

ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – Room 306
WILLIAM STREET
NEW BEDFORD, MA
Thursday, August 25, 2016

MEETING MINUTES

CITY CLERKS OFFICE
NEW BEDFORD, MA
2016 NOV 18 P 1:03
CITY CLERK

PRESENT: **Leo Schick** (*Acting Chairperson*)
 John Walsh (*Acting Clerk*)
 Robert Schilling
 Horatio Tavares

ABSENT: Debra Trahan
 Allen Decker
 Sherry McTigue

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

1. CALL TO ORDER

Acting Chairperson Schick 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.

Acting Chairperson Schick explained the process and procedures for those in attendance. He advised petitioners that with four board members present, a unanimous vote would be needed for their petition. He offered petitioners the opportunity to postpone their hearings. Each petitioner declined the offer.

SCHEDULED HEARINGS

ITEM 1 – Case #4242 – Petition of: 813 Real Estate, LLC (813 Purchase Street New Bedford, MA) and Jeff St. Pierre (367 Main Street Fairhaven, MA 02719) for a Variance under provisions of 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 801-803 Purchase Street and 98 William Street, assessor's map 52, lot 289 in a mixed-use-business [MUB] zoned district. The petitioners propose to operate a barber shop as plans filed.

With respect to Case #4242, a motion was made (JW) and seconded (HT) that the following be received and placed on file: the communication dated 7/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 8/17/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified. Motion passed unopposed.

Acting Chairperson Schick opened the public hearing.

Jeff St. Pierre addressed the board regarding parking for his business, and stated that a church up the street is allowing the use of their lot for parking. He provided a letter to the board.

A motion was made (JW) and seconded (HT) to receive and place the same on file. Motion passed unopposed.

In response to Mr. Walsh, Mr. St. Pierre indicated they needed only five of the church parking lot spaces.

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.

Acting Chairperson Schick closed the public hearing.

There being no further questions, a motion was made (JW) and seconded (RS) to approve the variance to allow the petitioners 813 Real Estate, LLC and Jeff St. Pierre to operate a barber shop as plans filed, requiring a variance under provisions of Chapter 9 comprehensive zoning sections 3000, 3100, 3110 and 3130 relative to property located at 801-803 Purchase Street and 98 William Street, assessor's map 52, lot 289 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 criteria

for relief has been met. In addition to the foregoing sections, the petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10 relative to the granting of variances, because the board has found that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. These circumstances are that the building takes up the entire lot, leaving no room for additional parking spaces. 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 hardship that literal enforcement would effectively prevent any new business from operating on that property. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law and that desirable relief may be granted without substantial detriment to the public good. In light of its review of the specifics noted within this motion, the board 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: that the project be set forth according to plans submitted with the application, and that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Acting Chairperson Schick - Yes

Board Member Schilling - Yes

Acting Clerk Walsh – Yes

Associate Board Member Tavares - Yes

Passed 4-0

ITEM 2 – Case #4243 - Petition of: Santo P. Rodriguez (332 Belair Street New Bedford, MA) and Pedro Rodriguez (401 Ashley Boulevard-Apt.1N New Bedford, MA) for a Variance under provisions of 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 401 Ashley Boulevard, assessor's map 108, lot 314 in a mixed-use-business [MUB] zoned district. The petitioners propose to operate a barber shop as plans filed.

In regard to Case #4243, a motion was made (JW) and seconded (HT) that the following be received and placed on file: the communication dated 7/29/16 from the Commissioner of Buildings & Inspectional Services; correspondence from the Office of the City Planner dated 8/17/16; 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.

Gary Langevin, 229 Nye's Lane, Acushnet, addressed the board on behalf of Pedro Rodriguez. He stated they are seeking a variance for an additional parking spot for a pre-existing barber shop they hope to re-open and add an additional chair. He stated there is an existing spot present from the 1960s.

In response to Mr. Walsh, Mr. Langevin stated the designated parking spot is on Ashley Boulevard.

Mr. Walsh clarified that his understanding was that there are no existing parking spaces related to the building, and you're looking for a variance for two parking spaces.

Mr. Langevin agreed, adding again that there is already one designated parking space. He stated there is no off-street parking for residents or the business.

Mr. Walsh again inquired as to the location of the designated parking space. Mr. Langevin stated it was on the street right in front of the barber shop on Ashley Boulevard. He expressed confusion at Mr. Walsh's question.

Mr. Walsh clarified that it was on street parking where anybody can park. Mr. Langevin agreed, but stated there was a sign reading one hour parking, which he assumes was put there for the previous barber shop.

Mr. Walsh stated that to his understanding there are no designated parking spots.

Mr. Langevin stated he cannot say that space is designated for the existing barber shop without examining the files.

Mr. Tavares explained that the board does not designate parking spaces for business.

Mr. Langevin stated he may be using the wrong words and was perhaps looking for an additional one hour parking spot.

Mr. Tavares again explained that any parking spot would not be just for the barber shop business.

Mr. Langevin expressed they were looking for parking for their customers.

Mr. Walsh reiterated to Mr. Langevin that the board does not designate parking spots, and again suggested he may be looking for relief from the lack of parking spaces required.

Acting chairperson Schick clarified that Mr. Langevin was looking for the board to okay an additional section for one hour parking. Mr. Langevin affirmed.

Mr. Tavares confirmed for the board that the petition was for relief from parking.

In response to Mr. Schilling, Mr. Langevin stated he believed the last time the property was used as a barber shop was within the last six years. He stated the property is currently vacant.

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 in opposition, Jose Torres, of Ashley Boulevard, stated he has been a resident for four years. He stated that what Mr. Langevin said was not correct. He stated that there is an auto sales business next door and the petitioner wants to put in an additional business and take another parking space. Mr. Torres admitted to a previous assault charge relating to a neighboring business as to a parking dispute. He stated there is no parking for the residents because Nuno has all the spots taken. He added that due to his investigation, the most recent barber shop was not supposed to be there because it was allowed to open without city hall knowing about it. He stated there has been a car parking in front of his house for 6-7 months and the city has done nothing about.

Mr. Torres stated it is fine to open a business but he does not agree with a designated spot. He stated Mr. Langevin is not handicapped, and it is not fair.

Mr. Walsh again stated that the board would not designate parking. Mr. Schilling added that the board cannot designate the parking space out in front.

Mr. Torres stated he had not gotten any notice in the mail and would not have known about it. He stated he is not against Pedro or Pedro opening a business, but when he arrives home from work he wants a parking spot. He stated that a judge had told Nuno not to have his customers park in front of Mr. Torres' building.

Mr. Walsh again reassured Mr. Torres that the board would not designate any parking spots for the barber shop. He inquired as to whether Mr. Torres would be more comfortable if the proposed barber shop only operated for certain hours. Mr. Torres stated that Nuno's auto shop is supposed to operate from 8:00 – 6:00 Monday thru Friday, and Saturday 8:00 –

4:00, and he knows because he worked there. He stated cars are on the side walk and music blares till 2:00 in the morning. He was concerned that the barber shop will do the same thing. He stated he lives on second floor and sees everything, and when he complains he is the snitch, the rat and the bad guy. He stated he is tired, but if he does something against them he will lose everything, because he is Section 8, so he can't "go smack them up", but they can smack him up. He stated he had come seven times and was told they can't do nothing. He stated two months from now, he and Nuno are going to go at it.

He stated no one knew this was going on and that's not fair to them at all. He again stated he does not object to Pedro's business, but at a certain time or a certain day he better not catch nobody outside, because he's got kids and they can't ride a bike.

In response to Mr. Schilling, Mr. Torres stated his concern is with the parking and any more problems from the barber shop. Mr. Torres stated that he knows what goes on in society and the board members don't. He stated there was prostitution downstairs and he stopped it because there were "dudes knocking at his door".

Mr. Walsh asked Mr. Torres to confine his comments to the parking and the business before the board. Mr. Torres stated that was with the parking too and that's why he's here.

Mr. Torres stated that from the pole to the bus stop is no parking, and Nuno took out the sign and it's behind his shed. He stated he does not care about Mr. Rodriguez business, but pays rent and does not want designated parking.

Ms. Gonet explained that the street sign is from a different board.

Mr. Torres stated he had already spoken to the traffic board. When reminded that was not this board, Mr. Torres stated that everything leads to something and no one will tell him where he is going to park.

The board again assured Mr. Torres that this board will only determine whether Mr. Rodriguez can operate a business without having the required parking spaces.

Mr. Torres stated he has no problem with that.

In response to Mr. Torres, Mr. Walsh stated the board may be able to address the hours of operation.

In response to Acting Chairperson Schick's further invitation to speak or be recorded in opposition, Tammy Cummings stated she does not want any sign that says they can't park there. She stated they had gone through it with a massage parlor located at the property

and had the cops at the house for parking when she had just gotten out of work. She stated Mr. Rodriguez can use the parking in front of Nuno's for his business.

In response to Mr. Schilling, Mr. Langevin suggested operating hours of 8:00 – 5:00, closed Monday and Sunday.

Mr. Torres stated Mr. Rodriguez is his neighbor and he wants him to succeed in life, but he does not want customers parked in front of his house when he gets out of work.

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

Acting Chairperson Schick closed the public hearing.

After brief discussion on the motion contents, a motion was made (JW) and seconded (HT) to approve the variance to allow the petitioner Santo P. Rodriguez and Pedro Rodriguez to operate a barber shop as plans filed, requiring a variance under provisions of Chapter 9 comprehensive zoning sections 3000, 3100, 3110 and 3130 relative to property located at 401 Ashley Boulevard assessor's map 108, lot 314 in a mixed use business zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9, above cited sections, the board finds that in respect to these sections, the criteria for relief has been met. In addition to the foregoing sections, the petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10 relative to the granting of variances, because the board has found that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. These circumstances are that the building takes up the entire lot, leaving no room for additional parking on the lot. 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 hardship that literal enforcement would effectively prevent the petitioner from operating a business out of that location. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law, and that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics noted within this motion, the board 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 criteria on the basis of the requested relief. Therefore, this motion is made and includes the following conditions: that the hours of operation be limited to Tuesday through Saturday, 8:00 a.m. to 5:00 p.m., and that the project be set forth according to plans submitted with

the application, and that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of the decision.

After input from Mr. Romanowicz, the motion was amended (JW) and seconded (RS) to include the condition that the business operation is limited to a two chair barber shop.

Roll-call vote as follows:

Acting Chairperson Schick - Yes

Board Member Schilling - Yes

Acting Clerk Walsh – Yes

Associate Board Member Tavares - Yes

Passed 4-0

3. ADJOURNMENT:

There being no further business to come before the board Acting Chairperson Schick Adjourned these proceedings at 6:40 p.m..

PLEASE NOTE:

Agenda Item #1 Case #4236, petition of: Anthony R. DeCosta (1861 Shawmut Avenue New Bedford, MA), continued from a public hearing held on July 21, 2016 which is scheduled to be heard at a Special Meeting on September 1st, 2016, was not addressed on the record.

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – Room 306
WILLIAM STREET
NEW BEDFORD, MA
Thursday, September 1, 2016**

**SPECIAL MEETING
MEETING MINUTES**

CITY CLERKS OFFICE
NEW BEDFORD, MA
2016 NOV 18 P 1:03
CITY CLERK

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

ABSENT: None

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

1. CALL TO ORDER

Chairperson Trahan called the Special Meeting of the City of New Bedford Zoning Board to order at 6:03 p.m.

2. ROLL CALL

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

Chairperson Trahan explained the following case had been previously opened at the meeting of July 21, 2016.

SCHEDULED HEARINGS

ITEM 1 – 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.L.A. 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

- **Request by Assistant City Solicitor Kreg R. Espinola to continue the hearing of case #4236 until September 22, 2016 or other time amenable to the Board.**

With respect to Case #4236, a motion was made (AD) and seconded (LS) that the following additional correspondence be received and placed on file: correspondence dated 8/26/16 from the Office of the City Solicitor; communication from the City of New Bedford Conservation Commission dated 8/29/16; a letter of interest from Patrick Sheridan of 1194 Old Plainville Road dated 8/21/16; a memorandum from Petitioner's attorney, Thomas Crotty, Esq. submitted 8/19/16.

Motion passed unopposed.

Mr. Decker noted that the 8/26/16 correspondence from the Office of the City Solicitor was a request to continue this matter to a date set by the board. He stated that it is his understanding that the petitioner, through his attorney, is in agreement with the continuance. Mr. Decker noted there are presently no timeframe issues associated with the case

A motion was made (RS) and seconded (AD) to continue the matter.
Motion passed unopposed.

After a scheduling discussion amongst board members, a motion was made (AD) and seconded (SM) to continue the matter to the regularly scheduled September board meeting of 9/22/16. Petitioner to appear at 7:30 p.m.
Motion passed unopposed.

3. APPROVAL OF MINUTES

A motion was made (AD) and seconded (LS) to approve the July 21, 2016 meeting minutes with respect to Cases #4239 and #4236, #4234, #4237, #4238, #4240, and #4241.
Motion passed unopposed.

4. ADJOURNMENT:

There being no further business to come before the board Chairperson Trahan adjourned these proceedings at 6:12 p.m..

Next regularly scheduled meeting September 22nd, 2016

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – Room 306
WILLIAM STREET
NEW BEDFORD, MA
Thursday, September 22nd, 2016**

**MINUTES
MEETING CANCELLED DUE TO A LACK OF QUORUM**

PRESENT: Leo Schick (*Acting Chairperson*)
Robert Schilling

A quorum was not present.

ABSENT: Debra Trahan
Allen Decker
Sherry McTigue

STAFF: Jennifer Gonet, *Assistant Project Manager*

CITY CLERKS OFFICE
NEW BEDFORD, MA
2016 NOV 18 P 1:01
CITY CLERK

1. CALL TO ORDER

Acting Chairperson Schick explained the board was unable to open any public hearings this evening due to a lack of quorum for tonight's meeting. He apologized for any inconvenience this may cause.

Further, he informed that Case # 4244 in regards to 176 Shwamut Avenue, Case #4245 in regards to 331-337 Wood Street, and Case # 4246 in regards to 197 Hawthorne Street will be heard on a date to be determined. Notice will be sent to parties in interest and the meeting will be re-advertised. Lastly, in regards to Case # 4236- 1861 Shawmut Avenue, the case will be heard on October 27th, 2016, he said.

3. ADJOURNMENT:

There being no business to come before the board Acting Chairperson Schick adjourned at 6:05 p.m.

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – Room 306
WILLIAM STREET
NEW BEDFORD, MA
Thursday, October 13, 2016**

MEETING MINUTES

CITY CLERKS OFFICE
NEW BEDFORD, MA
2016 NOV 18 P 1:03
CITY CLERK

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

ABSENT: Debra Trahan

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

1. CALL TO ORDER

Acting Chairperson Schick 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.

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

SCHEDULED HEARINGS

ITEM 1 – Case #4244 - Petition of: Dennis Costa (176 Shawmut Avenue New Bedford, MA 02740) for a Variance under provisions of chapter 9 comprehensive zoning section 2330-2334 (accessory structures), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-appendix b side yards), 2730 (dimensional variations), 2750 (yards in residential districts), and 2755 (side yards); relative to property located at 176 Shawmut Avenue, assessor's map 76, lot 126 in a residential B [RB] zoned district. The petitioner proposes to erect an 18'x20' prefabricated garage as plans filed.

In regard to Case #4244, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 9/2/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 9/15/16; communication from Councilor Linda Morad dated 9/14/16, wherein she advocates for passage of this variance; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Acting Chairperson Schick opened the public hearing.

Dennis Costa, 176 Shawmut Avenue, New Bedford, stated he had purchased a project vehicle in January 2015 which he did restorative work on for 19 months. He stated the vehicle was registered and he is looking to build a garage for the vehicle.

In response to Mr. Decker, Mr. Costa stated he is looking for a variance on the side yard setback.

In response to Acting Chairperson Schick's invitation to speak in favor, Councilor Brian Gomes, expressed support of the variance and requested the board grant the same.

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.

In response to Ms. McTigue, Mr. Costa explained the orientation of the proposed driveway and confirmed future plans to add pavement.

In response to Mr. Decker, Mr. Costa confirmed he will move one of the existing sheds further back to have room for the proposed garage.

Acting Chairperson Schick closed the public hearing.

There being no further questions, a motion was made (AD) and seconded (SM) to approve the variance to allow the petitioner to erect an 18'x20' prefabricated garage as per plans, requiring a variance under Chapter 9 comprehensive zoning sections 2330-2334, 2700,

2710, 2720 Appendix B, 2730, 2750 and 2755 relative to property located at 176 Shawmut Avenue, assessor's map 76, lot 126 in a residential B [RB] zoned district.

Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning Section as cited, the board finds that in respect to these sections, the requested relief is granted. In addition to the foregoing sections, this petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances, because the board has found 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. In this case, given the location of the existing house, the only site for the proposed garage is as proposed per the plans submitted. 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, to comply with existing setbacks in placing the garage, there would be an extreme hardship in accessing the entrance of the garage given the location of the existing house. Third, the desirable relief may be granted without nullifying or substantially derogating from the intent 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 is made and includes the following conditions: that the project be set forth according to plans submitted with the application, and that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

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

Board Member Tavares - Yes
Board Member McTigue – Yes

Passed 5-0

ITEM 2 – Case #4245 – Petition of JMP Property & Development, LLC (24 Jocelyn Street New Bedford, MA 02745) for a Special Permit under provisions of chapter 9 comprehensive zoning sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430-2432 (nonconforming structures, other than single and two-family structures) and 5300-5330 & 5360-5390 (special permit); relative to property located at 331-337 Wood Street, assessor's map 117 lot 26 in a residential-B [RB]. The petitioner

proposes to convert the existing repair shop on the west side of the first floor to a residential unit as plans filed.

In regard to Case #4245, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 9/2/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 9/15/16; communication from Councilor Morad dated 9/14/16, wherein she advocates for passage of this special permit; a revised development impact statement submitted 10/13/16; 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.

After input from Ms. Gonet, an amendment to the motion was made (AD) and seconded (SM) to include a submitted proposed repair renovation at 331-337 Wood Street, submitted 9/23/16. Motion passed unopposed.

Acting Chairperson Schick opened the hearing

Armando Pereira of Comprehensive Design Build Services, Union Street, addressed the board as representative of the owner. He stated the property, a two story structure on the corner of Vernon & Wood Streets, was built in 1925. He stated a former pinball and vending machine repair company, Adams & Adams, previously occupied part of the building. He stated the east side has one residential unit, with a second residential unit above. He stated they are looking to convert the repair shop into another residential unit, by adding two bedrooms and a kitchen. They also wish to install a laundry facility in back and some windows on the west side, all renovations staying within the footprint.

Mr. Pereira stated there are a couple of similar buildings on Wood Street, and historically many buildings did retail business on the first floor. He stated the conversion will better the neighborhood and reduce impacts, such as deliveries and parking. He stated that a residential unit also lessens the structure's hazard rating.

Mr. Pereira stated there are four available off-street parking spaces double stacked, again lowering any impact to the neighborhood. He stated such a use requires no additional city services. He then briefly went through the plans. He noted the area has three and six-family duplexes, and this proposed conversion will definitely fit in.

Mr. Decker noted that a third unit will increase parking requirements, and the applicant will need a parking reduction through the Planning Board. He suggested that their approval could be conditioned on the same.

Mr. Pereira indicated the applicant is amenable to the same.

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

John Pereira, 24 Jocelyn Street, New Bedford, the property owner.

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

Acting Chairperson Schick closed the public hearing.

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 convert the existing repair shop on the west side of the first floor to a residential unit as per plans filed, which requires a special permit under provisions of Chapter 9 comprehensive zoning sections 2400, 2410, 2430-2432, and 5300-5330 and 5360-5390, relative to property located at 331-337 Wood Street, assessor's map 117 lot 26 in a residential-B [RB]. 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 relates to the following conditions: The board has found compliance with said 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, 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 that the social, economic or community needs served by the proposal are that conversion to a residential use adds needed housing in the immediate area. Concerning traffic flow and safety, including parking and loading, the board finds that the removal of commercial use reduces the necessary related traffic flow. With respect to the adequacy of utilities and other public services, the board found that the application is neutral. Concerning the neighborhood's character and social structures, the board finds that the proposal promotes a proposed use that fits within the neighborhood's character of neighborhood. Concerning impacts on the natural environment, the board finds this petition neutral. Lastly, as to potential fiscal impact, including impact on city services, tax base and employment, the board finds the application and proposal are neutral.

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 finds the petition satisfactorily meets the basis of the requested relief.

Therefore the with the following conditions: that the project be set forth according to the

plans submitted with the application, and 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 that the applicant secures the necessary approval from the Planning Board concerning the amount of parking required on site, the special permit is motioned to approved.

Roll-call vote as follows:

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

Board Member Tavares - Yes
Board Member McTigue – Yes

Motion passed 5-0

ITEM 3 – Case #4246 - Petition of: Cynthia and James Cammarata (197 Hawthorne Street New Bedford, MA 02740) for a Variance under provisions of chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability) and 3145 (no open air-off street parking space shall be located in front of the dwelling or principal building); relative to property located at 197 Hawthorne Street, assessor's map 45 lot 356 in a residential A [RA] zoned district. The petitioners propose to construct a driveway which would be located in front of the dwelling as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 9/2/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 9/20/16; communication from Councilor Winterson dated 9/20/16, wherein he advocated for passage of this variance; communication dated 9/15/16 from Mr. Skaliotis, 203 Hawthorn Street, advocating for passage of the variance and that he has no concerns with this application; the appeal package as submitted; the plan as submitted - a revised plan submitted 10/13/16 showing the construction of the proposed driveway; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Acting Chairperson Schick opened the public hearing.

James Cammarata stated he is requesting permission to install a ribbon-style driveway in front of his Hawthorn Street home. He stated they have had to park on side streets (Ocean & Tremont) as they have no on-street parking in front of their house. He stated it would a practical added convenience to have their vehicles on-site, as the neighbors do. He noted it would also alleviate congestion on adjoining streets and increase the safety of pedestrians. He added it will help snow removal to have the cars off the street.

Mr. Cammarata stated his hope is to have his father-in-law move in and his mobility limitations will require room for a handicap accessible van, which would not be possible without this variance. In discussing the plans, he stated he plans to keep the driveway to the minimum 13' width and keep within the historical appearance.

Ms. McTigue discussed the use of stone and encouraged the applicant to keep the stones off the sidewalk for pedestrian safety.

In response to Acting Chairperson Schick's invitation to speak or be recorded in favor, the following asked to be recorded in favor:
Cynthia Cammarata, 197 Hawthorne Street

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

Acting Chairperson Schick closed the public hearing.

There being no further questions on the matter, a motion was made (AD) and seconded (SM) to approve a variance to allow the petitioner to construct a driveway which would be located in front of the dwelling as per plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 3000, 3100, 3110, 3145 relative to property located at 197 Hawthorn Street, assessor's map 45 lot 356 in a residential-A [RA] 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 relief requested is granted.

In addition to the foregoing section, this petition has 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. In this case, the proposed location of the driveway is the only location that works, given the size of the lot and the location of the existing house thereon. 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, parking is not permitted on Hawthorn Street and the homeowners currently must park on adjacent streets, which is a substantial hardship. The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. And, that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics noted within this motion, the board 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 is made and includes the following conditions: that the project be set forth according to plans submitted with the application, and that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of this decision.

Roll-call vote as follows:

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

Board Member Tavares - Yes
Board Member McTigue – Yes

Passed 5-0

ITEM 4 – 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.L.A. 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.

Mr. Decker announced that the above case has been continued and is scheduled to be heard at a hearing on October 27th, 2016.

3. OLD/NEW BUSINESS:

Ms. McTigue inquired as to the status of the Planning Department's Form Based Zoning. A motion was made (SM) and seconded (AD) for an update from the Planning Department on the same at the November Zoning Board meeting.

Motion passed unopposed.

4. ADJOURNMENT:

There being no further business to come before the board, a motion was made (JW) and seconded (AD) to adjourn at 6:54 p.m..

Next meeting – September 20, 2016

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – Room 306
WILLIAM STREET
NEW BEDFORD, MA
Thursday, October 20, 2016**

MEETING MINUTES

CITY CLERKS OFFICE
NEW BEDFORD, MA
2016 NOV 18 P 1:02
CITY CLERK

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

ABSENT: Debra Trahan
Robert Schilling

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

1. CALL TO ORDER

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

2. ROLL CALL

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

Acting Chairperson Schick noted for those in attendance that with a minimum of four board members present, any vote would need to be unanimous in order for the petition to pass. Acting Chairperson Schick inquired of each party on whether they wished to continue their matter when a full board was present, noting that Cases #4250 and #4251 wish to continue to the next hearing. All other parties declined the offer to continue to the next hearing.

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

SCHEDULED HEARINGS

ITEM 1 – Case #4247 - Petition of: Lau Van Luu and Thu-Thuy T. Huynh (310 Park Street New Bedford, MA 02740) for a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-Appendix B- green space), 2750 (yards in residence districts), 2756 (special driveway side yard requirements); relative to property located at 310 Park Street, assessor's map 57 lot 60 in a mixed use business [MUB]. The petitioner seeks approval of a driveway that was installed without a buffer as plans filed.

In regard to Case #4247, a motion was made (AD) and seconded (JW) that the following be received and placed on file: the communication dated 10/3/16 from the Commissioner of Buildings & Inspectional

Services; communication from the Office of the City Planner dated 10/20/16; 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.

Acting Chairperson Schick opened the public hearing.

Lau Luu, 310 Park Street, New Bedford, stated he was present to get his driveway done and get two cars off the street. He stated all his neighbors have driveways, and neighbors on each side of him park in front of his house and he must therefore park blocks away.

In response to Mr. Decker, Mr. Luu confirmed he had already poured the concrete for the driveway, but has not done any curb cut. He stated that he thought since it was within his property he did not need to get a permit. He stated he found out when trying to do the curb. He stated he poured the concrete himself and had no contractor.

In response to Ms. McTigue, Mr. Luu stated there is not any green space on the side, but in the back there is a two foot garden. He confirmed he took down bushes. He confirmed it is a two vehicle driveway, back to back.

In response to Mr. Decker, Mr. Luu confirmed that is the only location on the property for a driveway and all his neighbors have driveways.

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, Arthur Burton, 318 Park St., two doors down, stated he was curious why this is being done since when Mr. Luu is moving and the house is for sale. He stated that this is the side of the street people have to park on during a snow ban. He stated Mr. Luu has been a good neighbor and he would like to support, but he doesn't understand why this is being done if he's selling property, because he will move away and the neighborhood will be stuck with another driveway.

In response to Walsh, Mr. Burton stated the parking is like musical chairs and that's why Mr. Luu wants a driveway. He stated that with tenements the parking is very tight with. Mr. Burton stated if Mr. Luu planned to live in the house, he would support him.

In response to Acting Chairperson Schick, Mr. Burton stated he supposes a driveway would take cars off the street, but he is curious and thinks it will be hard to sell the house without a yard.

The petitioner declined the opportunity to respond to the opposition expressed.

Acting Chairperson Schick closed the public hearing.

Board Member Walsh expressed that he was not necessarily in favor of granting variances in instances where people have not applied for permits, although in this particular situation it sounds as though it may be an innocent mistake and that there is a need for off street parking. He expressed that the green space issue concerned him. He suggested a possible condition to remedy the situation.

There was discussion noting that Mr. Luu was 20% under the required green space regulation, and under on the side setbacks.

In response to the board concerns, Mr. Luu explained the concrete area is already small and cutting it further would make it impossible to put the car on it. The board explained the information given is that the concrete is 40' by 12', and inquired if twelve feet of width was necessary. Mr. Luu stated there was concrete walkway along his foundation, which he did not want to touch.

Ms. McTigue noted a handicap parking space is 10'x18'. She felt it possible for Mr. Luu to cut back two feet.

After further board discussion concerning the same, the board explained to Mr. Luu that the board could condition any approval on him removing 2' of width from the entire length of the concrete area, which would put him in compliance with the side set back and increase his percentage of green space.

Mr. Luu explained that he would need to hire a contractor and any car would be against his foundation.

The board further explained to Mr. Luu that if the request is denied, he would have to pull the entire concrete area out.

Mr. Luu again expressed the space would not fit a car if it is cut smaller and he did not think he had enough money to hire a contractor. He invited the board to come and show him what they want. He stated he made a mistake to think he could do it and did not understand why he has to remove it and does not have the money, further stating the neighborhood would be clean and he could get a car off the street for the city.

Mr. Walsh encouraged the condition be included within the motion. Ms. McTigue noted Mr. Luu was required to go 1'4".

Mr. Luu again asked to meet with the city building commissioner. The board explained that Mr. Romanowicz's decision had been made, and Mr. Luu's concrete area violates two aspects of zoning regulation. Mr. Decker noted Mr. Luu's lack of willingness to do anything that would bring him any closer to being in compliance.

After further brief discussion, a motion was made (AD) and seconded (SM) to approve the variance to allow the petitioner to seek approval of a driveway installed without a buffer as per the plans filed which requires a variance under the provisions of Chapter 9 comprehensive zoning sections 2700, 2710, 2720 Appendix B, Section 2750, and 2756 relative to property located at 310 Park Street, assessor's map 57, lot 60 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 Comprehensive Zoning Section as cited, the board finds that in respect to these sections, the board grants relief to Sections 2700 et sic. And that 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 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. In this case, the location of the existing house on the lot is such that the only location for the driveway is as proposed. 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, literal enforcement would require removal of the concrete and would be a substantial hardship financially. 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 is made and includes the following conditions: that the project be set forth according to plans submitted with the application, with the correction that the driveway may be no more than 11' in width, and that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Board Member Walsh - Yes

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Clerk Decker– Yes

Passed 4-0

ITEM 2 – Case #4248/#4252 – Petition of Union Fruit Market, Inc. c/o Birgilio Cabral (1437 Acushnet Avenue New Bedford, MA 02745) and Vanessa Marques (362 Pleasant Street New Bedford, MA 02740) for a Variance under provisions of chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability), 3130 (table of parking and loading requirements-appendix C- 12 spaces required); relative to property located at 111 Ruth Street, assessor's map 15 lot 304 in a residential C [RC] zoned district. The petitioner proposes to operate a market as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 10/3/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 10/20/16; 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.

Mr. Decker noted that this matter is a variance and a special permit with all of the same motioning. Therefore a motion was made (AD) and seconded (JW) to hear the special permit elements simultaneously.

Motion passed unopposed.

Acting Chairperson Schick opened the hearing

Birgillo Cabral stated he was seeking to open a Union Fruit market in the south end. He stated he has a market on Acushnet Avenue.

In response to an inquiry by Mr. Decker, Mr. Cabral stated the building has been closed for almost two years or more. He stated the same kind of business was there as what he wants to open. Mr. Cabral stated it was a small market/grocery store.

Mr. Decker noted that the building takes up the entire lot, and Mr. Cabral has nowhere to put the required parking spaces. Mr. Cabral confirmed that information.

In response to Ms. McTigue, Mr. Cabral confirmed that a lot of foot traffic is expected. He stated his Acushnet Avenue Store has little parking and also has neighborhood people that frequent his store.

Mr. Decker noted he is pleased to have another vacant building become an up and running business.

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.

Acting Chairperson Schick closed the public hearing.

There was brief board discussion clarifying the location of the proposed market.

In response to Mr. Decker, Mr. Cabral confirmed that he was not aware of any similar markets in the neighborhood.

Meeting recessed at 6:50 pm

Meeting reconvened at 6:55 pm

There being no further discussion on Case #4248, a motion was made (AD) and seconded (JW) to approve the variance to allow the petitioner to operate a market as per the plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 3000, 3100, 3110, 3130 Appendix C, relative to property located at 111 Ruth Street, assessor's map 15, lot 304 in a residential-C [RC] zoned district.

Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning Sections as cited, the board finds that in respect to these sections, the relief requested is granted. And, that 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 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. In this case, the existing building encompasses the entire parcel, leaving no room for the required onsite parking. 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, literal enforcement would require removal of the building and reconfiguring the required parking and a new building, which would be 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 is made and includes the following conditions: that the project be set forth according to plans submitted with the application, and that the Notice of Decision be recorded at the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Board Member Walsh - Yes

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Clerk Decker – Yes

Passed 4-0

With regard to Case #4252, a motion was made (AD) and seconded (JW) to approve the special permit to allow the petitioner to operate a market as per the plans filed, which requires a special permit under provisions of Chapter 9 comprehensive zoning sections 2400, 2410, 2430-2432, 5300-5330, and 5360-5390 relative to property located at 111 Ruth Street, assessor's map 15, lot 304 in a residential-C [RC] zoned district.

Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning Sections as cited, the board finds that in respect to these sections, the petition was in compliance. And, that 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 Sections 5300-5330 and 5360-5390, relative to the granting of special permits, because the board found that the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

In consideration of the following sections, the board has found that the social, economic or community needs served by the proposal are that the opening of this market would be filling an unserved need in the immediate neighborhood. Concerning traffic flow and safety, including parking and loading, the

board finds that this application is neutral, because the prior use had no parking available either. With respect to the adequacy of utilities and other public services, the board has found that the application is neutral, because they are sufficient and in place. Concerning the neighborhood character and social structures, the board finds that the market would provide foods that are popular and in demand by the neighborhood's local population. Concerning impacts on the natural environment, the board finds this petition neutral. Lastly, as to potential fiscal impact, including impact on city services, tax base and employment, the board finds that operating a business versus having a vacant space means employment, improved tax base, without more demand on city services.

In light of the review of the specifics noted within the motion, the board finds the material presented is complete, and in careful consideration of the petitioner's request, the Zoning Board finds the petition satisfactorily meets the basis of the requested relief. Therefore with the following conditions: that the project be set forth according to the plans submitted with the application, and that the Notice of Decision be recorded with the Registry of Deeds and a building permit be issued by the Department of Inspectional Services and acted upon within one year.

Roll-call vote as follows:

Board Member Walsh – Yes

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Clerk Decker – Yes

Motion passed 4-0

Minutes continue on following page.

ITEM 3 – Case #4249 - Petition of: New Bedford Counseling Group Inc. (306 Mount Pleasant Street New Bedford, MA 02740) c/o Michael Frias (131 Willis Street New Bedford, MA 02740), and James M. Doherty, Trustee of The Doherty Family Nominee Trust (15 Harbor Road Mattapoisett, MA 02739) for a Special Permit under provisions of chapter 9 comprehensive zoning sections 2400 (nonconforming uses and structures), 2410 (applicability), 2420-2422 (nonconforming uses), 5300-5330 & 5360-5390 (special permit); relative to property located at 306 Mount Pleasant, assessor's map 91 lot 49 in a residential B [RB] zoned district. The petitioner proposes to operate a counseling practice with licensed mental health counselors that will diagnose and treat a variety of clients as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 10/3/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 10/20/16; communication from Mike Frias received 10/11/16; communication from Fernando DaCosta of 167 Buchanan Street dated 10/15/16 and received 10/17/16; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Acting Chairperson Schick opened the public hearing.

Michael Frias, 131 Willis Street, New Bedford introduced himself to the Board.

Kathleen Frias, 131 Willis Street, New Bedford, wanted to note important factors for the board, stating they chose the location at 306 Mt. Pleasant Street because that section of the city does not have other counseling agencies. She stated that over twenty years in counseling she had found many clients have to walk, as they are uncomfortable riding a bus for various reasons, or they have no funds to take the bus with their children. Ms. Frias stated they had located at other properties that were already zoned business, but this location had no service for the community.

Ms. Frias stated they will have 1 billing person, 1 director, and 3-6 counselors over time. She stated they do not intend to have any medication, and have no psychiatric treatment. Such cases would be referred out. She stated their office is to provide counseling, with their main focus on children and families.

Ms. Frias stated they are seeking to have operating hours of 9:00am -7:00pm seven days a week. She stated people work and children are in school, and those hours provide availability. She stated clients will be prearranged for their approximate 45 minute sessions, which lends itself to privacy and traffic flow. She stated that currently there is a 6-9 month wait for a child counseling appointment, illustrating the great need for services.

Ms. Frias stated she is a New Bedford resident and understands community concerns about this location. She stated they want to answer questions and have good relations with the neighborhood.

Ms. Frias stated there are 9 available parking spots. With regard to the driveway being redone, it will be taken care of as soon as they receive approval. She stated the building has been vacant for a year and prior to that an insurance company. She said the area is presently trash ridden and unkempt, which they will remedy. She stated the office is on the SRTA bus route, and they intend to provide community resources to people coming into the office, such as fuel assistance et cetera.

She stated people calling with serious mental health problems would be referred to another agency that could help them, and expressed her career experience in triaging.

Ms. Frias then stated the office would employ 5-8 therapists over the total operation hours, not at all times.

Mr. Frias stated this would leave multiple parking spaces available.

Ms. Frias stated there is a school across the street and their hours are based on school traffic and dismissals.

Acting Chairperson Schick confirmed the operating hours of 7 days a week, 9-7 each day.

In response to an inquiry by Mr. Walsh, Mr. Frias stated there are four closed door offices in the building, with open space area for waiting. He stated an additional downstairs office would be used for files. Mr. Walsh confirmed with Mr. Frias the potential for four clients every 45 minutes.

In response to Mr. Walsh, Ms. Frias stated clientele are expected to be from ages five to geriatric, as well as family counseling for various mental health issues; depression, et cetera.

Mr. Frias added that with regard to drug and alcohol counseling, they may provide part of the mental health services. She again stated that is not their specialty and would refer out.

This was further confirmed by Mr. Decker.

Ms. McTigue confirmed that this location was chosen because there are clients within the neighborhood. Mr. Frias noted there are very few counseling agencies in that area.

Acting Chairperson Schick confirmed that of the 6-8 therapists, they will be licensed mental health counselors or licensed independent social workers as required by the insurance companies in Massachusetts. In further response, Ms. Frias stated they are presently part-time.

Ms. McTigue noted the importance of the service.

In response to Acting Chairperson Schick's invitation to speak or be recorded in favor, Barbara Livingston, 34 Jonathan St., New Bedford. She stated for 35 years she has been a LICSW and has known Ms. Farias twenty years and has worked with her in various settings. Ms. Livingston, after consulting with Ms. Farias, stated it will not be services to the homeless, it will not be providing any kind of medication, and there will be no psychiatrist or nurse practitioner. She stated calls and walk-ins will be referred to appropriate services. She confirmed the lack of services for children in this area. She stated

she welcomes additional service options and stated the people involved are seasoned professionals. She expressed her support.

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

In response to Acting Chairperson Schick's invitation to speak or be recorded in opposition, Councilor Henry Bousquet stated he had received neighborhood phone calls about this proposed facility in a heavily residential neighborhood across from an elementary school. He did not feel that was the best site for this type of agency. He stated there are already services such as half way houses already in the neighborhood, and he expressed concerns about the location for this facility, particularly one operating 7 days a week. He is concerned about neighborhood parking, and sees a lot of potential for things to go wrong, reading everyday about people with mental health issues toting guns. He stated one neighbor is no more than eighteen inches away, and he has received multiple appeals from neighborhood residents. He asked the board to consider the impact on that community, noting though currently vacant, the project is out of zone for the building use. He feels it brings the wrong element to this neighborhood and is concerned, after reading the submission, that this could progress to doling out medication or methadone.

In response to Acting Chairperson Schick's invitation to speak or be recorded in opposition, Andrew O'Leary, Business Manager for the New Bedford School Department, stated he is hearing about the potential impact in the neighborhood, and after spending time at the 400 student school facility, Grades Pre-K thru 6th, and assessing traffic flow and student ingress and egress, they have concluded there

would be a negative impact, in terms of increasing area traffic. He stated it is currently a very tightly arranged area with parents picking up and dropping off, buses entering/exiting and students walking.

Mr. Walsh inquired as to how this facility would affect dropping children off at school.

Mr. O'Leary stated he is sharing his assessment based on the documents initially reviewed. He stated it is difficult to predict this facility in operation. He stated given what they know, their initial judgment is it would increase the traffic in the area and have a potential negative effect.

Mr. Walsh expressed some disbelief that four people in a forty-five minute period could affect the traffic to and from the school.

Mr. O'Leary again stated not being stipulated in the documents, they cannot predict the same. He agreed four people in a forty-five minute time period may not, but their assessment on what was initially reviewed. He stated in general they have a positive long-term relationship with residents in establishing safe routes and are eager to ensure a stable relationship continues.

In response to Acting Chairperson Schick's invitation to speak or be recorded in opposition, Fernando DaCosta, 167 Buchanan St., stated he was raised in the area and even worked in the building at one time. He stated he does not agree with the idea and is present for his mom, 302 Mt.

Pleasant, right next door. He stated he is caring for his mom and this is too close. He stated his grandmother house at 171 Buchanan Street has a backyard close to the facility. He stated there will be all types of people from all over the place, and there is already no parking there at all, especially with the staff they list. He is worried he will have no parking space when he comes home from work. He stated he knows it will create a mess. He raised concerns about the long hours and 30-50 people coming and going in a day. He was concerned that people waiting for their appointment might be sitting on his or his mother's porch. He stated he is worried about his half blind mother's safety. He added this is currently a great neighborhood and this will bring a lot of problems. He stated the neighborhood neaby went crazy with yelling and screaming all hours of the night when the a crisis center was put there, and he does not want that to happen in his neighborhood. He stated the building is too small. He wondered why the application says treatment center/medical center if there are no drugs, and he believes eventually it will be that. He suggested something else should go there.

In response to an inquiry by Mr. Decker, Mr. DaCosta stated that the former insurance agency had people that would go in, pay their bill and leave. This business will have a lot of people there and he thinks it will become a hangout. He stated someone OD'd there not long ago and there are already people sleeping in cars, and this will create a big, big mess.

In response to Acting Chairperson Schick's further invitation to speak or be recorded in opposition, Olivia Cardoso, 161 Buchanan St., stated she has two children walking to that school each day and she is concerned about random people being around and drugs on the premises. She stated once they leave the building, does she have to worry about them, will they be on her porch. She stated it is a bad idea. The facility will be open when the kids leave school at 2:30. There is not enough parking and it is not the place.

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

Proceedings recessed at 7:45 pm at the call of the Chair.
Proceedings resumed at 7:50 pm.

In rebuttal, Ms. Frias stated the clientele, other than those who walk in, would be triaged when they call, and those looking for medication or substance abuse treatment would be referred to where they can get that. So, she does not feel that will be an issue. She stated those they plan to serve are families; children struggling in school, families going through divorce. Things everyone here could struggle with.

In response to Acting Chairperson Schick, she stated they will take individuals, children and families. She stated she wanted to be clear these are basic life struggles, anxiety, periods of depression.

Ms. McTigue confirmed that this service would not be licensed to distribute any medication. Ms. Frias confirmed the same and stated they would have to come back and get a permit and a doctor.

Barbara Livingston confirmed the same.

Ms. Frias stated she did not want to put anyone at risk, especially children, and they expressed willingness to comply with an order that required them to close at certain times for pick up and drop-off. She added their appointments start on the hour. Ms. Frias stated the office manager will be looking to make sure people are not hanging around.

She stated mentally challenged children would be services at the Schwartz or Kennedy Donovan Centers. Ms. Frias stated the crisis center or New Bedford Police would be called if anyone who came in was yelling.

In opposition rebuttal, Keith Koczera of Acushnet stated the park down the street has a little league field and he was concerned if sex offenders would be there. He stated this is a high "kid" area. He stated that for an area with a lot of kids, more precaution should be put in place.

Acting Chairperson Schick closed the public hearing.

Board Member Walsh inquired of Mr. Romanowicz regarding the notation "medical practice permit". Mr. Romanowicz stated uses for that area would require a special permit which could not be gotten in a Residential B neighborhood and that is why it's before the board.

Ms. McTigue stated she thought it was a medical office. Mr. Walsh inquired as to what granting a medical practice permit would entail. Mr. Romanowicz stated they have represented they will operate a counseling practice with licensed mental health counselors who diagnose and treat a variety of clients. Mr. Walsh confirmed they could not prescribe drugs or do anything else.

Mr. Decker expressed he was torn, understanding the character of the neighborhood but being aware of the need for the proposed use. He stated he appreciates the petitioner's willingness to curtail hours of

operation to address concerns for the children at the school. He did not believe a business such as this would add significant concern about the level of traffic.

Mr. Walsh stated he had no problem with the nature of the operation. He stated the legal test to apply is whether this use is more detrimental than the prior use. He stated the only thing he could see that would make it more detrimental is that this facility would be open 7 days a week with hours of 9-7. He encouraged that anyone with concerns about that could suggest conditions curtailing hours.

In response to Mr. Decker, Ms. Frias stated for the reason for Saturday and Sunday hours is so families to come together.

Ms. McTigue inquired as to anything that prevents a sex offender being treated at this facility. They discussed the law that prevents sex offenders from being within a certain distance to a school. Mr. Frias stated she has not had any problems with clients in the past.

Male audience member stated he was bipolar and depressive and this was working him up because the board doesn't live in that neighborhood. Female audience member began speaking.

Acting Chairperson Schick reminded the audience that the hearing was closed and audience members had a chance to speak during the meeting.

(A member of the audience began yelling, would not stop and was removed from the meeting.)

After further board discussion on hours of operation, a motion was made (AD) and seconded (JW) to approve a special permit to allow the petitioner to operate a counseling practice with licensed mental health counselors that will diagnose and treat a variety of clients as per plans filed, which requires a special permit under provisions of Chapter 9 comprehensive zoning sections 2400, 2410, 2420-2422, 5300-5330, and 5360-5390 relative to property located at 306 Mount Pleasant Street, assessor's map 91 lot 49 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 comprehensive zoning sections, the board finds that in respect to these sections the petition was in compliance.

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 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 has found that the social, economic or community needs served by the proposal are that the proposed use meets an underserved community need for mental health services. Concerning traffic flow and safety, including parking and loading, the board finds that this proposal provides adequate parking onsite for the proposed use. With respect to the adequacy of utilities and other public services, the board has found that the proposal is neutral as to those concerns. Concerning the neighborhood character and social structures, the board finds that the proposed use is not substantially

more detrimental to the neighborhood character than the prior non-conforming use. Concerning impacts on the natural environment, the board finds this proposal neutral. Lastly, as to potential fiscal impact, including impact on city services, tax base and employment, the board finds that the proposed use will result in an operating business versus a currently vacant space.

In light of the review of the specifics noted within the motion, the board finds the material presented is complete, and in careful consideration of the petitioner's request, the Zoning Board finds the petition satisfactorily meets the basis of the requested relief. Therefore the with the following conditions: that the project be set forth according to plans submitted with the application, and 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 that the operation is limited to four therapist at any one time in service, that the hours of operation on Saturday are limited to 9:00 a.m. to 5:00 p.m., and that there will be no Sunday operation of the business, and that the parking lot is to be repaired so that it is useable and serviceable.

Roll-call vote as follows:

Board Member Walsh – Yes
Board Member McTigue – Yes

Acting Chairperson Schick – Yes
Clerk Decker – Yes

Motion passed 4-0

ITEM 4 – CASE #4250 – Petition of: Mario and Kristinal Amaral (208 Tarkiln Hill Road New Bedford, MA 02745) and Steven D. Gioiosa for SITEC, Inc. (449 Faunce Corner Road Dartmouth, MA 02747) for a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2711 (lot change), 2720 (table of dimensional requirements-appendix B- minimum lot size, lot frontage, front yard, side yard), 2750 (yards in residence district), 2751 (front yard), 2755 (side yard); relative to property located at 208 Tarkiln Hill Road, assessor's map 118 lot 202 in a residential B [RB] zoned district. The petitioner proposes to subdivide existing single family dwelling on one lot and construct a new single family dwelling on the second lot as plans filed.

A motion was made (AD) and seconded (JW) to be continued to the regularly scheduled November meeting on 11/17/16.

Motion passed unopposed.

ITEM 5- CASE #4251 –Petition of: Mario and Kristinal Amaral (208 Tarkiln Hill Road New Bedford, MA 02745) and Steven D. Gioiosa for SITEC, Inc. (449 Faunce Corner Road Dartmouth, MA 02747) for a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2711 (lot change), 2720 (table of dimensional requirements-appendix B- minimum lot size, rear yard ft.) 2750 (yards in residence district), and 2753 (rear yards); relative to property located at NS Holden Street, assessor's map 118, lot 223 in a residential B [RB] zoned district. The petitioner proposes to construct a 32'x28' single family dwelling with a 24'x24' attached garage as plans filed.

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A motion was made (AD) and seconded (JW) to be continued to the regularly scheduled November meeting on 11/17/16.

Motion passed unopposed.

3. OLD/NEW BUSINESS:

Mr. Decker announced that Case #4236, concerning property at 1861 Shawmut Avenue has been continued several times, and is scheduled to be heard at a special hearing on Thursday, October 27, 2016 at 6:00 p.m.

A motion to approve meeting minutes did not carry.

4. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned by Acting Chairperson Schick at 8:20 p.m..

Next meeting – October 27, 2016

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – Room 306
WILLIAM STREET
NEW BEDFORD, MA
Thursday, October 27, 2016**

MEETING MINUTES

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

ABSENT: Debra Trahan
 Allen Decker

STAFF: Jennifer Gonet, *Assistant Project Manager*

CITY CLERKS OFFICE
NEW BEDFORD, MA
2016 NOV 18 P 1:01
CITY CLERK

1. CALL TO ORDER

Acting Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:06 p.m.

2. OLD/NEW BUSINESS

Acting Chairperson Schick raised the issue of the continuance of Case #4236.

A motion was made (JW) and seconded (SM) to continue Case #4236 to November 17, 2016 when a firm date can be set for hearing.

Motion passed unopposed.

Ms. Gonet inquired as to the board's preference in the scheduling of upcoming cases and meetings per month. There was board discussion on member availability.

A motion was made (SM) and seconded (JW) to carry Case #5254 from the December meeting to the board meeting on November 17, 2016.

Motion passed unopposed.

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A motion was made (JW) and seconded (SM) that the remaining two cases in question be held on the December 15, 2016 regularly scheduled meeting, as opposed to a special meeting.

Motion passed unopposed.

3. ADJOURNMENT:

There being no further business to come before the board, a motion was made (JW) and seconded (SM) to adjourn.

Motion passed unopposed.

Meeting was adjourned at 6:11 p.m..

Next meeting – November 17, 2016