



Zoning Board of Appeals

June 23, 2016 – 6:00 PM - **Minutes**

New Bedford City Hall, Room 306

133 William Street

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

ABSENT: **Debra Trahan**

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

1. CALL TO ORDER

Acting Chairperson Walsh called the meeting of the City of New Bedford Zoning Board to order at 6:00 p.m.

2. ROLL CALL

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

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

SCHEDULED HEARINGS

ITEM 1 – Case # 4230 – Petition of **Virgulino Lima Duarte (168 Grinnell Street New Bedford, MA) for a finding under chapter 9 comprehensive zoning sections 2400 (non-conforming uses and structures), 2410 (applicability), 2440 (nonconforming single and two family structures); relative to property located at 168 Grinnell Street assessor's map 36 lot 203 in a residential-B [RB] zoned district. The petitioner proposes to erect an addition by extending the footprint 3 feet, raising the deck, and finishing the basement as plans filed.**

In regard to Case #4230, a motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 6/3/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 6/15/16; communication from resident Jose Ayala dated 6/22/16; the appeal package; the plan 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.

Acting Chairperson Walsh opened the public hearing.

Mr. Duarte, stated he was looking for board permission to do a little construction in his basement to prepare his home for his retirement. He stated that when exiting his basement he hits his head on his deck and explained that he needs to bring the basement exit to ground level and cover it. So, he is also looking to elevate the deck one floor.

There was no response to Mr. Walsh's invitation to speak in favor.

In response to Mr. Walsh's invitation to be recorded in favor were the following:
John King, 167 Grinnell Street. In response to Mr. Decker, Mr. King stated he lived across the street.

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

Acting Chairperson Walsh closed the public hearing.

Mr. Decker noted that the City Planner communication indicated some confusion on the deck extension amount. Mr. Duarte stated his understanding is he is extending from where the deck ends by three feet towards the yard. He stated that if the plans say five feet, it's five feet.

After brief board discussion, a motion was made (AD) and seconded (LS) regarding Appeal #4230, Virgulino Lima Duarte (168 Grinnell Street New Bedford, MA) relative to property located at 168 Grinnell Street, assessor's map 36 lot 203, in a residential-B zoned district, to approve a finding to allow the petitioner to erect an addition by extending the footprint, raising the deck, and finishing the basement as per plans filed, which requires a finding under Chapter 9 comprehensive zoning sections 2400, 2410, 2440 relative to a property located at 168 Grinnell Street. Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 above cited sections, the board finds that in respect to these section, the petition is in compliance. In light of its review of the specifics noted within this motion, the board's finding that the material presented is complete and its careful consideration of the petitioner's request, the Zoning Board of Review finds that the petition satisfactorily meets the basis of the requested relief. Therefore this motion is made and includes 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
Acting Chairperson Walsh – Yes
Clerk Decker– Yes

Board Member Schick - Yes
Board Member McTigue – Yes

Passed 5-0

ITEM 2 – Case # 4231 - Petition of Donald Lamarre (17 Antonio Way Dartmouth, MA), for a variance under Chapter 9 comprehensive zoning sections 2330-2334 (accessory structures), 2430-2432 (nonconforming uses and structures - side and rear setback), 2750-2755 (yards in residential districts), 2753 (rear yards), 2755 (side yards); relative to property located at 21 Margin Street assessor’s map 20 lot 368 in a residential-c [RC] zoned district. The petitioner proposes to reconstruct the garage as plans filed.

In regard to Case #4231, a motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 6/3/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 6/15/16; 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.

Acting Chairperson Walsh opened the public hearing.

Donald Lamarre, owner of 21 Margin Street, stated he is seeking approval to build a garage on the same footprint as his existing garage, but making it longer and wider. He stated it will aesthetically look better and not be much higher than the current garage.

Ms. McTigue confirmed that the clearance between the new garage and the stairs is 3.5’.

In response to Mr. Walsh’s invitation to speak in favor, Councilor Joseph Lopes stated he had spoken to the petitioner and abutting neighbors, and there was not a single concern or complaint regarding the improvements.

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

There was no response to Mr. Walsh’s invitation to speak or be recorded in opposition.

Acting Chairperson Walsh closed the public hearing.

There being no questions, a motion was made (AD) and seconded (LS) to approve the variance to allow the petitioner to reconstruct the garage as plans filed, which requires a variance under Chapter 9 comprehensive zoning sections 2330-2334, 2430-2432, 2750-2755, 2753, and 2755 relative to property located at 21 Margin Street, Assessor’s map 20 Lot 368 in a residential-c zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 above cited sections, the board finds that in respect to these sections, the board grants relief as requested. In addition to the foregoing sections, this petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10 relative to the granting of variances, because the board has found that, first, there are circumstances relating 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 location of the existing home limits the siting of the new garage in a different location on the property. 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. In this case replacement of the garage would not otherwise be possible. 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 desirable relief may be granted without substantial detriment to the public good. In light of its review of the specifics noted within this motion, the board's finding that the material presented is complete and its careful consideration of the petitioner's request, the Zoning Board of Review finds that the petition satisfactorily meets the basis of the requested relief. This motion as made includes 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

Acting Chairperson Walsh – Yes

Board Member McTigue – Yes

Clerk Decker– Yes

Passed 5-0

ITEM 3 – Case # 4232 - Petition of Osvaldo DeSousa (118 Portland Street New Bedford, MA), for a variance under Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements, appendix B-Rear yard), 2750 (yards in residential districts), 2753 (rear yards); relative to property at 118 Portland Street assessor's map 4 lot 58 in a residential-A [RA] zoned district. The petitioner proposes to erect a pergola over a rear deck with a BBQ fireplace at the end of this deck as plans filed.

In regard to Case #4232, a motion was made (AD) and seconded (LS) that the following be received and placed on file: communication dated 6/3/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 6/15/16; communication from an anonymous New Bedford home owning family dated 6/10/16; 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.

Mr. Walsh raised the issue of accepting communication from anonymous people.

The motion was rejected, Acting Chairperson Walsh being opposed.

The above motion was remade (AD) and seconded (LS), excluding the anonymous letter. Motion passed unopposed.

Acting Chairperson Walsh opened the public hearing.

Osvaldo DeSousa stated he was looking to build a pergola on an existing deck and a fireplace/barbeque at the end of the deck. He stated he was told he did not have 30' from the property line, having on 25'8", and therefore needed a variance.

Mr. Decker confirmed with the applicant that he had already constructed part of the project. Mr. DeSousa confirmed that the fireplace was already up along with the pergola posts.

Mr. DeSousa stated he is trying to increase the value for the city, adding he is the one paying the taxes on it. He responded to Mr. Decker that he had built the fireplace himself, stating he did not know he needed approval, adding he could buy a pergola from Home Depot and put it up.

In response to Mr. Walsh's invitation to speak in favor, Councilor Joseph Lopes stated he has known Mr. DeSousa and his wife for many years. He stated they have a beautiful well-maintained home. He stated that he has spoken to the neighbors who have no issues and think it would be a nice addition to the neighborhood.

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

Acting Chairperson Walsh closed the public hearing.

Ms. McTigue noted the fire pit is an issue with the city and not with zoning.

In response to Mr. Decker, Mr. Romanowicz clarified that the deck being attached to the house makes it fall into different setbacks. He stated that a deck can go within 6' of the rear yard.

Mr. Decker explained to the applicant that if he reduced the height of the pergola by 18" then that would solve his problem. The applicant agreed.

Ms. Gonet added more clarification.

There being no further discussion, a motion was made (AD) and seconded (LS) to approve the variance to allow the petitioner to erect a pergola over a rear deck with a BBQ fireplace at the end of this deck as per plans filed, requiring a variance under Chapter 9 Comprehensive Zoning sections 2700, 2710, 2720 Appendix B, 2750, and 2753 relative to property at 118 Portland Street, assessor's map 4 lot 58, in a residential-A zoned district.

Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 above cited sections, the board finds that in respect to these section, the relief being sought is granted. In addition to the foregoing sections, this petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10 relative to the granting of variances, because the board has found that there are circumstances relating 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 construction of the pergola over the existing deck surface does not extend the deck surface's impact of the structures on the lot's existing setbacks. 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 require the expense of removal. 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.

In light of its review of the specifics noted within this motion, the board's finding that the material presented is complete and in its careful consideration of the petitioner's request, the Zoning Board of Review finds that the petition satisfactorily meets the basis of the requested relief. Therefore this motion is made and includes 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

Acting Chairperson Walsh – Yes

Board Member McTigue – Yes

Clerk Decker– Yes

Passed 5-0

ITEM 4 – Case # 4233 - Petition of Ronald F. Costa Jr. and Robert F. Dias (78 Moss Street New Bedford, MA) for a variance under chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (General), 2720 (table of dimensional requirements – appendix B-side yard), 2750 (yards in residential districts), 2755 (side yards), 3150 (size of parking space); relative to property located at 78 Moss Street assessor's map 10, lot 152 in a residential-B [RB] zoned district. The petitioner proposes to erect an addition as plans filed.

In regard to Case #4233, a motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 6/3/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 6/15/16; the communication from Jeffrey and Nancy Souza, 72 Moss Street dated 6/23/16; 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.

Acting Chairperson Walsh opened the public hearing.

Robert Dias and Ronald Costa introduced themselves. Mr. Costa stated they were looking to do a garage addition on their home, but due to the size of the lot and the design of the home it

is difficult to meet the side setback required. He stated they had six letters of support from all abutters but one, who is not opposed but has concerns. He stated the neighborhood is consistent with a 3' setback.

Robert Dias offered the signed approvals from the neighbors and abutters who agree with the project.

A motion was made (AD) and seconded (SM) that correspondence from the Dossantos, Mr. Horrocks, the Mellos, Ms. Lopes, and the Venturas, all abutters/neighbors, be accepted and placed on file. Motion passed unopposed.

In response to Mr. Decker, Mr. Costa stated he had spoken to Souzas. He noted it was not hostile and they were concerned with the trees being hurt if they moved the driveway. He stated they did not express it was going to be too close to their home, which is likewise 3' - 3.5' from their property line. Mr. Costa added that they are actually seeking four feet.

Mr. Decker clarified that the Souzas expressed they are concerned with the closeness of an addition and the airflow between that structure and their own, which already has issues with mold and mildew. The applicant responded that they have vinyl siding. Mr. Decker noted that the setback requirement is twelve feet in this instance, the request representing two thirds of the setback waived.

Mr. Dias stated that if denied, the applicant is still seeking to locate cars on the south side of the house due to parking conditions and easier egress.

Mr. Costa reiterated the problematic parking situation currently existing on Moss Street.

Mr. Dias stated he is a life-long New Bedford resident and would like to stay in the city.

In response to Ms. McTigue, Mr. Costa stated the garage is designed for two vehicles, one behind the other. Mr. Dias stated they are gaining some living space in the house, with the living room going from 9x8 to 9x15. This build will leave 18% on this small 7,500' lot.

Mr. Dias stated the driveway will be crushed stone to retain the tree. Mr. Walsh asked if the footprint could be reduced. Mr. Costa stated they could accommodate a 5' setback and still do a garage instead of a home addition.

In response to Mr. Walsh's invitation to speak or be recorded in favor, Councilor Joseph Lopes stated he is aware of the writers of three letters in favor, and has received no call from anyone in opposition. He stated the project meets the neighborhood characteristics, where parking is an issue. He stated he supports the project.

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

Acting Chairperson Walsh closed the public hearing.

Mr. Schick shared that north facing mold problem is not uncommon with a tree present. The applicant stated they will be removing the tree in their back yard.

Ms. McTigue felt a setback of 4.6' seemed reasonable as a condition. Mr. Schilling was agreeable. Ms. McTigue felt with houses so close together, every inch matters.

After brief discussion on the setback distance, a motion was made (AD) and seconded (LS) to approve the variance to allow the petitioner to erect an addition as per plans filed, requiring a variance under chapter 9 comprehensive zoning sections 2700, 2710, 2720 Appendix B, 2750, 2755, 3150 all relative to property located at 78 Moss Street, Assessor's map 10, Lot 152 in a residential-B zoned district.

Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 above cited sections, the board finds that in respect to these sections, the relief requested is granted. In addition to the foregoing sections, this petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10 relative to the granting of variances, because the board has found that there are circumstances relating 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 proposed addition cannot be located elsewhere on the property. 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 prevent the ability for the homeowner to provide adequate onsite parking. 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.

In light of this review of the specifics noted within this motion, the board's finding that the material presented is complete and in its careful consideration of the petitioner's request, the Zoning Board of Review finds that the petition satisfactorily meets the basis of the requested relief. Therefore this motion is made and includes the following conditions: that the project be set forth according to the plans submitted with the application, and 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, and that the south side setback of the improvements be at least five feet.

Roll-call vote as follows:

Board Member Schilling - Yes

Board Member Schick - Yes

Acting Chairperson Walsh – Yes

Board Member McTigue – Yes

Clerk Decker– Yes

Passed 5-0

ITEM 5 – Case # 4235 - Petition of 128 Union Street, LLC DBA DeMello International Center (128 Union Street New Bedford, MA) and Poyant Signs (125 Samuel Barnet Boulevard New Bedford, MA) for a Variance under provisions of Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3201 (purpose), 3250

(regulations governing particular types of signs), 3255 (area restrictions for ground signs), and 3256 (location restrictions); relative to property located at 128 Union Street, assessors' map 47 lot 5 in a mixed use business zoned district. The petitioner proposes to erect a 27 square-foot cabinet onto an existing monument sign which was approved under a previous permit as plans filed.

A motion was made (AD) and seconded (SM) that the following documents be received and placed on file: the communication dated 6/3/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 6/15/16; Notice of Decision from the City of New Bedford Planning Board filed 6/16/16; 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.

Ms. McTigue tried to locate the building permit rejection. Once resolved, the motion passed unopposed.

Acting Chairperson Walsh opened the public hearing.

Richard Poyant, of Samuel Barnett Blvd., requested relief for the installation of a single sided 3' x 9' monument sign to be added to an existing monument sign at the corner of Union and Spring Streets at the Santander Bank Building. He stated this is the future site of the DeMello International Center. He stated the sign will have a non-illuminated black background with the letters and logo illuminated. He stated they are seeking to re-brand the building. He invited questions.

In response to Mr. Schilling's suggestion that the Santander sign be made smaller, Mr. Poyant stated other building changes will increase the prominence of the DeMello Center. He stated this compromise with Santander will keep everything in an architectural conformity. In response to an inquiry by Mr. Decker, Mr. Poyant explained the term "cabinet" for the board members.

Ms. McTigue inquired of the setback and any visual obstruction. Mr. Schick noted the original sign size was grandfathered in. Mr. Poyant assured the board the sign is not an obstruction to intersection visibility.

In response to Mr. Walsh's further invitation to speak or be recorded in favor, Councilor Naomi Carney stated she was in favor of the sign modification. She noted that Mr. DeMello has made a substantial investment in the city and she felt the building would bring recognition to the city.

In response to Mr. Walsh's further invitation to be recorded in favor were the following:
Councilor Joseph Lopes

In response to Mr. Walsh's further invitation to speak or be recorded in favor, city attorney Michael McGlone, a tenant of the building, stated he was in favor of approval as it would not

only help Mr. DeMello, but the building tenant also, as its being an international center will bring people into the building.

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

Acting Chairperson Walsh opened the public hearing.

Mr. Decker confirmed that the reason for the rejection was simply that the sign exceeds the allowance by two feet.

There being no further questions or discussion, a motion was (AD) and seconded (RS) to approve the variance to allow the petitioner to erect a 27 square-foot cabinet onto an existing monument sign which was approved under a previous permit as per plans filed, requiring a variance under provisions of Chapter 9 Comprehensive Zoning sections 3200, 3201, 3250, 3255, and 3256 all relative to property located at 128 Union Street, assessors' map 47 lot 5 in a mixed use business zoned district,

Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 above cited sections, the board finds that in respect to these sections, the relief requested is granted. In addition to the foregoing sections, this petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10 relative to the granting of variances, because the board has found that there are circumstances relating 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 here are that the proposal adds signage to an existing location without further impacts to the site. 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 affect the proposed uniformity of the addition to the existing signage. 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.

In light of its review of the specifics noted within this motion, the board's finding that the material presented is complete and with its careful consideration of the petitioner's request, the Zoning Board of Review finds that the petition satisfactorily meets the basis of the requested relief. Therefore this motion is made and includes the following conditions: that the project be set forth according to the plans submitted with the application, and 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
Acting Chairperson Walsh – Yes
Clerk Decker– Yes

Board Member Schick - Yes
Board Member McTigue – Yes

Passed 5-0

3. APPROVAL OF MINUTES

A motion was made (JW) and seconded (LS) to approve the May 2016 meeting minutes with respect to Cases #4227 and #4228. Motion passed unopposed. Clerk Decker abstained from voting as he was absent at the referenced meeting.

4. ADJOURNMENT:

There being no further business to come before the board, a motion was made (JW) and seconded (AD) to adjourn at 7:21 p.m..

Next meeting - July 21, 2016