



JONATHAN F. MITCHELL
MAYOR

City of New Bedford
ZONING BOARD OF APPEALS
133 William Street, New Bedford, Massachusetts 02740
Telephone: (508) 979.1488 Facsimile: (508) 979.1576

ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – 1st Floor
WILLIAM STREET
NEW BEDFORD, MA
Monday, April 23, 2018

MINUTES

- PRESENT:** Leo Schick (*Acting Chairperson*)
Allen Decker (*Clerk*)
Robert Schilling
John Walsh
Stephen Brown
- ABSENT:** Debra Trahan-Raffa
- STAFF:** Danny Romanowicz, *Commissioner of the Department of Inspectional Services*
Kirsten Bryan, *Acting City Planner*

CITY CLERKS OFFICE
NEW BEDFORD, MA
2018 JUN 15 A 8:43
CITY CLERK

1. CALL TO ORDER

Acting Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order and read the hearing procedures.

2. PUBLIC HEARINGS

ITEM 1 – Case #4322: Petition of: Louisiana Realty Trust c/o Lesley M. Patterson & Tony Patterson (3330 Acushnet Avenue New Bedford, MA) for a Variance Chapter 9 Comprehensive Zoning sections 2300 (accessory building and uses), 2310 (general), 2330 (accessory structures), 2331 (private garages), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements – appendix B, side yard), 2750 (yards in residence district), and 2755 (side yard); relative to property located at 3330 Acushnet Avenue, assessors’ map 1321 lot 61 in a Mixed Use Business [MUB] zoned district. The petitioners propose to erect a 14’x42’ attached garage as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 2/23/18; communication from the Office of the City Planner dated 3/12/18; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones

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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.

The hearing was declared open.

Mr. Patterson stated he had additional information to submit. He stated the first few pictures were other houses in the area with attached garages at the end of their property line. The pictures following those are of the applicant's home, as well as fences, the proposed location of the garage and the distance to the neighbor's property. He also submitted pictures of his ill wife.

A motion was made (AD) and seconded (RS) to receive and place on file a series of photographs. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to receive and place on file correspondence dated 3/3/18 from Don Gamache.

Motion passed unopposed.

Tony Patterson, property owner of 3330 Acushnet Avenue stated that he is trying to get a garage attached to his home. He stated there are large stones in the back of his property. He is seeking a garage to be able to get his wife in and out without getting wet and/or slipping and falling. Mr. Patterson stated there is no other place to put the garage where it could be attached to the house, as there is a bulkhead behind the house which would not leave enough room.

Mr. Patterson stated that his neighbor Mr. Gamache is familiar with his proposal and does not have a problem with it. Mr. Patterson stated an additional female neighbor on the side of the applicant was unable to come.

There was no response to Acting Chairperson Schick's invitation to speak or be recorded in favor.

There was no response to Acting Chairperson Schick's invitation to speak or be recorded in opposition.

The hearing was closed.

Board Member Decker confirmed with Mr. Patterson that the unique circumstance is the large boulders that prevent placement of the garage elsewhere on the property. Mr. Patterson referred to the bulkhead once again. Board Member Decker confirmed Mr. Patterson's assertion that the garage is now a necessity due to his wife's condition and her safety.

Board Member Walsh confirmed that other area homes have garages on the side.

After brief discussion, including the support of the abutter, a motion was made (AD) and seconded (JW) to grant a variance under the provisions of the City Code of New Bedford relative to property located at 3330 Acushnet Avenue, assessors' map 1321 lot 61 in a Mixed Use Business [MUB] zoned district to allow the petitioners to erect a 14'x42' attached garage as

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plans filed. In accordance with City of New Bedford Code of Ordinances, Chapter 9 sections 5320, the benefit to the city and the neighborhood, outweighs the adverse effect 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: As concerns circumstances related to the soil conditions, shape or topography of the land, in this case the soil conditions and existing boulders, as well as the site's topography, make placement of garage within setbacks very difficult if not impossible to achieve. If the city were to literally enforce the zoning ordinance, due to the circumstances unique to this land or structure it would mean a substantial hardship to the petitioner. In this case, without the attached garage there would be significant impacts on the safety and welfare of the family as concerns ingress and egress to the residence. The granting of the variance will not take away from the purpose of the zoning ordinance, nor would it cause substantial detriment to the public good.

No specific conditions are added to this motion, but general conditions are as follows: that the project be set forth according to the plans submitted with the application; that it be recorded at the Registry of Deeds; and that a building permit be issued by the Department of Inspectional Services and acted upon within one year from the date the decision was granted or they will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Walsh – Yes

Clerk Decker - Yes

Board Member Schilling - Yes

Board Member Brown – Yes

Motion passes 5-0

ITEM 2 – Case #4323: Petition of Carlos M. Almeida (83 Rivet Street New Bedford, MA) for a Variance Chapter 9 Comprehensive Zoning sections 2300 (accessory building and uses), 2310 (general), 2330 (accessory structures), 2334 (No part of such accessory buildings or structures shall be located within thirty (30) feet of the street line on which the principal structure fronts, and, if located within fifty (50) feet from the front street line of the lot, no part of such buildings or structures shall be located within twelve (12) feet of any side lot line intersecting such street. If located in excess of fifty (50) feet from the front street line, the side yard setback shall conform to the requirements of the principal dwelling). 2700 (dimensional requirements), 2710 (general), 2720 (table of dimensional requirements- appendix B- rear yard, side yard, green space35%), 2750 (yards in residence districts), 2753 (rear yard), 2755 (side yard); relative to property located at 83 Rivet Street, assessors' map 31 lot 163 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to erect a 20'x24' accessory structure (shed) as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 2/23/18; communication from the Office of the City Planner dated 3/12/18; 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.

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Carlos Almeida, owner of 83 Rivet Street, stated that he would like permission to do a shed in the same location where he had to knock down in 2013 a structure he learned was a barn which was structurally unsafe. He stated he needs storage which he now doesn't have. He stated the proposed shed is smaller than the barn that was there.

In response to Board Member Walsh, Mr. Almeida stated this structure would be set back 18" inches away from the rear and side property lines. Mr. Almeida stated that the neighbors he spoke to have no objection. Mr. Almeida confirmed that he had installed a fence.

In response to Board Member Decker, Mr. Almeida stated there is nowhere else to place the shed without losing the parking places for tenants. Mr. Almeida again mentioned his lack of storage.

In response to Board Member Brown, Mr. Almeida stated he had allowed the use of the basement to the tenants and now cannot take it back.

There was no response to Acting Chairperson Schick's invitation to speak or be recorded in favor.

There was no response to Acting Chairperson Schick's invitation to speak or be recorded in opposition.

The hearing was closed.

After brief board discussion on whether a hardship is present by a lack of storage space versus the removal of a previous storage space for safety reasons, a motion was made (AD) and seconded (JW) to grant a variance under the provisions of the City Code of New Bedford relative to property located at 83 Rivet Street, assessors' map 31 lot 163 in a Mixed Use Business [MUB] zoned district to allow the petitioner to erect a 20'x24' accessory structure.

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 effect 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: As concerns circumstances related to the soil conditions, shape or topography of the land or structure in question, the existing structure does not allow for the placement of an accessory structure elsewhere on the lot that would comply with existing setbacks, and that if the city were to literally enforce the zoning ordinance, due to the circumstances applicable to this land or structure, it would mean substantial hardship to the petitioner. In this case, the lack of on-site storage for residences of the two-family residence creates a substantial hardship due to lack of storability on the premises. The granting of the variance will not take away from the purpose of the zoning ordinance, nor would it cause substantial detriment to the public good.

No specific conditions are added to this motion, but general conditions are as follows: that the project be set forth according to the plans submitted with the application; that it be recorded at the Registry of Deed and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

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Acting Chairperson Schick – Yes
Clerk Decker - Yes
Board Member Brown – Yes

Board Member Walsh – Yes
Board Member Schilling - Yes

Motion passes 5-0

ITEM 3 – Case #4325: Petition of Derek Fernandes (67 Clifford Street, New Bedford, MA) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430 (nonconforming structures, other than single and two family structures), 2431 (reconstructed, extended or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent), and 5300-5330 & 5360-5390 (special permit); relative to property located at 67 Clifford Street, assessor's map 110, lot 226 in a Residential-B [RB] zoned district. The petitioner is proposing to convert the office space to a studio apartment as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 3/26/18; communication from the Office of the City Planner dated 4/20/18; 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.

Derek Fernandes stated he purchased the property in 2011 to run his business out of, and since he no longer needs the building he has been unable to rent the space, which now can be used only for commercial storage. He is looking to convert the space to a studio apartment with off street parking that will provide new housing to the neighborhood and enable to rent the space.

Board Member Walsh noted that the board had approved a similar project a year or two prior on Court Street and it presently looks very nice and serves as a great addition to the neighborhood. Mr. Fernandes stated one had just been approved for the old Norman's Meats.

Board Member Decker confirmed that, while presently off, there are existing utilities on the property. Mr. Fernandes also confirmed that he is making no exterior changes, but adding a kitchen, and that he has the required parking.

After examining the proposed floor plan, he explained to Board Member Brown that he will heat the unit with hot water baseboards.

In response to Acting Chairperson Schick's invitation to speak or be recorded in favor, Councilor Maria Giesta stated she knows the applicant as a resident and business owner in the city. Councilor Giesta stated she has seen changes of many such small buildings in the area into residences, and she does not believe it will take away from the look of the street. She expressed her support for Mr. Fernandes, especially since he has had difficulty renting this property as it is.

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In response to Acting Chairperson Schick's invitation to speak or be recorded in favor Mary Lou Alfonso, an abutter, inquired if the garage that abuts the building will still be rented to the same group of men. Ms. Alfonso complained about the garage renters being a nuisance to the neighborhood, running their hot rods and taking parking spots, including two of the four on Concord Street.

Board Member Decker tried to explain to Ms. Alfonso that the garage is not the purview of what is before the board this evening.

Ms. Alfonso insisted it was all connected, and the garage is attached to this old store.

Board Member Brown inquired if Mr. Fernandes intended to rent or sell the proposed apartment to one of the garage renters. Mr. Fernandes said it was not, and he already has a prospective tenant. He confirmed the additional parking lot spaces would be used by the tenant.

There was no response to Acting Chairperson Schick's invitation to speak or be recorded in favor.

In response to Acting Chairperson Schick's invitation to speak or be recorded in opposition, Lea Charpentier, an abutter, also complained about the men using the garage as they worked on cars. Ms. Charpentier also stated that the garage is attached to the building Mr. Fernandes wished to renovate, and it has only two little windows. Ms. Charpentier stated she wants the building to stay as is.

Acting Chairperson Schick also tried to explain to Ms. Charpentier that her concerns about the garage are beyond the board's jurisdiction. He suggested she speak to the proper city officials.

At Board Member Brown's behest, Ms. Charpentier continued, stating these men have gone to where the new tenant will park and urinate. She stated that neighbors have small children that have to watch this. She insisted the garage plays a part in the decision, but stated that the board didn't want to hear it.

Board Member Schilling likewise tried to explain to Ms. Charpentier what was before the board, and informed Ms. Charpentier that public urination is against the law. Ms. Charpentier stated that the offenders are gone before police can get there.

In a rebuttal, Mr. Fernandes stated this is the first time he has heard of these issues and he had not been contacted about this. He stated he has told the garage renters that their cars have to be removed. He stated he had addressed a prior problem and he assumes it has stopped, as he has heard no more about it. Mr. Fernandes stated he has addressed all issues brought to him. He added he is not an absentee landlord.

There being no further questions or comments from the speakers, the hearing was closed.

Board Member Walsh noted that with the special permit the property would become residential.

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In response to board inquiry, Mr. Romanowicz confirmed that the garages can be rented, but not for business/commercial use, and welcomed contact with his office.

There being no further board discussion, a motion was made (AD) and seconded (JW) to grant a special permit request under provisions of the City Code of New Bedford relative to property located at 67 Clifford Street, assessor's map 110, lot 226 in a Residential-B [RB] zoned district, to allow the petitioner to convert existing commercial office space to a residential studio apartment as per plans filed.

In accordance with the City Code 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 each of the following:

- As concerns the social, economic or community needs served by the proposal, this proposed use provides additional residential housing in the neighborhood;
- As concerns traffic flow and safety, including parking and loading, the proposed residential use would have sufficient off-street parking for the one family proposed use.;
- As concerns the adequacy of utilities and other public services, existing utilities are adequate for the proposed residential use;
- As concerns the neighborhood character and social structure; the proposed residential use fits within the neighborhood's existing character and social structure;
- As concerns impacts on the natural environment, there are no proposed changes to the footprint or exterior of the building, so the proposed use is neutral;
- As concerns the potential fiscal impact, including impact on city services, tax base and employment, the proposed residential use brings a currently vacant building into use as a residence.

There are no specific conditions, but the following general conditions are that the project be set forth according to the plans submitted with the application; and that 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 from the date the decision was granted or this special permit will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Walsh – Yes

Clerk Decker - Yes

Board Member Schilling - Yes

Board Member Brown – Yes

Motion passes 5-0

(Whereupon proceedings were recessed and then resumed)

ITEM 4 - Case #4326: Petition of Carlton F. Spooner, Jr. (743 Tarkiln Hill Road, New Bedford, MA) and Joseph L. Michaud (324 Union Street, New Bedford, MA) for a Variance under provisions of Chapter 9, Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements - appendix - 8, lot frontage), 3100 (parking and loading), and 3145 (parking in front of dwelling & 18' maximum driveway width); relative

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to property located at 743 Tarkiln Hill Road, assessor's map 125A, lots 519, 520, 521, and 522 in a Residential-B [RB] zoned district. The petitioner is proposing to change from a single family residence to a two-family residence and reduce necessary frontage and parking location as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 3/26/18; communication from the Office of the City Planner dated 4/18/18; 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.

Att. Joseph Michaud, on behalf of Mr. Spooner, stated that the applicant seeks to change a single family residence into a two-family residence, and as such, reduce the necessary frontage and parking location, which requires a variance.

Board Member Decker confirmed that the petitioner is attempting to bring the property into compliance with its existing use. Att. Michaud confirmed the same, noting there will be no fundamental change in what currently exists. He introduced family member Dave Thomisson. Att. Michaud explained what started as a family room which morphed into a defacto in-law apartment. He stated they are simply trying to correct the matter.

Att. Michaud explained that the abutting Swampscott Street was effectively removed with the construction of Rte. 140 and the applicant lost significant frontage. The taking changed the lot's fundamental shape in terms of available frontage necessary; Att. Michaud noted these as circumstances effect his client's lot in particular. He added that literal enforcement would mean severe financial hardship, wherein he would lose use of a significant portion of his property, and stressed that there would be no fundamental change in the property's present use. He also noted the presence of other multi-family homes in the area, and stated the property driveway allows for off-street parking, although the Swampscott Street access is no longer available. As such, he stated there is no way to configure the lot to make it comply.

Att. Michaud stated there is no real proposed change here, and the petitioner asks only for a recognition of what already exists and allowance by the Board of the Variances requested, making the property a legal two-family residence. Att. Michaud added that his understanding is that property for several years has been assessed as a two-family.

In response to Board Member Walsh, Att. Michaud stated they went back no more than some six or seven years. Board Member Walsh indicated the city may be obligated for a reimbursement. Att. Michaud stated the applicant is not looking for that type of relief. He also noted that no abutters were present. Att. Michaud also acknowledged the helpfulness of Ms. Bryan.

There was no response to Acting Chairperson Schick's invitation to speak or be recorded in favor.

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There was no response to Acting Chairperson Schick's invitation to speak or be recorded in opposition.

The hearing was closed.

There being no board discussion, a motion was made (AD) and seconded (JW) to grant a variance under provisions of the City Code of New Bedford relative to property located at 743 Tarkiln Hill Road, assessor's map 125A, lots 519, 520, 521, and 522 to allow the petitioner to change the property use from a single family residence to a two-family residence and reduce necessary frontage and parking location as per the plans filed.

In accordance with the City Code 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 each of the following:

As concerns circumstances related to the soil conditions, shape or topography especially effecting the land or structure in question, but not generally effecting the zoning district, in this case the lot's shape is unique in that it was effected by the state's taking of buffer lanes for the placement of Rte. 140. If the city were to literally enforce the zoning ordinance, due to the circumstances unique to this land or structure, it would mean a substantial hardship to the petitioner. Lack of a variance would mean a defacto loss of use of the property and relocation of cars to Tarkiln Hill Road for parking purposes. The granting of the variance will not take away from the purpose of the zoning ordinance, nor would it cause substantial detriment to the public good.

There are no specific conditions, but the following general conditions are that the project be set forth according to the 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:

Acting Chairperson Schick – Yes

Board Member Walsh – Yes

Clerk Decker - Yes

Board Member Schilling - Yes

Board Member Brown – Yes

Motion passes 5-0

3. APPROVAL OF MINUTES:

A motion was made (AD) and seconded (JW) to approval meeting minutes of February 15, 2018, wherein the following cases were considered: Cases 4217, 4317, 4317, 4318, 4319, 4315 and 4316.

Motion passed unopposed.

4. ADJOURNMENT:

A motion was made (LS) and seconded (AD) to adjourn the meeting 7:25 p.m.

Motion passed unopposed.

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ATTEST.



Allen Decker, Clerk



Date

NEXT MEETING SCHEDULED FOR MAY 17, 2018

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