



Zoning Board of Appeals

May 19, 2016 – 6:00 PM - **Minutes**

New Bedford City Hall, Room 306

133 William Street

PRESENT: **Debra Trahan** (*Chairperson*)
 John Walsh (*Acting Clerk*)
 Robert Schilling
 Sherry McTigue
 Leo Schick

ABSENT: Allen Decker

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 6:02 p.m.

2. ROLL CALL

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

Chairperson Trahan/Acting Clerk Walsh explained the process and procedures for those in attendance.

SCHEDULED HEARINGS

ITEM 1 – Case # 4227 - Petition of: Aldo Alves Junior (87 Alpha Street Dartmouth, MA), who has submitted a petition for a Special Permit under provisions of Chapter 9, comprehensive zoning sections 3100 (parking and loading), 3110 (applicability), 3149 (Special Permit-Vehicular access to a building accessed from a public way that does not constitute frontage of a lot), and 5300-5330 & 5360-5390 (Special Permit); relative to property located at 45 Summit Street, assessor's map lot 1 in a residential A zoned district. The petitioner proposes to install a driveway in a rear yard as plans filed.

In regard to Case #4227, a motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 5/2/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 5/5/16; the appeal package; the plans 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.

Jose Fontes, general contractor, explained the home owner was absent due to surgery. He stated they are seeking a driveway in the back of the house, as is common on other homes in the neighborhood. He stated a driveway on the east side would be very expensive.

There was no response to Ms. Trahan's invitation to speak or 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.

There being no questions, a motion was made (JW) and seconded (RS) to approve Appeal #4227, for special permit to Aldo Alves, Jr. (87 Alpha Street, Dartmouth, MA) relative to property located at 45 Summit Street, New Bedford, Assessor's Map 56, Lot 134 to allow the petitioner to install a driveway in a rear yard requiring a special permit under the provisions of Chapter 9 comprehensive zoning sections 1300, 3110, 3149, and 5300-5330, and 5360-5390. The petition is found to be in accordance with the above sections of the City of New Bedford Code of Ordinances Chapter 9. The board finds that the benefit to the city and the neighborhood outweighs the adverse effects of the proposed used, taking into account the characteristics of the site and the proposal in relation to that site. After consideration of the following sections with respect to social, economic and community needs served by the proposal, the board finds that the proposal increases the availability of on-street parking. With respect to Section 5322, the board finds the project will improve traffic flow and safety by increasing the availability of on-street parking. With respect to the adequacy of utilities and other public services, there will be no impact. With respect to neighborhood character and social structures, the board finds the project is in keeping with the neighborhood characteristics and social structures. With respect to impacts on the natural environment, the board finds based upon the material submitted that this project will preserve existing green space on the property. With respect to potential fiscal impact, including impact on the city services, tax base and employment, the board finds the proposal will improve the tax base. In light of the review of the specifics noted in the motion, the board finds the material presented is complete, and after careful consideration of the petitioner's request, the Zoning Board finds the petition satisfactorily meets the basis of the requested relief. Therefore the with the following conditions: that the project be set forth according to plans submitted with the application, that the Notice of Decision be recorded with 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 Schick - Yes

Chairperson Trahan – Yes

Board Member McTigue – Yes

Acting Clerk Walsh– Yes

Passed 5-0

Chairperson Trahan explained the appeal period timeframe.

ITEM 2 - CASE #4228 – Petition of: Cellco Partnership D/B/A Verizon Wireless (One Verizon Way, Mail Stop 4AW100, Basking Ridge NJ) c/o Marisa Desautel, Esq. (900 Elm Street Manchester, NH); and EverSource Energy D/B/A NStar Electric (One NStar Way, NWBED 180 Westwood, MA); who have submitted a petition for a Special Permit under provisions of Chapter 9, comprehensive zoning sections 4900 (wireless communication facilities), 4910 (purpose), 4920 (location), 4940-4964 (special permit), 4950-4959C (conditions), and 5300-5330 & 5360-5390 (special permit); relative to property located at Utility Pole #370 - near Kathleen Street, assessor's map 132 lot 509 - in a residential A zoned district. The petitioners propose the installation of a Cloud Radio Access Network for wireless communication. The installation will occur on an existing utility pole owned by Eversource Energy as plans filed.

A motion was made (JW) and seconded (LS) that the following be received and placed on file: the communication dated 5/2/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 5/13/16; the appeal package; 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.

A motion was made (JW) and seconded (SM/LS) that the report dated 5/18/16 from Isotope wireless and the material from Attorney Desautel dated 4/22/16 be received and placed on file. Motion passed unopposed.

Chairperson Trahan declared the hearing open.

Att. Marisa Desautel, counsel for Verizon Wireless, introduced Brian Sarchi of Structure Consulting, and Victor Manougian counsel for Verizon Wireless.

Att. Desautel welcomed any questions about the materials introduced. She noted the memorandum dated 5/12/16 was submitted in response to a question from the Planning Department with regard to owner authorization for the project. Att. Desautel explained that the easement indicates the title search shows a historic easement granted in 1951 to the utility New Bedford Gas and Edison Light Company. She stated it was recorded in land evidence records and later assigned to Commonwealth Gas Company in 1981. She stated that based on Massachusetts case law the grant of the initial easement satisfies the owner authorization requirement needed. She again welcomed questions.

Ms. McTigue clarified that there is one WCF per pole, and so all the others will not appear on the pole. Att. Desautel affirmed. She directed the board to the photo simulations provided.

Mr. Schilling inquired whether this technology will replace the monopole towers. Att. Desautel stated yes and no, noting the progressive change in the coverage needs.

In response to Mr. Schilling, Mr. Sarchi stated the coverage area might be a mile or more depending on factors.

Mr. Walsh confirmed this was merely putting a piece of equipment on an existing pole. Att. Desautel affirmed.

In response to Mr. Schilling, Att. Desautel stated there were three such projects in the area.

Mr. Schick confirmed that this was for both voice and data.

In response to Ms. Trahan's invitation to speak or be recorded in opposition, Jean DeCoffe, North Street, Mattapoisett, stated her parents' house was 179 Kathleen Street. She stated Kathleen Street was her parents' private street, and the only easement she knew of was the Walgreen's access. She asked where 1 Kathleen Street was located and wondered if the pole was on her parents' property.

Mr. Schick tried to clarify that this was to be mounted on an existing Eversource pole.

Mr. DeCoffe referred to New Bedford Gas and then Commonwealth Electric and now Verizon. She stated that with only three of these in the city, she wondered if it was a necessity and what the value of this cosmetic eyesore was. She stated more information should be given to the existing landowners prior to this going forward.

Mr. Schick stated it was his belief the existing pole was part of an easement granted and that the proposal is to put a two foot canister on said pole.

The plans were shown to Ms. DeCoffe. Ms. DeCoffe again stated Kathleen Street is her family's private street.

Ms. McTigue noted this was listed as Kathleen Road.

At Chairperson Trahan's request Att. Desautel addressed the board in response and directed them to the 5/12/16 letter. She stated that Page 3 of the document was a photocopy of the initial easement described, located at Book 1528 and Page 433 in the New Bedford land evidence records. She stated the easement indicates the owners at the time, Allen Spooner and Maria L. Spooner, granted to New Bedford Gas and Edison Light Company, the perpetual right and easement. She read the further document specifics into the record with regard to 1 Kathleen Street located at Book 1490, Page 393.

Mr. Walsh requested any documents with an address from the appellant. Att. Desautel stated this was the only document with respect to the easement granted. She stated she would provide the board a copy of Book 1490, Page 393, the initial deed to Allen and Maria L. Spooner. Att. Desautel displayed the document on her phone, Book 1490, Page 393, noting the deed was from Roswell Spooner to Allen and Maria Spooner described only by metes and bounds. She stated a cross-reference with recorded plans shows that Lot 1 is the lot the deed is tied to.

Mr. Walsh inquired as to whether the easement pre-existed the street. Att. Desautel was unsure. She stated the plan was created after the easement was recorded, but she was unaware of the length of time between the two.

Ms. DeCoffe reiterated that Kathleen Street was a private street which her family had to plow, and it was never referred to as Kathleen Road. She stated it was never accepted as a street, and the only easement was to Walgreen's which was a previous easement or right of way for a restaurant that had been at that location.

Ms. DeCoffe stated Roswell was her grandfather. She stated the property was split between her uncle and her parents. She stated it is family property and no easement has ever been granted. She stated the only change was after her aunt died and the aunt and uncle's property was sold. She referenced a matter that went before the Historical Society. She again stated the right of way to Bickford's Restaurant was all that was ever granted.

Chairperson Trahan tried to clarify that this is an existing pole which the deed language indicates can be passed on. She inquired as to Ms. DeCoffe's specific objection.

Ms. DeCoffe stated it is cosmetically inappropriate. She stated the appellant seeks to do this based on their belief that there was some easement.

Mr. Walsh explained to Ms. DeCoffe that it is a matter of record.

Ms. DeCoffe argued that Att. Desautel did not have verified documentation about any easement for a pole. She stated she wants to know about it, this being a private street. She stated she did not understand how this could happen. She made a reference to a past problem with the electrical service to Bickford's being charged to 179 Kathleen Street. She stated they are uncomfortable with these blurry areas.

Ms. McTigue inquired as to the attachments shown on the pole. Mr. Sarchi stated the pole consists of a meter, the small canister RH box, along with two very small AC/DC converter boxes, and the antenna system.

Mr. Schick asked if the picture was representative of all equipment to be on the pole. Mr. Sarchi answered affirmatively. He stated there are parameters regarding the height of the equipment related to the tighter broadcasting .

Ms. McTigue confirmed the apparatus will address the networks becoming bogged. Mr. Sarchi agreed and added it eliminates the need to place multiple larger towers.

Mr. Sarchi responded to Ms. McTigue that this pole was chosen based on existing activity and the capacity of the larger tower servicing the area. Mr. Sarchi explained the coloring of the units.

Ms. DeCoffe stated the rendering shows a rectangle taking up 1/3 of the middle section of the pole, which is cosmetically inappropriate. She again stated she felt none of this was valid or legal in light of the language referencing Kathleen Road. She again stated her objection based on her representation that no easement has ever been granted. She inquired as the necessity of choosing this pole in a residential area.

Chairperson Trahan stated that everything had been advertised correctly. She invited rebuttal from the petitioner.

Att. Desautel stated the initial submission had an address of 1 Kathleen Road, which was crossed out by staff and "Street" was written in. She pointed out that the plot and lots have always been accurate; namely, Plot 132, Lot 509. She stated that notice was afforded to all interested parties and she does not believe there is any procedural defect. She noted a copy of the easement is recorded at Book 1528, Page 433.

Chairperson Trahan offered rebuttal to Ms. DeCoffe who stated she would appreciate the board's consideration of what she has presented, that this was her first knowledge of the situation. She stated she believe this should not be allowed to go through.

Chairperson Trahan closed the public hearing.

Mr. Schilling expressed that to him this seemed a classic "not in my backyard" argument. He stated he appreciated Ms. DeCoffe's feeling, but felt such technology was necessary to city residents.

Ms. McTigue stated it appeared to her there was an easement.

Mr. Schick stated that everything seemed to be in order legally. He added that technology is not always pretty.

There being no further discussion or questions, a motion was made (JW) and seconded (LS) to approve the special permit to allow the petitioner Cellco Partnership D/B/A Verizon Wireless to install of a Cloud Radio Access Network for wireless communication. The installation will occur on an existing utility pole owned by Eversource Energy as plans filed, requiring a Special Permit under provisions of Chapter 9, comprehensive zoning sections 4900, 4910, 4920, 4940-4964, 4950-4959C, and 5300-5330 & 5360-5390 relative to property located at Utility Pole #370 - near Kathleen Street, Assessor's Map 132, Lot 509 in a residential A zoned district.

The petition is found to be in accordance with the City of New Bedford Code of Ordinances Chapter 9. Having heard testimony on the merits, the board determines that the adverse effects of the proposed facility will not outweigh the need for the WCF in view of the particular characteristics of the site and of the proposal in relation to that site. This determination includes consideration of the following: With regard to Section 4941, the board has found that the addition of telecommunications equipment on a pre-existing utility pole will improve telecommunications coverage for the residents of the area. With respect to 4942, the board finds there is no impact on traffic flow and safety. With respect to 4943, the board finds that the proposal has no negative impact on existing aesthetics. With respect to Section 4944, the board finds there will be no negative impact on the natural environment because the equipment is being placed on an existing utility pole. With respect to Section 4945, the board has found this proposal is neutral and will have no negative impact. With respect to Section 4946, the board finds this is not applicable.

In addition to the foregoing sections, the petition has also been found to be in accordance with city of New Bedford Code of Ordinances Chapter 9, section 5300-5330 & 5360-5390 relative to the granting of special permits, because the board found that 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.

In consideration of the following sections, the board found that with respect to Section 5321, this proposal will improve telecommunications coverage for residents in the area. With respect to 5322, the board has found there will no effect on traffic flow and safety. With respect to 5323, the board finds this project will have no impact on existing utilities or public services. With respect to Section 5324, the board finds that there will be no negative impact, as the equipment will be mounted on an existing utility pole. With respect to Section 5325, the board finds there is no negative environmental impact. With respect to Section 5326, the board finds this neutral and absent any adverse impact.

In light of its' review of the specifics within this motion the boards finds that the material presented is complete and after careful consideration of the petition request the Zoning Board finds that the petition satisfactorily meets the basis of the requested relief. Therefore, with the following conditions: that the project be set forth according to plans submitted with the application, that the Notice of Decision 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 Schick - Yes

Chairperson Trahan – Yes

Board Member McTigue – Yes

Acting Clerk Walsh– Yes

Passed 5-0

Chairperson Trahan explained the appeal period timeframe.

Ms. DeCoffe requested copies of all materials. Chairperson Trahan directed her to Ms. Gonet for assistance.

3. APPROVAL OF MINUTES

A motion was made (LS) and seconded (JW) to approve the minutes of April 14, 2016.
Motion passed unopposed.

A motion was made (LS) and seconded (JW) to approve the minutes of April 28, 2016.
Motion passed unopposed.

4. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 6:50 p.m..

Next meeting - June 23, 2016