

**ZONING BOARD OF APPEALS  
NEW BEDFORD CITY HALL – Room 306  
WILLIAM STREET  
NEW BEDFORD, MA  
Thursday, November 17, 2016**

**MEETING MINUTES**

**PRESENT:**

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

Horatio Tavares

**ABSENT:**

Debra Trahan  
Robert Schilling

**STAFF:**

Danny Romanowicz, *Commissioner of Inspectional Services*  
Jennifer Gonet, *Assistant Project Manager*

CITY CLERKS OFFICE  
NEW BEDFORD, MA  
2017 JAN 25 P 3:58  
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.

Acting Chairperson Schick explained that with only four board members present, any vote must be unanimous to succeed. He offered the applicants the option to continue their cases to a hearing before the full board. All applicants declined this offer.

Acting Chairperson Schick explained the process and required findings necessary to those present.

**2. OLD/NEW BUSINESS**

Allen Decker announced that Case #4236 will be continued to December 6, 2016.

**3. SCHEDULED PUBLIC HEARINGS:**

**ITEM 1 Cases # 4250/#4251** – A public hearing continued from October 20, 2016 on the 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 Tarklin 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.**

**Petition of: Mario and Kristinal Amaral (208 Tarklin 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.**

In regard to Cases #4250, 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 Department of Planning, Housing & Community Development dated 10/20/16; two letters submitted by the petitioners dated 10/18/16; 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.

In regard to Cases #4251, 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 Department of Planning, Housing & Community Development dated 10/17/16; two letters submitted by the petitioners dated 10/18/16; 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.

Steve Gioiosa of SITEC Engineering, representing the petitioners, explained that the first request is to divide the property into two separate parcels. He displayed the overall parcel, purchased by the Amarals in 2013, showing the existing home closest to the Tarklin Hill Road side of the property. He stated the Amarals receive two separate tax bills, and the dividing line on the bills is essentially the division proposal this evening. He stated the Amarals have long planned to use the second parcel as a separate buildable parcel for a family member. He stated the result of the division would make the lots more compatible with many of the adjacent lots. He stated that without the requested relief, it will present a substantial financial hardship to the Amarals. Mr. Gioiosa stated that the petitioner has submitted a letter of support from the neighbors.

Mr. Gioiosa stated the second petitioner relates to the lot that will be created with frontage of Holden Street. He displayed a highlighted plan and explained the petitioners seek to create a single-family home with an attached garage on the parcel, which will require rear yard setback relief. He stated that placement of the proposed dwelling further back on the lot, thereby necessitating the setback relief, impacts only the petitioner themselves and provides more off-street parking. Mr. Gioiosa invited questions.

Ms. McTigue inquired as to the proposed parking space, which Mr. Gioiosa stated had to be at least twenty feet from the layout line from Tarklin Hill into the lot, a typical city parking space. He further responded that it would be paved.

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 brief discussion on the relocation of accessory items now present, a motion as to Case #4250 was made (AD) and seconded (JW) to approve the variance to allow the petitioner to subdivide an existing parcel with an existing single family dwelling into two lots, one with the existing house and the construction of a new single family dwelling on the second lot as per plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2700, 2710, 2711, 2720 Appendix B, 2750, 2751 and 2755, all relative to property located at 208 Tarklin Hill Road, Assessor's Map 118 Lot 202 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 grants the requested relief. 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 lot shape fronts on two streets, making it unique in the neighborhood, and it was purchased and taxed as two lots. 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, preventing the subdivision of the property would present a financial hardship, as the petitioner anticipates building a house for a family member needing the family's direct care. 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

A motion as to Case #4251 was made (AD) and seconded (JW) to approve the variance to allow the petitioner to construct a 32'x28' single family dwelling with a 24'x24' attached garage as per plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2700, 2710, 2711, 2720 Appendix B, 2750, and 2753 relative to property located at NS Holden Street, Assessor's map 118, Lot 223 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 sections 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, the shape of the newly created lot is not permitted necessary lot size and rear yard setbacks for the placement of the proposed residence. 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 petitioner would not be able to proceed with the plans for the residence, resulting in a financial hardship, as the petitioner has a family member needing direct family care. 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

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Passed 4-0

Board Member Horatio Tavares enters meeting at 6:35 pm.

**ITEM 2 – Case #4253 - Petition of: Nicki E. and Nitza N. LaRoca (11 Nautilus Street New Bedford, MA 02744) for a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-B-side yard), 2750 (yards in residence district), and 2775 (side yard); relative to property located at 11 Nautilus Street, assessor's map 5 lot 197 in a residential A [RA] zoned district. The petitioners seek approval of the location of a generator installed as plans filed.**

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication dated 10/28/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 11/17/16; 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.

Mr. LaRoca stated they are seeking a generating system on the left or south side of their home, which was installed without a permit. He stated they had hired someone they believed knew what they were doing, and he apologized that the permits had not been gotten. He stated the generator is placed where the utilities enter the house and it is barely visible from the street, and it not able to be located in the back of the home due to existing stairs.

In response to Board Member Decker, the applicant was amenable to installing shrubbery to screen the generator, which would be used in emergencies.

Board Member McTigue confirmed that the applicant was not in a flood plain.

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 as to Case #4253 was made (AD) and seconded (JW) to approve the variance to allow the petitioner to locate a generator installed as per plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2700, 2710, 2720 Appendix-B, 2750, and 2775 all relative to property located at 11 Nautilus Street, Assessor's map 5 Lot 197 in a residential A [RA] 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 board grants the relief requested. In addition to the foregoing sections, this petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10, relative to the granting of variances, because the board has found 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 placement of the house necessitates the generator's location 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 generator and the concrete pad, resulting in a financial hardship to the petitioner. 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  
Board Member Tavares - Yes  
Clerk Decker - Yes

Board Member McTigue - Yes  
Acting Chairperson Schick - Yes

Passed 4-0

**ITEM 4 – Case # 4254 - Petition of: Francisco M.O. Rocha (4441 Edinbridge Circle Sarasota, FL 34235) and Joseph E. Swift (25 Nelson Avenue Fairhaven, MA 02719) for a Special Permit under Chapter 9 comprehensive zoning sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430-2437 (nonconforming structures, other than single and two family structure), and 5300-5330 & 5360-5390 (special permit); relative to property located at 87 Lawrence Street, assessor's map 127A lot 179 in a residential A [RA] zoned district. The petitioners propose to change the use from an office/garage to a single family dwelling as plans filed.**

A motion was made (AD) and seconded (JW) that the following be received and placed on file: communication dated 10/28/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 11/17/16; communication from Cassandra Courtney received 11/16/16; communication dated 11/10/16 from Maria Quann of 28 Mansfield Street; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as

indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Att. Chris Saunders, representing Joseph Swift, who is a perspective purchaser of the subject property. Mr. Swift has entered into a Purchase & Sales Agreement contingent upon his obtaining the special permit. He stated that though situated on a Residential A zoning district, the property is currently used for commercial purposes. He stated his client wishes to take this non-conforming structure of approximately 1,000 s.f., one floor building, with a two stall garage, and change it to a conforming single family home with a conforming use. He stated this is consistent with much of the Residence A zoned neighborhood.

Att. Saunders stated the applicant simply seeks to add a second story. He stated the lot is unique, in that going up with a second story would bring the building to grade level. He drew the board's attention to staff comments and highlighted the landscaping currently present, as well as the ample off-street parking. He noted that the southern stall of the garage would be converted into livable space. He stated that, in harmony with the by-laws, this would take a commercial use out of a residential district. Att. Saunders elaborated on the criteria necessary to grant the permit. He noted he believed this would be a betterment to the neighborhood, the zoning district, and the City of New Bedford. He invited questions.

Chairperson Schick noted that the first floor contained only three windows on one side and no windows on the other sides.

Att. Saunders noted the first floor rear of the structure is below grade, and only the building first floor front is above ground.

Board Member McTigue confirmed the first floor has a bedroom with no possible window. Mr. Romanowicz confirmed that a bedroom needs an escape present by state code. Att. Saunders stated that in that event that room will become a family room.

Board Member Walsh noted that is not really an issue that concerns this board.

Board Member McTigue clarified that at one point this property was an accessory to adjacent property to the north. Att. Saunders stated that he had noted the lot was held in common ownership, but he had not run the title. He stated the side setbacks are presently 7' and 11'. He noted it is skewed, being a corner lot with 40' in front, and he suggested the northern neighbor likely has a greater non-conformity.

Att. Saunders addressed the site plan with Board Member McTigue.

Board Member Walsh noted that while there is a proposed structural change, there is no change to the footprint.

In response to Board Member Decker, Att. Saunders stated he was not aware of the filed objection. Board Member Decker stated the owners of 92 Lawrence were very much opposed to the change, but did not elaborate on why. Att. Saunders noted that 92 Lawrence was across the street, one house up from the corner lot.

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.

Board Member Tavares stated he would rather see a house there, instead of a non-operating business.

Board Member Decker supported the removal of a non-conforming to a conforming use.

Board Member McTigue did not feel height was being added comparatively to other structures.

Board Member Walsh stated he felt it was a change for the better.

There being no further discussion, a motion was made (AD) and seconded (SM) to approve the special permit to allow the petitioner to change the use from an office/garage to a single family dwelling as per plans filed, which requires a special permit under Chapter 9 comprehensive zoning sections 2400, 2410, 2430-2432, and 5300-5330 & 5360-5390 all relative to property located at 87 Lawrence Street, Assessor's map 127A Lot 179 in a residential A [RA] 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 is in compliance. 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 has found that the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site of the proposal in relation to that site.

After consideration of the following sections, the board found that concerning the social, economic and community needs served by the proposal, the board found that a non-conforming use is being removed in the conversion from a commercial use to a residential use. With respect to traffic flow and safety, including parking and loading, the board finds that the required parking is available and the new use will result in less traffic and less general coming and going. With respect to the adequacy of utilities and other public services, the board has found this petition neutral, as the property is already adequately served and no new utilities are necessary. With respect to the neighborhood character and social structures, the board finds that the removal of a commercial use in a residentially zoned district is positive for the neighborhood character. With respect to impacts on the natural environment, the board finds this proposal neutral as there are no changes to the environment effecting the lot. With respect to the potential fiscal impact, including impact on the city services, tax base and employment, the board finds a substantial financial investment in the



conversion of use of this property will potentially raise the property's value and 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, 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

Board Member Tavares - Yes

Acting Chairperson Schick - Yes

Board Member McTigue - Yes

Clerk Decker - Yes

Motion passed 5-0

#### **4. NEW BUSINESS:**

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 8/25/16, concerning cases #4242 and #4243. Board Member Decker abstained. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 9/1/16, concerning cases #4236. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 9/22/16, lacking quorum. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 10/13/16, concerning cases #4244, #4245, #4246 and #4236. Motion passed unopposed.

A motion was made (AD) and seconded (JW) to approve the meeting minutes of 10/20/16, concerning cases #4247, #4248, #4252, #4249, #4250 and #4251. Motion passed unopposed.

A motion was made (AD) and seconded (SM) to approve the meeting minutes of 10/27/16, wherein no cases were heard, but continued. Board Member Decker again abstained. Motion passed unopposed.

Board Member Decker noted the information provided by the City Planner with regard to the requested update on the Form Based Zoning Initiative.

Board Member Decker noted the proposed 2017 calendar of meeting dates and submission deadlines.

A motion was made (AD) and seconded (JW) to accept the 2017 meeting schedule as amended this evening, and adding the note that the Zoning Officer requests applications be submitted a minimum of five working days prior to the submittal deadline.

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Motion passed unopposed.

**5. ADJOURNMENT:**

There being no further business to come before the board, a motion was made (AD) and seconded (SM) to adjourn. Motion passed unopposed.  
Meeting was adjourned at 7:23 p.m..

The next regularly scheduled Zoning Board of Appeals Meeting is December 15th, 2016.

**ZONING BOARD OF APPEALS  
NEW BEDFORD MAIN PUBLIC LIBRARY  
PLEASANT STREET  
NEW BEDFORD, MA  
Tuesday, December 6, 2016**

**SPECIAL MEETING  
MINUTES**

CITY CLERKS OFFICE  
NEW BEDFORD, MA  
2017 JAN 25 P 3:58  
CITY CLERK

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

**ABSENT:** Debra Trahan

**STAFF:** Attorney Kreg Espinola, *Assistant City Solicitor*  
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 6:04 p.m.

**2. OLD BUSINESS**

**ITEM 1: Case #4236** –Continued public hearing on the 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.

A motion was made (AD) and seconded (SM) to reopen the above-referenced case.  
Motion passed unopposed.

A motion was made (AD) and seconded (SM) to note documents previously received by the board, to include aerial images dated April 5, 1994, April 14, 2007, and December 1, 2011 submitted by

Patrick Sheridan to the Planning Department on September 2, 2016; a memorandum from Assistant City Solicitor Kreg Espinola dated 9/8/16; material submitted by the petitioner's attorney Thomas Crotty on 9/14/16, including Anthony DeCosta's rebuttal to the 9/8/16 memorandum submitted 9/14/16; a copy of a noise and vibration monitoring summary by Geo Sonics Inc. submitted 9/14/16; a request for continuance from the petitioner's attorney dated 10/24/16; documentation submitted 12/6/16 by the petitioner in support of the overturning of the existing cease and desist order on the property.

Motion passed unopposed.

Board Member Decker stated that his memory of the status of this matter is that after the September meeting, the board was awaiting documentation from both sides regarding specific questions, among questions from Mr. Schilling, and that those have been submitted. He stated the board has not yet been able to have discussion on those, and he believes that is the purpose of this evening's proceedings. He invited both sides to present to the board.

Board Member Walsh stated his understanding is that the primary issue is grandfathering and he welcomed presentation from Attorneys Crotty and Espinola.

Attorney Thomas Crotty stated he had provided a package this evening for the board, including portions of the Geo Sonic study regarding sound measurements at the property. He stated Mr. DeCosta had spoken to area neighbors who had voiced complaints. He stated Mr. DeCosta had a petition signed by some twenty neighbors expressing support. Attorney Crotty stated that notice was given to all abutters to Mr. DeCosta's property by the Conservation Commission on a related project, and that of the 5 residential abutters, 4 signed the petition in support. Attorney Crotty added that the resident who did not sign, Tom Welch, is an assistant building inspector.

Attorney Crotty referenced a letter from Charon Associates provided to the board describing the Conservation Commission project is essentially designed to address some neighbor complaints in a good faith effort by Mr. DeCosta. He stated the project is stalled due to the city not cooperating in allowing work on the wetlands belonging to the Airport Commission.

Attorney Crotty stated the legal issues are and are not about grandfathering. He stated that in 1963 the Shawmut Avenue property, a farm for many years, was purchased by Mr. DeCosta's father, at which time he started A-1 Asphalt. Attorney Crotty stated that the zoning ordinance at the time provided that any lawful use was allowed in that zone. He stated that the use started out as a contractor's yard. Attorney Crotty stated a contractor's yard is still an allowed use. He stated that as such, to some extent that is not a grandfathering issue. He represented that grandfathering is trying to use property for an unallowed use.

Attorney Crotty stated that in the 1980's Mr. DeCosta's father began bringing in demolition debris, and in the 1990's began crushing the same. He stated that that is a grandfathering issue, because it was an allowed use in the 1980's and 1990's, and in 2003 the ordinance was amended to prohibit crushing stone.

Attorney Crotty stated that essentially what it comes down to is whether those uses, which were allowed uses at the time, are somehow not allowed uses due to the Building Department's contention of failure to obtain a use permit.

Attorney Crotty stated that the Building Department is not addressing the specific neighbor complaints of dust, noise and vibrations. He stated the specific cease and desist order addresses the fact that A-1 Asphalt in 1963 did not obtain the use permit the Building Department says it should have gotten. He stated that regardless of noise, dust or vibrations, the Building Department is seeking to put Mr. DeCosta out of business because he did not get the so-called use permit.

Attorney Crotty referenced his September memo addressing the language relied on by the Building Department, also found at the end of the documents submitted this evening, wherein he quoted the provisions of the 1963 ordinance, which is what this case is all about.

Attorney Crotty read into the record the 1963 ordinance. He then stated that when Mr. DeCosta's father began A-1 Asphalt, at what was originally a farm, the property contained a garage building that was permitted in the 1930's. He stated that no other building was constructed or altered. He stated that in 1963, when Mr. DeCosta's father began operation, he did so out of that same building. He stated the land was not changed, reduced in size or altered.

Attorney Crotty stated that the ordinance makes clear that if you build, change or move a building, or if you reduce the size of the lot, then before resuming use you must come to the Building Department and get certification that the changed property conforms to the ordinance. He stated the ordinance does not speak to a property not changed or altered, as in this case where there was a prior allowed use and a different allowed use was started. Mr. Crotty stated the language from the Building Department indicates Mr. DeCosta was supposed to have gotten a use permit even though they made no changes to the property. Attorney Crotty disagrees with that position.

Attorney Crotty stated that at the last hearing, the Building Commissioner indicated that if there was a provision requiring a use permit, he would have some discretion to deny the use permit if he was not satisfied, regardless of whether it was an allowed use. Attorney Crotty stated that is not the law, according to SCIT v. Planning Board of Braintree. Attorney Crotty stated the ordinance is a general ordinance covering all property, and assuming that each time you began using a property you had to go to the Building Department to get a permit for that use, and assuming that the Building Commissioner said I have discretion and I can say no, the SCIT v. Planning Board of Braintree case says no, you cannot do that; that there are zones and allowed uses in those zones which are allowed, and there is no discretion absent a special permit requirement.

Attorney Crotty stated that regarding the absence of a permit, even if there was a requirement for a use permit every time you changed the use of a property from one allowed use to another, the permit would have to be granted. He stated there is no evidence that when Mr. DeCosta's father started A-1 Asphalt in 1963 what he was doing was not in conformance with the ordinance. There's no evidence the Building Inspector could have denied him the right to that permit. He stated that on the evidence before the board, the permit would have been mandatory. He stated where the

permit is mandatory and would have been granted anyway, the use is not illegal, according to Derby v. Chelsea, as cited in his memo. He stated that if it is a ministerial act to give him the permit, then the use itself is not illegal. Attorney Crotty again stated that even today, the use of the property as a contractor's yard is not illegal and there is no evidence it is not in conformance with the ordinance.

Attorney Crotty stated the only issue beyond that is the stone crushing, which the very same issues apply to, in addition to grandfathering, because though made illegal in 2003, it was not before then.

Attorney Crotty suggested that the Building Department is going for the brass ring, rather than addressing the real issue of the neighbor complaints and what can be done to help them. Mr. Crotty stated their engineer submitted a project to the ConCom [Conservation Commission] to address those neighbor complaints and the Building Department is saying 'let's just shut down the business because of this use permit they didn't get back in 1963.' Attorney Crotty stated that is unfair to Mr. DeCosta and the neighbors that support him, as well as to a city with such high unemployment.

Attorney Crotty stated the board should reverse the cease and desist order and tell the Building Department to go back to the drawing board and address the neighbor issues that have been raised, rather than try to put this company out of business. Attorney Crotty welcomed questions.

Board Member Schilling stated his understanding is that in 1963 it was an Asphalt Company. And leaving aside the question of whether there had to be a permit some 53 years ago, some documents indicate that in the past few years it has become an aggregate recycling plant.

Attorney Crotty stated that the company began doing that in the 1990's and has not changed in terms of the nature of what they do. He stated they had a stone crushing machine and a sorting machine back in the 1990's. He stated that at various times, depending on the businesses providing these materials, sometimes there would be more of that and other times less. He stated that a few years back there were ten people employed, some doing blacktop, some doing the stone aggregate crushing. He stated that presently there are seven, indicating the volume of that business has gone down.

Board Member Schilling inquired whether Attorney Crotty was referring to the volume of the asphalt or the crushing. Attorney Crotty stated he believed it was the crushing. After consulting with Mr. DeCosta, Attorney Crotty stated both. Attorney Crotty stated he believed most of the stone crushing volume was from when they did the airport runways.

Board Member McTigue inquired as to whether A-1 had received an RCC [Recycling, Composting, Conversion] permit. Attorney Crotty stated that he believed Rick Charon, the engineer, was working on it.

There being no further questions for Attorney Crotty, Attorney Kreg Espinola, Assistant City Solicitor, addressed the board. He stated that while he appreciates Attorney Crotty's concerns about employing people in the City of New Bedford, which the city takes very seriously, he had just witnessed a distortion of the facts and the law in the matter, which the board has to consider.

Attorney Espinola stated it was not that Mr. DeCosta decided that he was going to be a good neighbor and contact ConCom and build a berm for the neighbors to protect them from the noise and the dust. He stated Attorney Crotty omitted the fact that A-1 received a letter from the Department of Environmental Protection (DEP) in 2014 indicating that in fact he was in violation, not having received the necessary aggregate recycling permit in order to operate the type of business he was operating.

Attorney Espinola stated he had spoken with Colleen Ferguson from the DEP who said that the requirement goes back to 1991. He stated that A-1 is playing a game of catch me if you can. Attorney Espinola stated that relying on his memorandum, A-1 was supposed to get a building permit in 1963, and Mr. DeCosta failed to do so. He stated that in 1981 A-1 stated they started taking in truckloads of stuff. They were supposed to get a permit from DEP and failed to do so. Attorney Espinola stated that in 2001 A-1 stated it started crushing rock, and again, failed to get the permit from the DEP. Attorney Espinola asked the board to consider the letter from DEP to A-1 explicitly stating that he is required to get the aggregate recycling permit from the DEP before he can operate. Attorney Espinola stated that Mr. DeCosta has been operating, by his own measure, 15-20 years illegally, and now wants to come before the board and say the reason he's building a berm is for the neighbors. The fact is that DEP is forcing him to comply with their regulations and he has failed to do so up until this point in time.

Attorney Espinola cited the case of Oakham Sand & Gravel Corporation v. the Town of Oakham. He stated that Page 3 of Attorney Crotty's August memorandum states this is a prior non-conforming use. Attorney Espinola stated that even assuming the non-conforming use is legal, which Attorney Espinola asserts it is not, in order to maintain the prior non-conforming use he cannot expand the operation, and that any significant extension or expansion of the use results in the use then becoming illegal. Attorney Espinola stated the reason for this is to put the neighborhoods on notice of what will be happening in their neighborhood, and that is what the permit application does. He stated that is not what A-1 has done. He stated that A-1 at every step has failed to apply for or receive any permit that they were required to obtain to operate that business. Every step.

In rebuttal, Attorney Crotty stated that what is before the ConCom is a wetlands case and notice of intent, where they not only address wetlands issues, but also add the complaint of the dust issue. He stated Mr. DeCosta is proposing mud traps so the trucks can be cleaned off as they exit the property, as well as a berm to address the sound and noise complaints from neighbors. He stated this seeks to reduce the noise even further than what is indicated in the acoustic survey. Attorney Crotty stated those do not have to be put into a ConCom wetlands application. He stated Mr. DeCosta also sought to address the neighbor concerns. Attorney Crotty stated that Mr. DeCosta was not forced by DEP to apply for those things; rather, Mr. DeCosta added them voluntarily.

Attorney Crotty stated that with regard to DEP or ConCom, those are not zoning issues and are not before this board; that they are not the jurisdiction of this board. He stated it is also not the basis of the cease and desist order, which only raises the issue of the failure to obtain a use permit in 1963.

He stated the DEP and ConCom issues should not form the board's basis in denying Mr. DeCosta's appeal here, as they are totally irrelevant to this case.

Attorney Crotty stated that the prior non-conforming use issue, again, is not the basis of the cease and desist order. He stated that if the issue was the expansion of the non-conforming use, the cease and desist order should address that, and it did not. He stated that the Building Department is focusing solely on a piece of paper that Mr. DeCosta or his father was supposed to have gotten sometime in the past. Attorney Crotty stated he relies on his previous arguments that the ordinance does not require it.

In rebuttal, Attorney Espinola stated that in 1981, when the operation changed, A-1 would have had to receive a determination from the Department of Environmental Protection (DEP) in order to proceed with their business. Even forgetting 1963, which Attorney Espinola stated he feels is important in that A-1 was required to get a building permit and failed to do so, in 1981 A-1 was required to get a determination of whether that site was feasible for that type of activity, and Mr. DeCosta failed to get that determination. Attorney Espinola stated that in 1991, Mr. DeCosta should have gone to DEP for a determination of whether or not that site was feasible for the operation, and again failed to do so. And in 2001, he failed to do so. Attorney Espinola stated that Attorney Crotty's memorandum relies on a statute that ultimately indicates that this ministerial act of getting a permit back in 1963 would have had to have been stamped off by the Building Commissioner. Attorney Espinola stated that Attorney Crotty omits the provision of that statute that states "otherwise lawful". Attorney Espinola stated that would mean that if you were in violation of the DEP regulation, indicating you cannot operate such business, then you are not otherwise lawful. You are twice lawless.

Attorney Espinola stated that again and again A-1 has gone rogue and failed to get any permit required by either a city or state agency. He stated there is no targeted enforcement action or conspiracy against A-1. Attorney Espinola reminded the board that they had heard from the neighbors concerning what this has caused in their neighborhood. He stated his memory is that when brushing their teeth the cup in front of them was shaking. He stated that A-1's continued expansion over 30 years and their failure to follow the rules everyone else must follow is the reason this has come up.

Board Member Walsh moved that the hearing be closed. There being no further board questions, Acting Chairperson Schick declared the hearing closed.

Board Member Schilling stated he was somewhat troubled that there was a 53 year old violation just coming to the forefront. He stated he was also troubled by the amount of expansion since 1981 that may be legitimate grounds for a cease and desist order. He stated if the cease and desist order was unartfully drawn and referred only to the 1963 matter, it still seems there would be grounds for a cease and desist order based on the expansion of business and the change from merely an asphalt company to a business that crushed stone 5-6 days a week.



Acting Chairperson Schick agreed. He stated it seems there was a disregard for getting the proper approvals and certificates.

Board Member Walsh stated he agreed this was a dry legal issue, which is not complicated. He stated the law must be followed without consideration of equity. He stated he had watched the original hearing and read the materials, and the issue was the neighbors were complaining about the expansion in the use of the property. He stated the neighbors seemed to be complaining about the stone crushing and demolition, and the problems that was causing. Attorney Crotty indicates that that was a pre-existing non-conforming use. Board Member Walsh stated that in his research, he had come across the same case as Attorney Espinola. He stated that the Oakham case states that once there is a substantial change or extension of the non-conforming use, the resulting use must comply with the current zoning by-laws to avoid becoming an illegal use. Board Member Walsh believed the simple question before the board was that based upon neighbors' complaints and the expansion, has the activity at that site made the pre-existing non-conforming use into an illegal use. He stated that based upon the testimony he had viewed from the prior meeting, he is inclined to believe the expansion has made a pre-existing non-conforming use now an illegal use.

Board Member Schilling stated in that case, the cease and deist order should have said 1981, rather than 1963. Board Member Walsh disagreed that the wording was a concern.

Attorney Espinola stated that Number 2 of the cease and deist order does specify the rock and concrete crushing operations.

Mr. Decker made a motion, seconded by Ms. McTigue to accept as part of the case file the case of Oakham Sand and Gravel Corporation v. the Town of Oakham. Motion passed unopposed.

Board Member McTigue inquired if the property had received a cease and desist, can it revert back to the legal use of a contractor's yard.

Attorney Espinola stated that Mr. DeCosta could apply for a permit, which he has not yet done.

Attorney Crotty stated that the Building Commissioner attorney should not be advising the Zoning Board on legal matters. He stated that did not constitute a fair hearing.

Acting Chair Schick reopened the hearing and the board allowed Attorney Crotty to speak briefly.

Attorney Crotty stated that the issue of whether A-1 even needed a use permit is before the board to decide; not for you to be instructed that he needs a use permit.

Attorney Crotty stated the Building Department raises the issue of non-conformity, which Attorney Crotty claims the cease and deist order does not actually address. He added that the contractor's yard is even currently an allowed use, and regardless of the board's decision it is an allowed use and Mr. DeCosta has the right to do it. He stated the issue of grandfathering is also not addressed in the cease and desist order, and he believes on appeal a judge will say that the issue was not even raised.

Attorney Crotty again suggested going back to the drawing board and rewrite a cease and desist order that raises these issues.

Board Member Decker explained that in order to make the motion the board needed to state facts that they have found in the case in order for the cease and desist order to be over turned.

Board Member Decker read into the record the items on the cease and desist order, namely:

- Failure to obtain a building permit for any structure associated with the operation of A-1 Asphalt Company
- Failure to obtain the required permit for a contractor's yard
- That the rock and concrete crushing operations and the crushing and recycling of other materials are not permitted activities in a contractor's yard

Board Member Walsh expressed that what weighs heavily on his vote is the rock crushing operation. He said that in his understanding there was a permit prior to 1963 for a contractor's yard. He believes it is undisputed that the rock crushing operation was a pre-existing non-conforming use. He stated the other fact he considers important, is the abutters, who, to his memory, stated at the last hearing that there had been a substantial increase in the rock crushing operation. He felt the board needed to come to a consensus on what facts they find.

Board members discussed how to make the motion for the case.

Attorney Espinola clarified that in 1932 there was a permit for a garage only.

Board members discussed if the permit issued in 1932 was for a contractor's yard or not. Board Member McTigue stated electric permits had been pulled but not building permits.

After further board discussion on motion content for the administrative appeal, Board Member Decker welcomed an offer from Board Member Walsh to present a motion.

A motion was then made by Mr. Walsh and seconded by Mr. Decker that with regard to Case #4236 to approve the administrative appeal as follows: that the cease and desist order issued by the Commissioner of Inspectional Services be overturned and that the appeal of the petitioner be granted per the administrative appeal process under provisions of Chapter 9, Sections 5200, 5220 and 5223 relative to property located at 1861 Shawmut Avenue, Assessors Map 124, Lot 27 in an Industrial B zoned district.

Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9, above cited sections, and under the provisions of MGL Chapter 40A, Sections 7, 8 and 15 the board finds the following facts:

- That A-1 Asphalt began using the property at issue as a contractor's yard in 1963;
- That A-1 Asphalt began operating a stone crushing operation at the property in the 1990's;

- That as a result of an ordinance that took effect in 2003, the stone crushing operation became a pre-existing non-conforming use;
- That since that time, there has been a substantial increase in the stone crushing operation at that property.

Ms. McTigue inquired if the references to the code need be based on the cease and desist order, as she believed she had heard different code section numbers in the motion than those listed in the order.

Board Member Walsh stated that his individual decision would be based on the third prong of the cease and desist order.

Board Member Walsh amended the motion to include, in addition to the ordinance sections cited, Sections 5100, 5110, 5120 and 5130. Chairperson Schick clarified that a vote in the affirmative will overturn the cease and desist order.

Roll-call vote as follows:

Board Member Schilling - No  
Acting Chairperson Schick – No  
Clerk Decker– Yes

Board Member Walsh - No  
Board Member McTigue – No

Motion failed 1-4

### **3. ADJOURNMENT:**

There being no further business to come before the board, the meeting was adjourned at 7:05 p.m..

**Next meeting – December 15, 2016**

**ZONING BOARD OF APPEALS  
NEW BEDFORD CITY HALL – Room 306  
WILLIAM STREET  
NEW BEDFORD, MA  
Thursday, December 15, 2016**

**MEETING MINUTES**

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

**ABSENT:** Debra Trahan

**STAFF:** Danny Romanowicz, *Commissioner of Inspectional Services*  
Jennifer Gonet, *Assistant Project Manager*

CITY CLERKS OFFICE  
NEW BEDFORD, MA  
2017 JAN 25 P 3:58  
CITY CLERK

**1. CALL TO ORDER**

Acting Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order.

Acting Chairperson Schick explained the process and required findings necessary to those present.

**2. SCHEDULED PUBLIC HEARINGS:**

In light of a conflict for one board member, Alternate Board Member John Walsh sat on Cases #4257 and #4258. Therefore, upon motion, these cases were taken first, to accommodate Mr. Walsh.

A motion was made (AD) and seconded (JW) to hear Cases #4257 and #4258 out of order. Motion passed unopposed.

(\*Court Reporter enters meeting at 6:11 p.m.)

A motion was made (JW) to hear a consolidated presentation of Cases #4257 and #4258.

**ITEMS 1 & 2**

**Case #4257 - Notice is given of the public hearing on the petition of: Waterfront Historic League of New Bedford, INC. c/o Teri Bernert (128 Union Street New Bedford, MA 02740) and Studio 2 Sustain, Inc. c/o Kathryn Duff (412 County Street New Bedford, MA 02740) 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 139 Union Street, assessor's map 53 lot 144 in a mixed use business zoned district [MUB]. The petitioners propose to create spaces for an art center, office and two apartments as plans filed.**

**Case # 4258 – Notice is given of the public hearing on the petition of: Waterfront Historic League of New Bedford, INC. c/o Teri Bernert (128 Union Street New Bedford, MA 02740) and Studio 2 Sustain, Inc. c/o Kathryn Duff (412 County Street New Bedford, MA 02740) 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 141 Union Street, assessor's map 55 lot 143 in a mixed use business zoned district [MUB]. The petitioners propose to create space for two small restaurants, office, and two apartments as plans filed.**

A motion was made (AD) and seconded (JW) that the following be received and placed on file: the communication dated 11/23/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 12/15/16; 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.

A motion was made (AD) and seconded regarding Case #4258 that the following be received and placed on file: the communication dated 11/23/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 12/15/16; 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.

Kathryn Duff, Studio 2 Sustain, architects on the project for owners W.H.A.L.E., stated they are seeking a variance for relief of the 32 space parking requirements. She stated there is no site available outside of the building footprint. She stated the proposed project, which consists of two separate buildings, which are currently vacant, is being developed one project.

Ms. Duff made a code review submission to the board.

A motion was made (AD) and seconded (JW) to accept the CR Plans as submitted by the petitioner. Motion passed unopposed.

Ms. Duff explained that the Co-Creative Center site location at the intersection of Union Street and Acushnet Avenue. Ms. Duff noted that the project, which will restore historic storefronts, will receive state historic tax credits. She explained the proposed uses of the space within the buildings, including a gallery, office space, residential units, a café and juicing company. Ms. Duff displayed proposed renovations, including the pedestrian way.

In response to Board Member Walsh and Acting Chairperson Schick, Ms. Duff confirmed there is no parking space on the property, and the site is approximately two blocks from the Ziterion parking facilities. She noted the student cliental the residential units will be marketed to, and therefore did not anticipate any volume of traffic needs.

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.

Board Member Schilling, an area resident, shared that he believed having to look for a parking space is a sign of a vibrant city. There being no further discussion, with regard to Case #4257, petitioner Waterfront Historic W.H.A.L.E. of New Bedford, INC., and Studio 2 Sustain, Inc., concerning property located at 139 Union Street, Assessor's map 53 Lot 144 ,in a mixed use business zoned district [MUB], a motion was made (AD) and seconded (JW) to approve the variance to allow the petitioner to create spaces for an art center, office and two apartments as per plans filed, which requires a variance under Chapter 9 comprehensive zoning sections 3000, 3100, 3110, and 3130- Appendix-C, relative to property located at 139 Union Street, Assessor's map 53 Lot 144 in a mixed use business zoned district [MUB].

Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9, above cited sections, the board grants the relief 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, first, that there are circumstances relating to the soil conditions, shape or topography which especially effect 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 structure takes up the entire lot such that no area is available for 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 a new development plan and additional expenses making the project unfeasible and unable to continue. 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 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.

Roll-call vote as follows:

Alternate Board Member Walsh - Yes

Alternate Board Member Tavares – Yes

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12/15/16  
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Acting Chairperson Schick – Yes  
Board Member Schilling - Yes  
Passed 5-0

Clerk Decker– Yes

A motion was made (RS) and seconded (JW) to adopt the same reading and moves that Case #4258 be allowed on the same grounds. Motion passed unopposed.

Roll-call vote as follows:

Alternate Board Member Walsh - Yes  
Acting Chairperson Schick – Yes  
Board Member Schilling - Yes

Alternate Board Member Tavares – Yes  
Clerk Decker– Yes

Passed 5-0

*Alternate Board Member John Walsh exits the meeting at 6:26 p.m.  
Board Member Sherry McTigue entered the meeting at 6:26 p.m.*

**ITEM 3 – Case #4255 - Petition of: Paunor Realty, LLC c/o Norman Shurtleff (8 Burgess Point Road Wareham, MA 02571) and Christopher T. Saunders (700 Pleasant Street New Bedford, MA 02740) for a Special Permit under Chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430 (nonconforming structures other than single and two family structures), 2431 (reconstructed, extended, or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent), and 5300-5330 and 5360-5390 (special permit); relative to property located at 44 Fruit Street, assessor's map 28 lot 262 in a residential C [RC] zoned district. The petitioners seek approval to allow the third floor to be used as an apartment as plans filed.**

A motion was made (AD) and seconded (SM) that the following be received and placed on file: communication dated 11/21/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 12/15/16; 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.

Att. Chris Saunders, 700 Pleasant Street, New Bedford, representing the applicant, introduced Mr. Shurtleff, Manager of the LLC. Att. Saunders stated that Mr. Shurtleff purchased this 1902 built property in 2013. Att. Saunders submitted the MLS listing given him by the agent, as well as the Assessor's card. He stated that at the time marketed to the client, the three two-bedroom floors in a Residential C district. Att. Saunders noted that the entire area consists of one, two and three-family homes. He stated his client, upon purchase, intended to rent out the three apartments. While seeking a permit to renovate, Mr. Shurtleff learned that the building department has the property listed as a two-family. He noted this allowed use non-conforming structure lacks the 15,000 SF required for a three-family.

Att. Saunders noted his client's reliance on the assessor's office and the ML listing designation for the property he purchase as is. He stated his clients seeks to change the non-conforming two-family to a non-conforming three-family structure. Att. Saunders agreed with the staff comments regarding the necessary points for granting a special permit and he expressed his position on each, noting there is no change to the footprint or adding of floors to this existing structure.

In response to Board Member McTigue, Att. Saunders stated that parking was not observed in the evening, but he did not believe adding one apartment would have any notable impact on parking.

In response to Board Member Tavares, Att. Saunders confirmed two means of egress on the third floor. Att. Saunders noted the existence of a front and back door of the apartment and the structure.

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.

After brief board discussion, a motion was made (AD) and seconded (SM) to approve the special permit to allow the petitioner to obtain approval to allow the third floor to be used as an apartment per plans filed, which requires a Special Permit under Chapter 9 comprehensive zoning sections 2400, 2410, 2430, 2431, 2432, and 5300-5330 and 5360-5390, relative to property located at 44 Fruit Street, Assessor's map 28, Lot 262 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 is in compliance. 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 has found that the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

After consideration of the following sections, the board has found, first, that the social, economic and community needs served by the proposal are such that the use of the property as a three-family is consistent with the immediate neighborhood. With respect to traffic flow and safety, including parking and loading, the board finds that the proposed use does not have an undue burden on parking or traffic flow. With respect to the adequacy of utilities or other public services, the board has found the petition to be neutral. With respect to the neighborhood character and social structures, the board finds that the use as a three-family is consistent with the immediate neighborhood. With respect to impacts on the natural environment, the board finds this proposal neutral. Lastly, with respect to the potential fiscal impact, including impact on the city services, tax base and employment, the board finds the petition neutral as well.

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, the motion is made 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 from the date of the decision.

Roll-call vote as follows:

Board Member Schilling - Yes

Alternate Board Member Tavares - Yes

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Clerk Decker – Yes

Motion passed 5-0

**ITEM 4 – Case #4256 - Petition of: Edward J. Motyl and Jeanne M. Motyl (1053 Braley Road New Bedford, MA 02745) for a Variance under Chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-b-side yard), 2750 (yards in residence district) and 2755 (side yard); relative to property located at 1053 Braley Road, assessor's map 136-1 lot 278 in a residential-A zoned district. The petitioners propose to erect a 14'x36' addition as plans filed.**

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 11/21/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 12/15/16; the appeal package as submitted; the plans as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Jeanne Motyl stated they are seeking to put on an addition to their one bath home for her elderly mother-in-law, with a handicap accessible bathroom and a bedroom, should future nursing assistance become necessary. She stated she has adequate frontage, but the landscape is on an angle and therefore the back is short, with only 6-7' from her wall. She stated the lot next door is empty and nothing will touch the landscape.

Board Member Decker confirmed that Ms. Motyl had consulted the neighbor on any objections. Ms. Motyl represented that they had no problem with the project, they being the only real residential abutters.

In response to Acting Chairperson Schick's invitation to speak in favor, Councilor Linda Morad stated she was in favor of the petition. She stated the Motyl have been home owners for many years and keep their property immaculate. She believed the addition will be likewise and will add to their property value. She asked the board's consideration and approval.

In response to Acting Chairperson Schick's invitation to speak in favor, Chris Saunders 422 County Street, New Bedford, stated he was in agreement with Councilor Morad. He stated the elder Mrs. Motyl has been a city resident for many years. He asked that due to the unique shape of the lot, the board vote favorably on the merits.

There was no response to Acting Chairperson Schick's further 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 board discussion, a motion was made (AD) and seconded (SM) to approve the variance to allow the petitioner to erect a 14'x36' addition as per plans filed, which requires a Variance under Chapter 9 comprehensive zoning sections 2700, 2710, 2720-Appendix B, 2750 and 2755, relative to property located at 1053 Braley Road, Assessor's map 136-1, Lot 278 in a residential-A 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, relief can be 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 effect 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 shape of lot and location of the existing improvement is such that the addition only works 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 abandonment of the application equating to a substantial 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 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 decision.

Roll-call vote as follows:

Board Member Schilling - Yes  
Acting Chairperson Schick – Yes  
Board Member McTigue – Yes

Alternate Board Member Tavares – Yes  
Clerk Decker– Yes

Passed 5-0

**ITEM 5 – Case #4259 – Petition of: CMAC Realty, LLC c/o Lance Sylvia (83 Chershire Avenue Acushnet, MA 02743) for a Special Permit under provisions of Chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430-2432 (nonconforming structures other than single and two family structure), and 5300-5330 & 5360-5390 (special permit); relative to property at 2112 Acushnet Avenue, assessor's map 119 lot 13 in a mixed use business zoned district [MUB]. The petitioner proposes to convert the existing three (3) units on the upper level into three (3) residential living units as plans filed.**

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 11/23/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 12/15/16; 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.

Armando Pereira, Comprehensive Design Build Services, 227 Union Street, New Bedford, addressed the board regarding the old Aamco Transmission building, a mixed use building erected in the late '70's with approximately 14,226 SF consisting of seven units on the corner of Harwich and Acushnet Avenue. He stated the building is currently a laundromat, with the back of the lower level containing two retail units. He described the additional floors, with residential units on the third floor. He displayed the same.

He stated that in 2007 a change of use was recorded, being the only record of the units with the building department. Mr. Pereira states they are seeking to create a legal building on that level. He stated three units above can be potentially used for residential. Mr. Pereira stated this will add to the legal housing stock. He covered the two means of egress for each unit, and noted the installation of a sprinkler system.

Mr. Pereira stated that after obtaining zoning approval, the applicant will have to go before the planning board for parking.

In response to Chair Schick, Mr. Pereira stated that the site is a sea of asphalt, and as such putting in green space will take away from parking, which is already restricted. He noted a front planter as well as trees and plantings on Harwich Street. Mr. Pereira acknowledged the lack of green space.

Chair Schick suggested trees might help green space and not take up parking spaces. Mr. Pereira stated he would look into what could be done.

Board Member McTigue suggested making a recommendation that the planning board also look at the green space. In response to Board Member McTigue, Mr. Pereira stated that the building has been used as one studio and two or three bedroom units. He added that many purchasers buy buildings like this, assuming the subdivided apartments are legal, only to find out down the road that they are not.

Chair Schick noted the strange building configuration. Mr. Pereira stated that it almost appears as a split level, the back portion being down lower.

Ms. McTigue reiterated her concern for the lack of green space.

Mr. Pereira stated that there are 53 spaces required and the applicant has 43, and therefore must seek relief. He noted that with the exception of the green space, the project fits in with the area buildings.

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

In response to Chair Schick's invitation to be recorded in favor, were the following:

Paul Martins, 2112 Acushnet Avenue

There was no response to Acting Chairperson Schick's further 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.

Chair Schick closed the public hearing.

After board discussion, a motion was made (AD) and seconded (SM) to approve the special permit to allow the petitioner to convert the existing three (3) units on the upper level into three (3) residential living units, as per plans filed, which requires a Special Permit under the provisions of Chapter 9 comprehensive zoning sections 2400, 2410, 2430-2432, 5300-5330 & 5360-5390, relative to property at 2112 Acushnet Avenue, Assessor's map 119 Lot 13 in a mixed use business zoned district [MUB].

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 is in compliance. 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 has found that the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

After consideration of the following sections, the board has found, first, that the social, economic and community needs served by the proposal are such that the proposed use of the property will provide legal housing stock in the City of New Bedford. With respect to traffic flow and safety, including parking and loading, the board finds that the proposed use is neutral. With respect to the adequacy of utilities and other public services, the board has found the proposed use is neutral. With respect to the neighborhood character and social structures, the board finds that the proposed use is not inconsistent with the neighborhood's character. With respect to impacts on the natural environment, the board finds the proposed use is not more detrimental. Lastly, with respect to the

potential fiscal impact, including impact on city services, tax base and employment, the board finds the proposed use is neutral.

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, the motion is made 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 from the date of the decision.

Roll-call vote as follows:

Board Member Schilling - Yes

Acting Chairperson Schick - Yes

Clerk Decker - Yes

Alternate Board Member Tavares - Yes

Board Member McTigue - Yes

Motion passed 5-0

**ITEM 4 - CASE 4260 - Petition of: Maria Pereira Costa, Trustee of the 811 Mount Pleasant Street Real Estate Trust (157 Gammons Road Acushnet, MA) and David Costa (157 Gammons Road Acushnet, MA) for a Special Permit under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulation), 2210 (general), 2230 (table of use regulations-appendix-A, (C) Commercial #20- Medical offices, Center, or Clinic) and 5300-5330 & 5360-5390 (special permit); relative to property at 811 Mount Pleasant Street assessors map 123A lot 81 in a mixed use business zoned district. The petitioner proposes to use the building for licensed massage therapy, licensed acupuncturist, or a licensed physical therapist to compliment the current chiropractic use as plans filed.**

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 11/23/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner dated 12/15/16; 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.

David Costa stated they are looking to add a licensed massage therapist to the chiropractic office planned to open in January. He stated he has his main office in Wareham. He stated the massage therapist would be on a rotating schedule and would not affect parking as she will see clients on the days Mr. Costa is not in the office.

Board Member McTigue inquired about any future therapists. Mr. Costa, trying to save future visits in front of the board, broadened the request so that should the massage therapist leave after her year lease, an acupuncturist could lease the space.

In response to Board Member Decker, Mr. Costa stated they are proposing more use of the facility because, though he will not be there more than three days a week, in the event of a schedule change to accommodate holidays he listed Monday thru Saturday. He again stated he was trying to avoid having to come before the board. He stated he is in Wareham Monday, Wednesday and Friday. With the expected use to occur Tuesday, Thursday and Saturday mornings, leaving Monday, Wednesday and Friday for the massage therapist.

Ms. McTigue confirmed there are a number of commercial buildings in the area.

In response to Acting Chairperson Schick's invitation to speak in favor, Councilor Linda Morad stated she was at Dr. Costa's original petition to operate. She stated Dr. Costa is investing in the city and expanding his business. She stated he has upgraded the property and his request is not detrimental to the neighborhood and proposes no structural change to the building. She asked the board to grant the request.

There was no response to Acting Chairperson Schick's further 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 discussion, a motion was made (AD) and seconded (SM) to approve the special permit to allow the petitioner to use the building for licensed massage therapy, licensed acupuncturist, or a licensed physical therapy to compliment the current chiropractic use as per plans filed, which requires a Special Permit under the provisions of Chapter 9 comprehensive zoning sections 2200, 2210, 2230-Appendix-A subsection (C), 5300-5330 & 5360-5390, relative to property at 811 Mount Pleasant Street Assessors map 123A Lot 81 in a mixed use business 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 is in compliance. 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 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 has found, first, that the social, economic and community needs served by the proposal are such that it will provide services not currently available in the immediate area. Concerning traffic flow and safety, the proposed use will not be inconsistent with the surrounding area. Concerning the adequacy of utilities and other public services, the board has found the proposal is neutral. Concerning the neighborhood character and social structures, the board finds that the proposed use is not more detrimental to the character of the neighborhood. Concerning the impacts on the natural environment, the board finds the proposed use is not more detrimental. Lastly, with respect to the potential fiscal impact, including

impact on city services, tax base and employment, the board finds the proposed use provides additional employment opportunity in the city. In light of its 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, the motion is made 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 from the date of the decision.

Roll-call vote as follows:

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

Alternate Board Member Tavares - Yes  
Board Member McTigue – Yes

Motion passed 5-0

**3. OLD/NEW BUSINESS:**

There was discussion on the slate of officers for 2017, namely chairperson, vice-chairperson and clerk. Acting Chairperson Schick stated that the nomination of 2017 officers to occur at a later point.

**4. ADJOURNMENT:**

There being no further business to come before the board, a motion was made (AD) and seconded (HT) to adjourn. Motion passed unopposed.  
Meeting was adjourned at 7:32 p.m..

**The next regularly scheduled Zoning Board of Appeals Meeting is January 19, 2017.**