located at 72 Topham Street, assessor's map 89 lot 150 in a Residential-B [RB] zoned district. The petitioner is seeking approval of a family room, full bathroom, and a closet in the basement as plans filed.

A motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 3/4/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 3/9/16; 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 the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairperson Trahan opened the public hearing.

Cheryl Giovannini explained to the board that she is in need of a permit for her finished basement. She stated that due to health issues, she has to sell her home, where she has been for 38 years. She stated potential buyers require a permit. She stated she has had to move elsewhere and now is faced with the difficult financial hardship of having two homes. Ms. Giovannini stated she had a basement bathroom installed in 2011. She stated upon the potential buyer's request she realized it not permitted. She stated she had a licensed plumber and electrician examine the area. She stated the electrician found no problems, but the plumber noted a shower venting and sump pump issue, which was subsequently fixed.

In response to an inquiry by Chairperson Trahan, Ms. Giovannini stated the family room was done near 1985. They then installed the bathroom and a small closet, but no kitchen.

Ms. McTigue confirmed the existence of a bulk head and a set of stairs leading up into the residence, and that there was no basement living arrangement.

In response to Ms. Trahan's invitation to speak in favor, Maria Boisvert, the real estate agent, explained Ms. Giovannini assumed the person doing the bathroom had pulled the appropriate permit (s).

In response to Ms. Trahan's further invitation to speak or be recorded in favor, Ms. Leigh Giovannini the petitioner's daughter wished to be recorded in favor.

There was no response to Ms. Trahan's invitation to speak or be recorded in opposition.

Upon invitation, Ms. Giovannini expressed that she would appreciate the board's consideration as she is a disabled person in dire need.

Chairperson Trahan closed the public hearing.

After brief board discussion, Ms. McTigue noted that the issue of work done absent a permit comes up often, where people express that they were unaware they needed a building permit. She explained it is the homeowner's responsibility to make sure there is a building permit on file. Ms. McTigue also suggested a condition preventing bedrooms or kitchen in the basement. Mr. Decker agreed.

Mr. Romanowicz noted that would be listed on the building permit.

A motion was made (AD) and seconded (SM) to grant Appeal #4223, a motion to grant a variance under provisions of the City Code of New Bedford to Cheryl Giovannini (72 Topham Street New Bedford, MA) relative to property located at 72 Topham Street, Assessor's map 89, Lot 150 in a Residential-B [RB] zoned district to allow the petitioner to seek approval of a family room, full bathroom, and a closet in the basement as per 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. The circumstances are that the structure in question has already had these interior changes made, which are on the inside only and will not affect the zoning district at large. 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 the work has already been completed and removal would be an extreme hardship on the owner. 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 fourth, that the 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 Tavares - Yes

Acting Chairperson Trahan - Yes

Clerk Decker – Yes

Board Member McTigue – Yes

Board Member Schick – Yes

Passed 5-0

OLD BUSINESS:

3. APPROVAL OF MINUTES

A motion was made (AD) and seconded (LS) to approve the meeting minutes from February 18, 2016, concerning Cases 4217, 4219, 4220, and 4221.

Motion passed unopposed.

4. NEW BUSINESS:

Announcing his departure from the board, Ms. Trahan expressed well wishes and thanks to James Mathes for his service and all he did for the board, as well as for his friendship during his tenure on the board.

She noted his departure leaves a vacancy in the position of Chair.

A motion was made (AD) and seconded (LS) that Debra Trahan be voted as Chair of the Zoning Board of Appeals for the City of New Bedford moving forward.

Motion passed unopposed.

Mr. Decker noted for the public that left a vacancy in the position of Vice Chair and encouraged anyone interested to contact the Office of the City Planner.

5. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 6:45 p.m..