



JONATHAN F. MITCHELL
MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

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ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – 3rd Floor
WILLIAM STREET
NEW BEDFORD, MA
Thursday, December 13, 2018

MINUTES

CITY CLERKS OFFICE
NEW BEDFORD, MA
2019 JAN 18 A 9:16
CITY CLERK

PRESENT: Leo Schick (*Chairperson*)
John Walsh (*Vice Chairperson*)
Allen Decker
Laura Parrish
Stephen Brown

ABSENT: Robert Schilling

STAFF: Angela Goncalves, *Assistant Project Manager*
Danny Romanowicz, *Commissioner of Buildings and Inspectional Services*

1. CALL TO ORDER

Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:04 p.m.. He then explained the meeting process and protocol.

2. PUBLIC HEARINGS

A motion was made (AD) and seconded (JW) to take the following case out of order.
Motion passed unopposed.

ITEM 1 – Case #4351 - Petition of: 135 Potter Street LLC., Salt Marsh Foods LLC. and C/O Attorney, Michael Franco (32William Street, New Bedford, MA) for an Administrative Appeal under Chapter 9, Comprehensive Zoning Sections 5220 (powers) and 5223 (to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L.A c. 40A, §§ 7, 8 & 15); relative to property located at 135 Potter Street, Assessors' map 82 lot 154 in an Industrial B [IB] zoned district. The petitioner is seeking that the violation letter should be rescinded per letter filed.

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Clerk Decker notified the board that correspondence had been received from the applicant's attorney requesting a withdrawal of the appeal without prejudice.

A motion was then made (AD) and seconded (JW) to withdraw this administrative appeal without prejudice.

Motion passed unopposed.

A motion was made (AD) and seconded (JW) to take the following case out of order.

Motion passed unopposed.

ITEM 2 – Case #4354 - Petition of: Florence A. Curry (11 Potter Street) and John E. Williams, Esquire (651 Orchard Street) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements- Appendix-B minimum lot size, lot frontage, front yard & side yard; relative to property located at 11 Potter Street, Assessors' map83 lot 219 in a Residential A [RA] zoned district. The petitioner is proposing to sell the vacant parcel which will leave the present dwelling on an undersized lot (the lots merged with the property located at 11 Potter Street after the owner purchased them) per 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 11/20/18; communication from the Office of the City Planner dated 12/3/18; 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.

Att. John Williams, representing Ms. Curry, gave a history of Ms. Curry's previous employment in the school system, noting she is now retired. Att. Williams stated this two-story house was purchased in 1957 and she has since lived there. He explained that in the 1960's the state took over and told her she would lose her house. He directed the board to the related subdivision plan. Ms. Curry then purchased the lot behind her house as a result of the information. Att. Williams stated that a portion of Ms. Curry's frontage was taken by the state.

In response to Board Member Brown, Att. Williams stated the reason was for the construction of Rte. 195. He added that all houses to her west were gone.

Att. Williams explained the hardships of the same, including this elderly and handicap woman's need to now back in and out. Her present physical condition requires her to sell the house. He stated when the lot was purchased, the intent was to sell the house upon retirement and build a smaller home. Circumstance did not allow for that, and now Ms. Curry needs to sell the house for her retirement income. He stated that at 3,740 SF, the lot is the same in size as all the other lots on this street. He stated the Kenny Street lot is a buildable lot.

Att. Williams stated that in the 1990s, the city zoning changed house lot size to 8,000 SF, which resulted in the two lots merging into one. He stated as a result they are requesting a variance. He detailed the related circumstances in granting the same.

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In response to Board Member Brown, Att. Williams stated Ms. Curry seeks to sell both lots, as she has already moved into a handicap friendly residence.

In response to Board Member Walsh, Att. Williams confirmed that Ms. Curry has always treated the lots separately, living on one lot and doing nothing with the other.

Att. Williams stated this does not derogate from the intent of the zoning ordinance, and a literal enforcement would cause her substantial hardship. He stated that, in speaking to neighbors and abutters she has letters in favor, which he submitted to the board.

A motion was made (JW) and seconded (AD) to receive and place on file the three letters submitted.

Motion passed unopposed.

In response to Board Member Decker, Att. Williams stated that Ms. Curry could sell the property as is, but that would affect the amount of her retirement income.

In response to Board Member Brown, Att. Williams stated the lot involving the state's taking makes the original lot less marketable, for reasons such as the backing in required, and is a hardship. He stated the granting of the variance would make her whole in the selling of both lots.

In response to Chairperson Schick, Att. Williams confirmed that per the Registry of Deeds, the lots are separate parcels. He did clarify that they have been merged per the city of New Bedford, therefore Ms. Curry received two tax bills.

Board Member Walsh confirmed that Ms. Curry continues to treat them as separate parcels, and the board is allowed to consider them as such.

Board Member Brown clarified the Life Estate Deed and Ms. Curry as the owner.

In response to Chairperson Schick's invitation to speak or be recorded in favor, Councilor Hugh Dunn stated he is in favor of the petition and does not believe the parcel's subdivision will significantly change the neighborhood. He added that not granting relief to Ms. Curry will impose a significant financial hardship, hindering her ability to have a good retirement. He stated he has not heard any negative remarks from the neighborhood.

In response to Chairperson Schick's invitation to speak or be recorded in favor, daughter-in-law Nancy Curry stated she is in favor and this would help her in retirement.

In response to Chairperson Schick's invitation to speak or be recorded in favor, Bob Curry stated he also supports the petition.

In response to Chairperson Schick's invitation to speak or be recorded in favor, Ms. Curry's daughter Sandra Dias, 125 Rockway Street, also stated she agrees with those who have spoken. She reiterated her mother and father's retirement plans for the land.

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In response to Chairperson Schick's invitation to speak or be recorded in favor, Henry Bousquet, a neighbor stated he too is in favor of her petition.

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

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

The public hearing was closed.

After brief 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 11 Potter Street, Assessors' Map 83 lot 219 in a Residential A [RA] zoned district, to allow the petitioner to sell the vacant parcel, which will leave the present dwelling on an undersized lot per plans filed, which requires a Variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 –Appendix B. Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that with respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances. This determination includes consideration of the following:

The board finds first that there are circumstances related to the soil conditions, shape and topography especially effecting the land or structure in question, but which do not generally affect the zoning district in which the land or structure is located. In this case circumstances are that the shape of the existing lot on Potter Street has been severely impacted by the taking and construction layout of Interstate 195, resulting in access being negatively impacted. In addition, the land owner has always treated the Potter Street lot and the Kenny street lot as separate. Second, due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, the hardship is that the landowner being elderly and disabled to a degree has significant difficulty with access and needs to have the lots separated for sale to be made financially whole. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no specific conditions, but with general conditions as follows: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granted variance

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must be exercised by issuance of a building permit 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:

Chairperson Schick – Yes	Board Member Walsh – Yes
Board Member Decker - Yes	Board Member Parrish – Yes
Board Member Brown - Yes	

Motion passes 5-0

ITEM 3 – Case #4350 - Petition of: John Sousa & Carol Sousa (101 Belleville Avenue, New Bedford, MA), Kevin Mendoza, Darlene Mendoza (42 Brown Street, Fairhaven, MA) and Weekly Grind II Realty, LLC., C/O Tom Daly (PO Box 51147, New Bedford, MA) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations-appendix A, commercial #23 Restaurant, Fast Food) and 5300-5390 (special permit); relative to property located at 101 Belleville Avenue, Assessors' map 85 lot 300 in an Industrial A [IA] zoned district. The petitioner proposes to construct a Dunkin Donuts Restaurant with a drive through window per 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 11/20/18; communication from the Office of the City Planner dated 12/3/18; 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.

Jim Bernardino, Bohler Engineering, explained the proposal and reasons for the request. He displayed an aerial photo to the board and explained the same, noting the surrounding mixed use neighborhood and the Industrial A zoning. He then displayed and discussed the plans, including a complete raze and rebuild. He stated the establishment's primary focus is drive through customers and the building contains no sit-down tables. He noted the site has 15 parking spaces, and they received a reduction in parking from the planning board.

Board Member Walsh confirmed that in essence the applicant seeks to change one commercial use for another, in an area with similar type businesses.

Mr. Bernardino noted the current Dunkin Donuts facility, which will be relocated into the proposed facility. Board Member Walsh also confirmed that the planning board had issued conditions.

In response to Chairperson Schick, Mr. Bernardino stated this store will not be a kitchen store.

In response to Board Member Decker, Mr. Bernardino explained the modifications to ingress/egress. Mr. Bernardino also confirmed for Chairperson Schick the proposed green space and landscape plan, adding the applicant also proposed a solid 6' fence.

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In response to Board Member Brown, Mr. Bernardino stated they had provided their traffic flow analysis and explained the same, including the extensive queuing lane. He also confirmed for Board Member Brown their expectation of more employees.

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

The public hearing was closed.

After board discussion, including the conditions imposed by the planning board, a motion was made (AD) and seconded (JW) to grant a special permit under the provisions of the City Code of New Bedford relative to property located at 101 Belleville Avenue, Assessors' Map 85 lot 300 in an Industrial A [IA] zoned district, to allow the petitioner to construct a Dunkin Restaurant with a drive through window per plans filed, which requires a special permit under provisions of Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230 - appendix A, and 5300-5390.

In accordance with the City of New Bedford Code of Ordinances Chapter 9, Section 5320, the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and the proposal in relation to that site.

This determination includes consideration of each of the following:

The social, economic or community needs served by the proposal. In this case, the commercial use of the site will continue and involves the relocation of an existing Dunkin location nearby, and the proposed use will serve ongoing community needs. Concerning traffic flow and safety, including parking and loading, in this case the stacking and queuing of cars has been studied and accounted for in the design plans and sufficient parking and loading are planned and accounted for. Regarding the adequacy of utilities and other public services, existing utilities on site and service needed is adequate and available. Regarding the neighborhood character and social structures, this proposed use fits within the existing neighborhood character and the abutting residential uses have been accounted for in the planned green-scaping on the site. Regarding the impacts on the natural environment, the impacts actually lessen as planned through the green-scaping and through improve storm water handling and treatment on site. Regarding potential fiscal impact, including impacts on city services, tax base and employment, the proposed use keeps a commercial use on site and contributing to the city's tax base.

With the following specific conditions:

That the applicant adheres to the conditions specified in Planning Board Case #18-50 and the site plan review done thereof.

And with general conditions as follows: that the project be set forth according to the plans submitted with the application; that the applicant ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of this special permit must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted or they will lapse.

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Roll-call vote as follows:

Acting Chairperson Schick – Yes	Board Member Walsh – Yes
Board Member Decker - Yes	Board Member Parrish - Yes
Board Member Brown - Yes	

Motion passes 5-0

ITEM 4 – CASE #4352 - Petition of: Carolyn Souza Wade (80 Willis Street, New Bedford, MA) for a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2750 (yards in residence), 2755 (side yard), 3100 (parking and loading), 3110 (applicability), 3140 (location and layout of parking and loading facilities) and 3145 (no driveway in a residential district shall exceed eighteen(18) feet in width); relative to property located at 80 Willis Street, Assessors' map 65 lot 98 in a Residential B [RB] zoned district. The petitioner is seeking approval for extending the driveway to the existing fence on the west side which measured in total 31'X44" per 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 11/20/18; communication from the Office of the City Planner dated 12/3/18; 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.

Carolyn Wade, 80 Willis St., New Bedford, stated she has lived at this location since 1978. She stated they had replaced the driveway in September by a contractor who stated he would apply for the permit. She stated the contractor did not bring the permit to the jobsite, which she described as the permit stating that the green belt was to remain in place from driveway to an existing fence. She stated the contractor paved to the existing fence. They then received a violation letter from the Building Department. They were told the contractor should correct the problem. She added that the area affected has been much cleaner, and tenants can now park off-street. She stated they feel the mistake made by the contractor actually helps keep the property cleaner and frees of much needed street space as their tenants can now park off-street. She requests they be allowed to keep the driveway as is.

Board Member Decker confirmed that Ms. Wade lives at the property, and that she never saw the permit prior to the violation notice.

There was board discussion with the building commissioner regarding the current status of Contractor Morgado.

Ms. Wade stated that upon contacting the contractor, he admitted he had not read the permit and suggested she go to city hall and talk nice to smooth it over. Board Member Decker expressed some concern that as the homeowner she did not read her permit. Ms. Wade took the contractor and his wife at their word and she was not at home when he came to do the job.

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Chairperson Schick rose the issue of drainage created by the current lack of greenspace.

Ms. Wade felt cutting out the violation will create an irregular edge to her driveway.

In response to Chairperson Schick's invitation to speak or be recorded in favor, David Wade stated he has seen the rainwater runoff the driveway to the street. He stated there was previously a divot that collected water. He understands the green belt should've stayed in place and they should have noticed it, however, he reiterated, they took the contractor at his word that he would take care of it. He agreed the driveway is much cleaner and improves the property's appearance.

In response to Board Member Parrish, Mr. Wade confirmed that he went from 4 to 5 parking spaces, one of which now will require driving over the curb. Mr. Wade denied driving over the curb.

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

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

The public hearing was closed.

After board discussion, including: lack of harm and the basis for a decision of whether or not to place blame on the Wades; input from the building commissioner; and the fact that action may be taken against Morgado in this case to repair the error, 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 80 Willis Street, Assessors' map 65 lot 98 in a Residential B [RB] zoned district, to allow the petitioner to seek approval for extending the driveway to the existing fence on the west side which measures in total 31'X 44' per plans filed, which requires a variance under the provisions of Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2750, 2755, 3100, 3110, 3140 and 3145.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that with respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances. This determination includes consideration of the following:

The board finds first that there are circumstances related to the soil conditions, shape and topography especially effecting the land or structure in question, but which do not generally affect the zoning district in which the land or structure is located. In this case, circumstances are such that increasing the width of the driveway will allow addition off-street parking for the landowner and tenants and will improve the appearance of the property. The driveway cannot be located elsewhere, and the drainage will be improved. Second, due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, the hardship is that parking would continue to necessitate on street parking, already at a premium and chasing the contractor would be lengthy and expensive, and the resulting greenspace needs to be maintained over time. Third, the desirable relief may be

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granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no specific conditions, but with general conditions as follows: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granted variance must be exercised by issuance of a building permit 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 – No	Board Member Walsh – Yes
Board Member Decker - No	Board Member Parrish - No
Board Member Brown - Yes	

Motion Fails 2-3

ITEM 5 – Case #4353 - Petition of: Pedro DeAlmeida & Crestina DeAlmeida (137 Holyoke Street, New Bedford, MA) and Couto Construction, Derek Couto (24 Ernest 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 SF), 2750 (yards in residence district) and 2753 (rear yard); relative to property located at 137 Holyoke Street, Assessors' map 127B lot 311 in a Residential A [RA] zoned district. The petitioner proposes to remove an existing deck and build an addition per 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 11/20/18; communication from the Office of the City Planner dated 12/3/18; 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 Couto, representing the DeAlmeidas, stated they are longtime New Bedford residents, seeking a variance in order to add an addition off the back of the residence to extend their kitchen and living area. He stated the family is growing and they are needing to add some living space to the residence or relocate. He stated they propose to extend the kitchen and living

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room with a 12'x16' addition of the back of the house. They proposed to remove the current 22'x30' deck, decreasing the encroachment area of the property by some 5'.

Board Member Decker confirmed the variance relates to the rear yard setback.

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

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

The public hearing was closed.

After brief 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 137 Holyoke Street, Assessors' map 127B lot 311 in a Residential A [RA] zoned district, to allow the petitioner to remove an existing deck and build an addition per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700, 2710, 2720 -Appendix-B, 2750 and 2753.

Having reviewed the petition in light of the City of New Bedford Code of Ordinances Chapter 9, Comprehensive Zoning Sections as cited, the board finds that with respect to these sections, the applicable sections have been addressed. In addition to the foregoing sections, the petition has been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances. This determination includes consideration of the following:

The board finds first that there are circumstances related to the soil conditions, shape and topography especially effecting the land or structure in question, but which do not generally affect the zoning district in which the land or structure is located. In this instance, circumstances are such that the proposed addition to the structure will result in the rear setback being less impacted, and the expansion only works as designed and, in the location, proposed given the structure's location on the property. Second, due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, the proposed expansion is to satisfy the needs of a growing family that would otherwise need to relocate. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw, and that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

With no special conditions, but with general conditions as follows: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office

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be recorded at the Registry of Deeds; and that the rights authorized by the granted variance must be exercised by issuance of a building permit 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
Board Member Decker - Yes	Board Member Parrish - Yes
Board Member Brown - Yes	

Motion passes 5-0

3. APPROVAL OF MINUTES

A motion was made by (AD) and seconded (JW) to approve meeting minutes of November 15, 2018, which addressed Cases #4346; 4347; 4348; and 4349.

Motion passed unopposed.

4. ADJOURNMENT:

The meeting was declared adjourned at 7:37 p.m.

NEXT MEETING SCHEDULED FOR January 17, 2019.



Allen Decker, Clerk



Date