

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – Room 306
WILLIAM STREET
NEW BEDFORD, MA
Thursday, July 21, 2016**

MEETING MINUTES

CITY CLERKS OFFICE
NEW BEDFORD, MA
2016 SEP - 2 P 3:27
CITY CLERK

PRESENT: Debra Trahan (*Chairperson*)
Allen Decker (*Clerk*)
Robert Schilling
Sherry McTigue
Leo Schick

ABSENT: None

STAFF: Dan Romanowicz, *Commissioner of Buildings and Inspectional Services*
Jennifer Gonet, *Assistant Project Manager*
Kreg Espinola, *City Solicitor's Office*

1. CALL TO ORDER

Chairperson Trahan called the meeting of the City of New Bedford Zoning Board to order at 6:05 p.m.

2. ROLL CALL

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

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

A motion was made (AD) and seconded (RS) to take Case #4239 out of order. Motion passed unopposed.

At Large City Councilor Linda Morad (133 William Street New Bedford, MA) requested the board not take cases out of order this evening. She noted that she wished to speak on the first three agenda items before the city council meeting.

SCHEDULED HEARINGS

ITEM 1 – Case #4239 - Petition of: Miller Holdings, LLC (171 Mendell Road Rochester, MA) and 791 Purchase Street, LLC (401 County Street New Bedford, MA) for a Variance under chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability), and 3130 (table of parking and loading requirements, Appendix C); relative to property located at 791-797 Purchase Street, assessor's map 52 lot 292 in a mixed-use-business [MUB] zoned district. The petitioners propose to operate a restaurant and bar establishment as plans filed.

In regard to Case #4239, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 6/30/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 7/20/16; communication from city Councilors Rebeiro, Abreu, Coelho dated 7/21/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.
Motion passed unopposed.

Chairperson Trahan opened the public hearing.

Christian Farland, Farland Corp, representing the applicant, described the location of the 9,281 sf subject property and noted the building encompasses the entire lot. He stated the Elm Street and Zeiterion Parking Garages are within five minutes walking distance. He stated the proposed use is allowed. He stated the applicant wishes to operate an 8,800 sf restaurant/bar and music venue on the property's first floor, with six residential apartments on the second floor. Mr. Farland stated the use requires sixty-eight parking spaces, for which they are seeking relief.

Mr. Farland listed some of the many downtown projects that have come before the board for similar relief. He stated this project, like others, will greatly continue the trend of projects revitalizing the city's downtown. He reviewed the conditions to be met for the granting of a variance and noted the shape of the lot and building coverage of the lot relative to those findings. He also noted soil conditions, including ledge. He stated failing to acquire the variance would in essence make the lot valueless and create a hardship for the applicant. He stated all big cities have issues with parking and our parking garages have available spaces. Mr. Farland stated the applicant does not want to expend funds on the construction drawings until acquiring the relief sought. He invited questions.

Ms. McTigue confirmed that the requested relief is for the first floor and the six residential units on the second floor. She noted her packet refers to a request only for the first floor. Mr. Farland stated they would be willing to come back if necessary. In response to Ms.

McTigue, Mr. Farland stated they are planning to have valet service if allowed by the traffic commission. He stated there is a valet parking arrangement with the Webster Bank Building. She confirmed with Mr. Farland that that morning deliveries are expected.

In response to Chairperson Trahan's invitation to speak in favor, City Councilor Ward 4 Dana Rebeiro of 260 Union Street New Bedford, MA, a downtown resident, expressed her excitement for the project planned for this now vacant building. Also speaking in favor of the application was Mr. Chris Saunders of 411 County Street, New Bedford, stated he felt it was a great revitalization of a vacant storefront. He stated he expects Mr. Farland will be a great addition to the neighborhood.

In response to Chairperson Trahan's invitation to be recorded in favor were the following:

City Councilor Ward 2 Steve Martins (273 Shaw Street New Bedford, MA),
Ms. Maureen Sylvia Armstrong (131 Elm Street Dartmouth, MA), and
Mr. Robert Unger (38 Laurel Street Fairhaven, MA).

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

Chairperson Trahan closed the public hearing.

Mr. Decker tried to clarify that the application states the proposed use is a restaurant and business, with references to residential use. He stated he did not feel there was a need to make the applicant re-appear before the board.

Commissioner Romanowicz stated the applicant is presently seeking parking for the first floor. He stated the applicant will have to reappear for a special permit for the second floor parking in the Downtown Overlay District for the residential.

Mr. Schilling asked if the application could be amended to include the residential use on the second floor. Chairperson Trahan stated they could not because the matter was not advertised as such.

There being no further discussion, a motion was made (AD) and seconded (LS) to approve the variance to allow the petitioner to operate a restaurant and bar establishment as per plans filed, requiring a variance under Chapter 9 comprehensive zoning sections 3000, 3100, 3110 and 3130 Appendix C relative to property located at 791-797 Purchase Street, assessor's map 52 lot 292 in a mixed-use-business [MUB] 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 will grant relief from Sections 3110 and 3130. In addition to the foregoing sections, this 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 first 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. These circumstances are that the structure completely fills the subject 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 the creation of on-site parking to meet the zoning ordinance would be excessively expensive, making it a substantial financial hardship. 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 finds that the material presented is complete, and after its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. Therefore, this motion as made includes the following conditions:

- a) That the project be set forth according to plans submitted with the application; and
- b) That the Notice of Decision be recorded at the Registry of Deeds; and
- c) 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

Clerk Decker– Yes

Passed 5-0

A motion was made (AD) and seconded (LS) to take Case #4236 out of order. Motion passed unopposed.

ITEM 2 – Case #4236 - Petition of: Anthony R. DeCosta (1861 Shawmut Avenue New Bedford, MA) and Thomas P. Crotty, Esq. (388 County Street New Bedford, MA) for an Administrative Appeal under provisions of chapter 9 comprehensive zoning section 5200 (Zoning Board of Appeals), 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.LA. c. 40A, §§ 7, 8, and 15); relative to property located at 1861 Shawmut Avenue, assessor's map 124 lot 27 in an Industrial-B [IB] zoned district. The petitioners propose to overturn a cease and desist order.

In regard to Case #4236, a motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 6/30/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 7/20/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified. Motion passed unopposed.

Chairperson Trahan opened the hearing

A motion was made (AD) and seconded (LS) to receive materials submitted by the appellant at this time. Motion passed unopposed.

Atty. Thomas Crotty, attorney for the appellant, stated that A-1 Asphalt had been in business for more than fifty years, started in 1964 by Charles DeCosta, Sr. He noted neighbor complaints about trucks coming back and forth from the property, noise and dust, and he stated those issues are not before the board, as they are not issues related to zoning or any claim that the nature of the business is a violation of zoning. He stated that in May a cease and desist order was issued to A-1 Asphalt by Mr. Romanowicz, which is the subject to be addressed this evening.

He stated that Commissioner Romanowicz complained that in the past the building department was not notified by the DeCosta family that they were going to run a business and that the nature of the business was going to be an asphalt business, a contractor's yard, which unfortunately gets into some "dry legal issues related to the nature of the zoning laws and ordinances and grandfathering issues."

He noted the appellant's engineer was present to explain the A-1 Asphalt plans to address neighbor concerns, though those issues are not before the board.

Atty. Crotty stated that in 1932, the previous owner received a certificate of occupancy and a building permit to erect a five-stall garage, which is still being used by A-1. He stated A-1 Asphalt has in the past contracted to do work for the city and the old telephone company. Atty. Crotty referenced permits issued for A-1 in 1973, 1999, and 2000. Atty. Crotty stated these are relevant because the allegation of the Building Commissioner is that A-1 failed to obtain a building permit for any structures associated with A-1 Asphalt. He noted the

existing certificate of occupancy. He noted the only other structure is a hundred year old farmhouse that Mr. DeCosta lives in. Att. Crotty stated that building permits were obtained. He stated the argument is raised that the business itself needed permits. He stated that any use permit would be grandfathered in. Additionally, the present use is still a legal permitted use. Presently, a permit must be obtained for the use. He stated in the 60's you weren't required to tell anybody anything.

Aty. Crotty stated that with regard to the claim that A-1 failed to obtain permit for a contractor's yards, this is a state building code, which went into effect ten years after the business started, and as such is also grandfathered in. He stated the zoning ordinance in the 90's allowed crushing stone in a contractor's yard because any lawful use was permitted and so thus, it, too is grandfathered in. He stated the Building Commissioner's allegation relate to things that are all grandfathered in.

In response to Chairperson Trahan's invitation to speak or be recorded in favor were the following:

Mr. Carmelo Nicolosi of Charon Associates, (323 Neck Road Rochester, MA) the engineers who worked on the engineering on the site; and
Mr. Anthony DeCosta of 1861 Shawmut Avenue New Bedford, MA.

There was no response to Chairperson Trahan's further invitation to speak in favor.

In response to Mr. Schilling, Mr. Crotty stated there are seven current employees. Mr. Crotty added there was a volume increase at one point due to A-1's work for the airport. Mr. DeCosta stated that in 2005 there were approximately ten employees.

Chairperson Trahan invited City Attorney Kreg Espinola to address the board.

Atty. Espinola stated he disagrees with Mr. Crotty's contention with relation to grandfathering and zoning ordinances in 1963. He stated that in 1963 there was an ordinance in place that required a permit from the building inspector which A-1 never received. Atty. Espinola stated the initial permit, from the Town of Dartmouth, called for a one story cement block building, the key being that the purpose of a garage five car capacity says nothing about operation an asphalt company or a rock crushing operation. Atty. Espinola's advised the board that failing to get a building permit has no statute of limitations. Such permits alerts the city as to what is happening in the neighborhoods. A corporation can come in subsequently, even after failing to obtain the initial certificate of occupancy. Atty. Crotty's Exhibit D says wired gas pumps, Charles DeCosta. It says nothing about A-1. So, even in 1973 they are not alerting the building department to what's going on out there. While agreeing with Atty. Crotty that this is a "dry legal issue," the fact

remains that one needs to alert the building department by getting a correct building permit. Having failed to do so, they should not be allowed to operate.

Mr. Schilling stated that the cease and desist should have gone out fifty years ago. Atty. Espinola stated that if you don't know what's happening at a place, one would not send a cease and desist.

Chairperson Trahan inquired as to how the matter came before the board. Atty. Espinola stated a number of neighbors had submitted documents for the board's attention.

Commissioner Romanowicz stated in response to Atty. Crotty's representation that the City of New Bedford has always had a building code, and he read from a 1964 copy. Commissioner Romanowicz noted that A-1 was operating without a license from DEP and eventually had to go to the Conservation Commission, which required Commissioner Romanowicz to submit a letter. This started the research on finding a building permit for the business, which could not be found, and the applicant has not submitted.

Atty. Espinola in response to other issues relative to the cease and desist letter, stated that a contractor's yard is allowed in an Industrial B Zone, however rock crushing is not allowed in a contractor's yard. Atty. Espinola submitted the 1963 zoning regulations and directed the board to the enforcement section relative to permits.

A motion was made (AD) and seconded (LS) to accept sections of the city code concerning Industrial B districts and enforcement thereof. Motion passed unopposed.

In response to Chairperson Trahan's invitation to speak in opposition, City Councilor Ward 1 James Oliveira (39 Briarwood Drive New Bedford, MA) stated he had followed the issue for some time and notes a greatly diminished quality of life for the neighbors. He stated the use of the property has changed over time. He stated that while creating new opportunities, a business still has a high degree of social responsibility to the existing area neighbors. He stated there should be a strong consideration on this aspect of the business, and he encouraged the business find another place for such operation, so that tax paying neighbors may once again open their windows in the summer and let their children play outside. He stated he is opposed to the use in place.

Also speaking in opposition was Mr. Gregory Sirois, 1930 Shawmut Avenue New Bedford, who stated he is a lifelong city resident and city employee who bought his home in 2002. He stated he visited the neighborhood and was aware he was buying a home near an airport and near A-1 Asphalt. He explained the truck traffic at that time of his purchase. He stated that a few years ago the truck traffic changed dramatically. He noted the many 20 ton dump trucks and tractor trailer trucks coming down the street at over 100 per day. He stated they cannot open windows or go outside and enjoy their property, the business

operating from 7:00 am to well after 5:00 pm, as well as Saturdays and some Sundays. He added that houses vibrate from the rock crushing to the point where things fall off the walls. Mr. Sirois told the board the activity has dramatically reduced since that project three years ago but if he's allowed to continue with this activity then there is no doubt that's going to activate again. He stated that this business is not appropriate for a neighborhood. Mr. Sirois further stated the Conservation Commission application was submitted as an aggregate recycling company not A-1 Asphalt. He also encouraged Commissioner Romanowicz to research how many permits were pulled for work in the city to pave driveways.

Also speaking in response to Chairperson Trahan's invitation to speak or be recorded in opposition were the following :

Ms. Andrea Welch, 1878 Shawmut Avenue New Bedford, MA, stated, "I'm in opposition;"

Ms. Emanuela Mello, 113 Falmouth Street New Bedford, MA, a street off of Shawmut Avenue, explained she lives across from these problems;

Mr. Thomas Welch, 1878 Shawmut Avenue New Bedford, stated they were "under siege with A-1 running giant slabs of concrete through his machines and trucks barreling through at high speeds." He stated it is dirty, dusty and noisy. He felt it was an illegal use that started a few years ago and is a horror. He stated they need help;

Mr. Andrew Savaria, 1534 Old Plainville Road New Bedford New Bedford, stated recent roadwork on Shawmut Ave re-routed traffic to Old Plainville Road, and for that three week period he got a taste of the trucks barreling down the road well over the speed limit, creating a scary situation with his small children playing in the yard. He stated he was in opposition;

Ms. Andrea Welch, 1878 Shawmut Avenue New Bedford, MA, stated there was a monitor put on a pull to count the traffic, which happened two days before the cease and desist order. She suggested the board research the amount of traffic from the monitor. She also complained about the rock crushing and the rattling and dust it creates, as well as her concern for her grandchildren. She stated trucks came by every thirty seconds.

In rebuttal, Atty. Crotty stated it was anticipated the neighbors would complain about the operation, but that is not what the board is to base its decision upon. He stated the Conservation Commission proposal would add a new entrance/exit which will clean off trucks as they enter the street to alleviate the dust. He stated they will build a berm to alleviate the noise issue.

Atty. Crotty again noted the only issue before the board is the legal issue about grandfathering rights under the zoning ordinance.

Mr. Carmelo Nicolosi, site engineer, noted a 75 foot long paved section providing storm water runoff along with a 50' section of trap stone. In response to a question from Mr. Schick, Mr. Carbone could not provide an answer indicating what was causing the dust.

Anthony DeCosta stated the dust is coming mostly from the trucks, which will be washed off before entering the street. He stated neighboring houses have windows open day and night.

In response to questions from Mr. Schilling, Mr. DeCosta stated the rock crushing has been in existence since 1990 and that the volume of rock crushing varies depending on the contracts.

Atty. Crotty stated that Sharon Associates engineers went out and created an existing conditions plan, which shows the stone in the same location now as it was in 2000, and in the 1990's as well.

Ms. McTigue inquired as to whether a permit had been pulled for that work. Mr. Crotty stated there was no permit required, per the grandfathering issue.

Mr. Carbone stated a permit was pulled by the Conservation Commission in 2000, regarding work in the buffer zone due to wetlands and an enforcement order.

Ms. McTigue read the section on Industrial B from the 2002 ordinance.

Mr. Crotty stated that in the 1990's the ordinance stated that under Industrial B one could do anything that was not otherwise unlawful.

Atty. Espinola stated the 1963 ordinance stated they needed to get a permit to operate the business and there is no statute of limitations on that issue.

Ms. Trahan inquired of the board if they were in favor of having the applicant get more clarification and have the applicant re-appear.

Atty. Crotty stated the use permit issue, the crux of the Building Commissioner's complaint, is such that fifty years ago or twenty-six years ago no use permit was obtained. The purpose of that is to make sure that the use planned is in compliance. He stated the issue is whether in 1963-1964, when this was a contractor's yard for a blacktop company, was a legal use. He stated the question is whether in 1960's there was anything that he was doing

that was illegal at the time. He stated the Building Department does not allege that this was not a legal use back in the 1960's. Instead they are saying you didn't get the piece of paper--that's all. He stated back in the 1990's rock crushing was a legal use of the property. Atty. Crotty stated that he had never seen a use permit, as opposed to a building permit. He suggested that absent a complaint or allegation that at the time those were not allowed uses, the most the board should do is have A-1 apply for their permits now under the ordinance as it existed.

Atty. Espinola stated that would be an incorrect application of the law. He clarified by reading for the board Section 9, §266 Enforcement. He stated Mr. DeCosta is trying to do an end run around and say he is above that ordinance. Atty. Espinola stated it is not merely a piece of paper, but is the very reason for ordinances, so that neighbors don't have to come in and deal with this. Atty. Espinola encouraged the board to also look at the subsequent permits, which do not say A-1 Asphalt. He stated the law in place should be applied and any deference should be granted to the neighbors. Atty. Espinola stated that Building Inspector Romanowicz has a meritorious argument in addition to a procedural argument.

Chairperson Trahan invited one representative for the opposition to speak. Mr. Sirois referenced a Conservation Commission issue that was never rectified. He stated the representation about trapping the dust from the trucks doesn't do a thing for trucks coming in. He stated they don't use tarps or close the doors on the back of the trucks.

Chairperson Trahan inquired as to the time frame that this problem started and whether it was three years ago. Mr. Sirois stated there was no problem in the neighborhood before that, no dust, no vibrations.

Mr. Schilling stated that three years ago something dramatically changed.

Chairperson Trahan confirmed by show of hands by those in opposition that the change occurred some three years ago.

Mr. Schilling moved to have the board come back. He stated he was not prepared to vote, seeing merit on both sides and a factual question about when the rock crushing operation actually started.

Mr. Decker said he would second the motion, but requested discussion on the motion. He stated he wanted to know what additional information was specifically being sought.

Commissioner Romanowicz addressed Atty. Crotty's representation noting that had DeCosta Sr. gone to get a building permit in 1963 it would have been an allowed use. He

read the 1963 ordinance and the Industrial B use from Section 9, 253, uses and then read Industrial A uses (which would be stone crushing) were allowed providing that nothing injurious, nauseous or offensive to the neighborhood for reason of odor, fumes, dust, smoke, vibration, et cetera, shall be permitted. He felt those things had all been stated by those in opposition this day.

A motion was made (AD) and seconded (SM) to include sections handed in from the 1963 building code for the City of New Bedford. Motion passed unopposed.

Mr. Schilling requested information that in 1964 the cease and desist could have issued. He stated he understood that A-1 did work for the city. Att. Espinola clarified that he had heard no testimony that A-1 was doing work for the city in 1964. Mr. Schilling stated that his understanding was that A-1 was legally out of compliance when hired by the city to do the airport project, subcontracted or otherwise. Mr. Schilling stated that his impression is that some three years ago something changed that dramatically spiked the problems, and he wants to know what spiked.

Mr. Sirois stated the airport project was subcontracted to A-1. He also mentioned a recent Faunce Corner Road reservoir project.

Mr. Decker felt the question stated by Mr. Schilling is at the crux of the questions that need to be answered.

Mr. Schilling also requested that a memo and response be filed before the hearing by both counsel.

Ms. McTigue inquired as to obtaining the Conservation Commission items, and any EPA Title 5 air quality permits.

Chairperson Trahan confirmed with Ms. Gonet the contents of the motion before the board and the continuance of this matter to a date to be determined at 6:00 pm as the first matter heard.

ROLL CALL VOTE AS FOLLOWS:

Board Member Schilling - Yes
Chairperson Trahan – Yes
Clerk Decker– Yes

Board Member Schick - Yes
Board Member McTigue – Yes

Att. Crotty requested any form for a use permit. Commissioner Romanowicz explained that a change of use would be a building permit.

Chairperson Trahan instructed those present who wished to be notified of the next meeting on this matter to provide their name and address to Ms. Gonet.

ITEM 3 – Case #4234 - Notice is given of the public hearing on the petition of: Bouley Property Management LLC c/o Thomas Swift (374 Smith Neck Road So. Dartmouth, MA) for a Special Permit under chapter 9 comprehensive zoning sections 1200 (definitions-lot, and frontage of), 5300-5330 and 5360-5390 (special permit); relative to property located at 361 Arnold Street, assessor's map 44 lot 292 in a residential-B [RB] zoned district. The petitioner proposes to construct a driveway on Armour Street as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 6/30/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 7/15/16; communication from Ricardo Simas, the new owner of 361 Arnold Street, dated 7/21/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairperson Trahan opened the hearing.

Christian Farland, Farland Corp, representing Bouley Property Management, stated the applicant was seeking a special permit for an 18' x 35' driveway. He stated what brings the matter before the board is simply that the driveway is being proposed on Armour Street versus the legal Arnold Street address. Mr. Farland stated they feel the driveway will be an asset to the neighborhood, as it will take 2-3 cars off the roadway, especially during city snow plowing efforts. He stated they had met with DPI, which had no issues with the proposed location. He stated they feel there are no adverse effects or negative impacts associated with this improvement, and it will increase the property value and tax revenue. He invited questions.

In response to Mr. Decker, Mr. Farland confirmed that the area for the driveway is now part of the property's year. Mr. Decker then inquired as to any runoff plans for the additional impervious surface. Mr. Farland stated the addition was negligible with no adverse impact to the street or neighboring properties.

In response to Chairperson Trahan's invitation to speak or be recorded in favor, At Large Councilor Linda Morad (133 William Street New Bedford, MA) asked the board for favorable consideration of what she feels will be an asset to the neighborhood by removing cars from the street and adding to the beauty of the neighborhood.

With regard to Case #4237, Councilor Morad stated that this businessman is making an investment in the City of New Bedford, purchasing a currently vacant building to expand his business to the location. She requested the board's favorable consideration.

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

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

Chairperson Trahan closed the public hearing.

There being no further questions on the matter, a motion was made (AD) and seconded (LS) to approve the special permit to allow the petitioner to construct a driveway on Armour Street as per plans filed, requiring a special permit under Chapter 9 comprehensive zoning sections 1200, 5300-5330 and 5360-5390 relative to property located at 361 Arnold Street, assessor's map 44, lot 292 in a residential-B [RB] 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 is willing to grant relief. In addition to the foregoing sections, this petition has also been found to be in accordance with City of New Bedford Code of Ordinances, Chapter 9, above sections relative to the granting of special permits, because the board has 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.

After consideration of the following sections, the board found first, in regard to Section 5321, social, economic and community needs served by the proposal, the creation of the driveway will serve the community needs by removing cars from using existing street parking. With respect to Section 5322, the board finds the creation of the driveway will remove cars from parking on the street, thereby improving traffic flow and reducing parking load on the street. With respect to 5323, the adequacy of utilities and other public services, the board has found this petition neutral. With respect to 5324, neighborhood character and social structures, the board finds as designed the driveway will not have any effect on the neighborhood character. With respect 5325, impacts on the natural environment, the board finds this petition neutral as the runoff will be directed into the street. With respect to 5326, potential fiscal impact, including impact on the city services, tax base and employment, the board finds the potential increase in value to the property will thereby increase the tax base.

In light of the review of the specifics noted within the motion, the board finds the material presented is complete, and after careful consideration of the petitioner's request, the Zoning Board of Appeals finds the petition satisfactorily meets the basis of the requested relief. Therefore, this motion as made includes the following conditions:

- a) That the project be set forth according to the plans submitted with the application;
- b) That the Notice of Decision be recorded with the Registry of Deeds; and
- c) 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

Clerk Decker – Yes

Motion passed 5-0

ITEM 4 – Case #4237 - Petition of: Hardy Family Nominee Trust, Arthur J. Hardy, Jr. and Norma M. Hardy, Trustee (74 Apple Tree Lane New Bedford, MA) and David Costa (157 Gammons Road Acushnet, MA) for a Special Permit under chapter 9 comprehensive zoning sections 2220 (use regulations), 2210 (general), 2230 (table of use regulations-appendix-A (C) commercial #20-medical offices, center, or clinic) and 5300-5330 & 5360-5390 (special permits); relative to property located at 811 Mount Pleasant Street assessor's map 123A lot 81 in a mixed-use-business [MUB] zoned district. The petitioners propose to operate a chiropractic office as plans filed.

A motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 6/30/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 7/15/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairperson Trahan declared the hearing open.

David Costa of 157 Gammons Road, Acushnet, representing the applicant, stated he is seeking to change the current use at Mount Pleasant Street to a chiropractic office. He stated with his primary office in Wareham, MA, this office will have only a three day a week use and noted that there are five off-street parking spots.

In response to a question from Ms. Trahan, Mr. Costa explained the office will be open Tuesdays, Thursdays and Saturday mornings.

Mr. Decker discussed the parking locations and adequacy with Mr. Costa.

In response to Chairperson Trahan's invitation to speak or be recorded in favor, the Chair first noted Councilor Morad's favorable input noted in Case 4234.

There was no further response to Chairperson Trahan's further invitation to speak or be recorded in favor and there was no response to Chairperson Trahan's invitation to speak or be recorded in opposition.

Chairperson Trahan declared the hearing closed.

There being no further questions on the matter, a motion was made (AD) and seconded (LS) to approve the special permit to allow the petitioner to operate a chiropractic office as per plans filed, requiring a special permit under Chapter 9 comprehensive zoning sections 2200, 2210, 2230 Appendix A, 5300-5330 and 5360-5390 relative to property located at 811 Mount Pleasant Street, assessor's map 123A, lot 81 in a mixed-use-business [MUB] zoned district. This petitioner has been found to be in accordance with the City of New Bedford Code of Ordinances, Chapter 9, above cited sections, particularly as it related to the following conditions:

The board has found the petition is in compliance with the Sections 2210 and 2230. In addition to the foregoing sections, this petition has also been found to be in accordance with City of New Bedford Code of Ordinances, Chapter 9, above sections relative to the granting of special permits, because the board has 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 first, in regard to Section 5321, social, economic and community needs served by the proposal, the proposed use will serve a need in the immediate community not currently served. With respect to Section 5322, traffic flow and safety, including parking and loading, the board finds this use is neutral, as it is adequately addressed by the use. With respect to 5323, the adequacy of utilities and other public services, the board has found this petition neutral, as no change is needed. With respect to 5324, neighborhood character and social structures, the board finds that the use fits within the character of neighborhood. With respect 5325, impacts on the natural environment, the board finds this petition neutral, as no change is needed. With respect to 5326, potential fiscal impact, including impact on city services, tax base and employment, the board finds the use will have a small business operating in the city,

thereby increasing the city's tax base. In light of the review of the specifics noted within 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 board approved the request with the following conditions:

- a) That the project be set forth according to the plans submitted with the application,
- b) That the Notice of Decision be recorded with the Registry of Deeds; and
- c) 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

Clerk Decker – Yes

Motion passed 5-0

A motion was made (RS) and seconded (LS) to take a five minute recess.

Meeting suspended at 8:10 pm and resumed at 8:17 pm.

ITEM 5 – Case #4238 - Petition of: William H. St.Pierre (99 Field Street New Bedford, MA) for a Special Permit under chapter 9 comprehensive zoning sections 1200 (Definitions-lot, and frontage of), and 5300-5330 & 5360-5390 (special permits); relative to property located at 99 Field Street, assessor's map 27 lot 54 in a residential-B [RB] zoned district. The petitioner proposes to create a driveway with a curb cut on Hollyhock Street as plans filed.

A motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 6/30/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 7/15/16; 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.

Chairperson Trahan opened the public hearing.

William St. Pierre of 99 Field Street New Bedford, Ma stated he is looking to put a driveway on the back of his residence where there currently is no driveway. He stated there is a concrete patio in the rear yard that would be easier to convert into a driveway rather than

the front. He stated the front yard has shrubs he would rather not dig up. He is looking for an 18' x 32' driveway that will take four cars off the street and increase the property value.

Mr. Decker confirmed that Mr. St. Pierre was proposing a little extra concrete to increase the parking area to fit more vehicles. Mr. Decker inquired whether the planning staff had expressed any concerns to him about delineating the end of the parking area to the abutting neighbor's lot line. Mr. St. Pierre said they had not but felt it would be a great idea and he was amenable to doing so. Mr. Decker inquired as to whether Mr. St. Pierre intended to put cement to the edge of the property line, which Mr. St. Pierre stated he was not and was only looking for an 18' parking area.

Ms. McTigue confirmed with Ms. St. Pierre that the garage structure was to remain.

There was no response to Chairperson Trahan's invitation to speak or be recorded in favor nor was there any response to Chairperson Trahan's invitation to speak or be recorded in opposition.

Chairperson Trahan closed the public hearing.

Mr. Decker noted the staff comment that parking was not allowed four feet from the rear of the property line.

There being no further questions on the matter, a motion was made (AD) and seconded (SM) to approve the special permit to allow the petitioner to create a driveway with a curb cut on Hollyhock Street as plans filed, which requires a special permit under Chapter 9 comprehensive zoning sections 1200, 5300-5330 and 5360-5390 relative to property located at 99 Field Street, assessor's map 27 lot 54 in a residential-B [RB] zoned district. Having reviewed this petitioner 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 will grant relief from Section 1200. In addition to the foregoing section, this petition has been found to be in accordance with the City of New Bedford Code of Ordinances, Chapter 9, Sections 5300-5330 and 5360-5390 relative to the granting of special permits, because the board has 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 first, in regard to Section 5321, social, economic and community needs served by the proposal, the driveway will serve the community by removing cars from having to use on-street parking. With respect to Section 5322, traffic flow and safety, including parking and loading, the board finds that the removal of cars from parking on the street will improve traffic flow and reduce the load or need on

available street parking. With respect to 5323, the adequacy of utilities and other public services, the board has found this petition neutral. With respect to 5324, neighborhood character and social structures, the board finds that the creation of the driveway fits with the character of neighborhood. With respect to 5325, impacts on the natural environment, the board finds this petition neutral. With respect to 5326, potential fiscal impact, including impact on city services, tax base and employment, the board finds the creation of the driveway may increase the value of the property, thereby increasing the city's tax base. In light of the review of the specifics noted within the motion, the board finds the material as presented is complete, and after its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

Therefore the board approved the request with the following conditions:

- a) That the project be set forth according to the plans submitted with the application;
- b) That the Notice of Decision be recorded with the Registry of Deeds;
- c) A building permit be issued by the Department of Inspectional Services and acted upon within one year;
- d) That the project will include fencing or other delineation of the parking area for safety; and
- e) That parking use will not be allowed within four feet of the rear property line.

Roll-call vote as follows:

Board Member Schilling - Yes

Board Member Schick - Yes

Chairperson Trahan - Yes

Board Member McTigue - Yes

Clerk Decker - Yes

Motion passed 5-0

ITEM 6 – Case #4240 - Petition of: Evelyn F. Carvalho, Trustee, Evelyn F. Carvalho Realty Trust (232 Lawrence Street New Bedford, MA), Candice Rego (140 Sherman Street So. Dartmouth, MA), and Steven Costa (44 Wing Road Acushnet, MA) for a Special Permit under chapter 9 comprehensive zoning sections 4200-4267 (Body Art), and 5300-5326 & 5360-5390 (special permit); relative to property located at 2883 Acushnet Avenue, assessor's map 130B, lot 244 in a mixed-use-business [MUB] zoned district. The petitioners propose to add permanent make-up and body art to the hair and nail salon as plans filed.

A motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 6/30/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 7/15/16; 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.

Chairperson Trahan opened the public hearing.

Mr. Steven Costa of 44 Wing Road Acushnet, MA stated that Ms. Candice Rego of 140 Sherman Street South Dartmouth, MA is looking to add permanent make-up as a service in her salon. He stated they were joining forces.

Mr. Decker inquired if Mr. Costa was aware of a recent city ordinance concerning body art and screening. Mr. Costa stated this would occur in a back room not visible through the front windows and clarified for Chairperson Trahan that this service would include permanent makeup.

Mr. Decker confirmed Mr. Costa's awareness of the time difference between the two operations in that the body art cannot open before the primary salon or operate after the salon closes.

Ms. Rego explained the hours of the neighboring businesses to the nail salon and the parking. She confirmed for Mr. Decker that they saw no parking problems, as this service would only serve one client at a time.

Ms. McTigue inquired as to disposal and delivery associated with tattooing instruments. Mr. Costa explained there is a third party contract for pickup of the locked needle containers.

In response to Chairperson Trahan's invitation to speak or be recorded in favor, Kera Burba of 44 Wing Road Acushnet, MA read a client letter into the record.

In response to Chairperson Trahan's further invitation to speak or be recorded in favor, Pamela DeMelo of 4228 Acushnet Avenue New Bedford, MA expressed her support for the proposal.

There was no response to Chairperson Trahan's further invitation to speak or be recorded in favor nor was there any response to Chairperson Trahan's invitation to speak or be recorded in opposition.

Chairperson Trahan reminded Ms. Gonet about notification to the Board of Health.

Chairperson Trahan closed the public hearing.

There being no further discussion on the matter, a motion was made (AD) and seconded (SM) to approve the special permit to allow the petitioner to add permanent make-up and body art to an existing hair and nail salon as per the plans filed, which requires a special permit under Chapter 9 comprehensive zoning sections 4200-4267, 5300-5326 and 5360-5390 relative to property located at 2883 Acushnet Avenue, assessor's map 130B, lot 244 in a mixed-use-business [MUB] zoned district.

The petition has been found to be in accordance with the City of New Bedford Code of Ordinances, Chapter 9, above cited sections, particularly related to the following conditions. The board has found the petition in compliance with Sections 4210, 4212, 4220, 4230, 4250, 4260. In addition to the foregoing sections, this petition has also been found to be in accordance with the City of New Bedford Code of Ordinances, Chapter 9, Sections 5300-5330 and 5360-5390 relative to the granting of special permits, because the board has 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 first, in regard to Section 5321, social, economic and community needs served by the proposal, the proposed use meets a need currently not served in the immediate community. With respect to Section 5322, traffic flow and safety, including parking and loading, the board finds that the proposed use does not change or impact the existing traffic flow. With respect to 5323, the adequacy of utilities and other public services, the board has found this proposal is neutral. With respect to 5324, neighborhood character and social structures, the board finds that the proposed use does not negatively affect the character of neighborhood. With respect to 5325, impacts on the natural environment, the board finds this proposal is neutral. With respect to 5326, potential fiscal impact, including impact on city services, tax base and employment, the board finds the use expands a small business in the city, thereby increasing the city's tax base. In light of the review of the specifics noted within the motion, the board finds the material presented is complete, and after its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

Therefore the board approved the request with the following conditions:

- a) That the project be set forth according to the plans submitted with the application;
- b) 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; and
- c) That the permanent makeup and body art services shall not be performed before 10:00am or after 10:00 pm.

Roll-call vote as follows:

Board Member Schilling - Yes

Board Member Schick - Yes

Chairperson Trahan – Yes

Board Member McTigue – Yes

Clerk Decker – Yes

Motion passed 5-0

Mr. Decker commented that the petitioner's permanent makeup services are really important for cancer survivors, et cetera.

ITEM 7 – Case #4241 - Petition of: Moby Dick Brewing Company, Inc. (8 Village Road Lakeville, MA), Marder Management Corp. (22 South Water Street New Bedford, MA), and Christopher T. Saunders, Esq. (700 Pleasant Street New Bedford, MA) for a Variance under chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability), and 3130 (table of parking and loading requirements, appendix-c); relative to property located at 52 Union Street, assessor's map 47 lot 37 in an industrial-A [IA] zoned district. The petitioners propose to commence exterior and interior renovation to operate a brew pub and restaurant known as "Moby Dick Brewing Company" as plans filed.

A motion was made (AD) and seconded (LS) that the following be received and placed on file: the communication dated 6/30/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 7/20/16; 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.

Chairperson Trahan opened the public hearing.

Atty. Chris Saunders of 700 Pleasant Street New Bedford, MA introduced the corporate members representing this request to the board. He stated they are proposing to lease the first floor of 52 Union Street. He stated the second floor will remain unchanged regarding tenancy and that there is no available parking, though there is intent to lease space for that purpose. He stated the building comprises the entire lot and that as part of the proposed facility, the applicants were proposing to do a total buildout—working with the Historical Commission—representing a substantial investment into the city. He stated the plan is to brew beer on site. He stated the shape of the building and soil conditions leave them

unable to comply with zoning, absent the destruction of part of the historic structure and the costly building of a parking deck.

Atty. Saunders stated that after speaking with the traffic commission they are aware of ample space in the Elm Street and Zeiterion Garages, as well as space owned by the Redevelopment Authority. He noted this will enhance the walkable city concept and revitalize a vacant space. He invited questions.

In response to Ms. McTigue, Atty. Saunders stated that morning deliveries will primarily be on Commercial Street, per consultation with Mr. Carl Beckman, an abutting property owner.

In response to Chairperson Trahan, Atty. Saunders stated they are proposing outside tables in their liquor license application, but the location is yet to be determined.

There was brief discussion about the possibility of leasing parking space on the pier for parking with valet services. In response to Ms. McTigue, Atty. Saunders stated valet service was being considered. Mr. Schilling also noted the YMCA parking lot which is empty in the evening.

In response to Chairperson Trahan, Atty. Saunders stated they expect fifteen workers, with hours from 11:00 am to 2:00 am and seating for ninety-four.

In response to a question from Mr. Schick, Atty. Saunders stated he thought the residence spaces at Plumbers Landing were actually owned by the City of New Bedford, and thus expected that violators would be towed. He noted they had had discussions with the chief of police regarding an increase in foot patrols for the entire downtown area.

In response to Chairperson Trahan's invitation to speak or be recorded in favor were the following:

Ms. Maureen Armstrong (131 Elm Street Dartmouth, MA), and
Mr. Bob Unger (38 Laurel Street Fairhaven, MA).

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

Chairperson Trahan closed the public hearing.

There being no further discussion, a motion was made (AD) and seconded (LS) to approve the variance to allow the petitioner to commence exterior and interior renovation to operate a brew pub and restaurant known as "Moby Dick Brewing Company" as per plans

filed, requiring a variance under Chapter 9 comprehensive zoning sections 3000, 3100, 3110, 3130, relative to property located at 52 Union Street, assessor's map 47 lot 37 in an industrial-A [IA] 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 from Sections 3110 and 3130. 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 structure occupies the entire lot and the soil conditions are such that ledge would make changes to the lot subsurface extremely expensive and difficult. 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 creation of on-site parking would require demolition of at least a portion of the existing building resulting in a substantial hardship of a financial nature, placing the project in jeopardy. 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:

- a) That the project be set forth according to plans submitted with the application; and
- b) That the Notice of Decision be recorded at the Registry of Deeds; and
- c) 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
Chairperson Trahan - Yes
Clerk Decker - Yes

Board Member Schick - Yes
Board Member McTigue - Yes

Passed 5-0

3. APPROVAL OF MINUTES

A motion was made (AD) and seconded (LS) to approve the June 3, 2016 meeting minutes with respect to Cases #4230 and #4231, #4232, #4233, and #4235. Motion passed unopposed.

4. OLD/NEW BUSINESS:

Chairperson Trahan stated she had spoken to Ms. Gonet about limiting future agendas to four or five cases.

5. ADJOURNMENT:

There being no further business to come before the board, a motion was made (JW) and seconded (AD) to adjourn at 9:10 p.m..

**Next meeting – August 25, 2016
Special Meeting – September 1, 2016**