

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL
WILLIAM STREET
NEW BEDFORD, MA
Thursday, January 19, 2017**

MEETING MINUTES

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

ABSENT: Debra Trahan
Allen Decker

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

CITY CLERK'S OFFICE
NEW BEDFORD, MA
2017 AUG 30 P 2:44
CITY CLERK

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. and explained the process and protocols to those in attendance. Acting Chairperson Schick notified those on the agenda that there were four members present, and as such petitioners would need a unanimous vote. He offered petitioners the opportunity to continue their hearing to a meeting with five board members. All petitioners indicated they would proceed.

2. PUBLIC HEARINGS

ITEM 1: Case #4261- Petition of: Norbeto C. and Lucilia C. Moniz (36 Rogers Street New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-B, side yards), 2750 (yards in residence districts) and 2755 (side yards-driveways may extend to four (4') feet of a side yard); relative to property located at 36 Rogers Street, assessor's map 55 lot 187 in a residential B [RB] zoned district. The petitioners seek approval of a driveway that was installed without the required four foot (4') buffer as plans filed.

A motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 12/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 1/19/17; the appeal package; the plan 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 Chair Schick declared the hearing open.

Lucilla Moniz stated she was here seeking a driveway.

Acting Chair Schick clarified with Ms. Moniz that she was seeking approval of a driveway installed without the 4' buffer as included in the plans filed, now requiring a variance. Ms. Moniz confirmed.

In response to Mr. Schilling's question about any objection by abutters, Mr. Walsh noted a letter from abutter Patricia Mahoney dated 11/17/16.

Ms. McTigue stated that the water runoff was the main issue, absent the 4' buffer. Lance Moniz stated the slope of the driveway takes the water right to the street. He also noted the abutters land slopes and is higher.

Ms. McTigue noted the plans were filed with knowledge of the required 4' buffer. Mr. Moniz stated the permits were picked up by the contractor and they had no knowledge that it needed a 4' buffer. Mr. Moniz confirmed to Ms. McTigue that there was green space.

In response to Acting Chair Schick's invitation to speak favor, Jessica Pinho spoke on behalf of State Representative Tony Cabral. She stated that Representative Cabral wished to voice his support of Ms. Moniz' petition and is hopeful the board will vote in favor.

There was no response to Acting Chair Schick's further invitation to speak or be record in favor.
There was no response to Acting Chair Schick's invitation to speak or be record in opposition.

At Mr. Walsh's invitation, Mr. Romanowicz stated the inspector who went to sign off on the project noted the driveway was absent the required buffer. He stated the requirement is written on the permits to avoid these situations. He noted that the board seems to be seeing this issue more.

Mr. Walsh stated that perhaps the board has been somewhat lenient in the past, but based upon what was submitted by the applicant, he does not believe she meets the requirements to receive a variance. Mr. Walsh noted the petitioner's representation that knowing prior to the work being done that the neighbor's land was higher, and the applicant stated the 4' buffer zone would create a depression for settling water. Mr. Walsh stated he did not believe a buffer would necessarily do that, in light of grading, et cetera. He felt the conditions of the permit were ignored, and the applicant has not met the requirements to grant the variance.

In response to discussion, the result of not granting the variance would require the removal of 4' of the driveway. Ms. McTigue noted that the requirement of the 4' buffer is for the ground to absorb some of the ground water to avoid overtaxing the city storm water system.

Mr. Schilling added that had the neighbor been silent on the issue that would be one thing. But with the neighbor's letter being received, it is different. Mr. Schilling stated he appreciates the enforcement of the requirements, but feels it's a high price for Ms. Moniz to pay for a mistake made by Reis Asphalt. Mr. Moniz stated that after receiving the letter that the work did not meet code, the contractor reviewed the drawings and discovered he had made the error.

Mr. Schilling stated the removal of the four feet would likely result in suing the contractor. He felt there was adequate runoff even absent the 4' buffer. Ms. McTigue noted the space was not buildable.

In response to Acting Chair Schick, Ms. Moniz explained that she had changed contractors from Morgado to Reis and was told she did not need another permit. Mr. Moniz stated that after speaking with the contractor's secretary they admitted they would remove it if necessary.

Acting Chair Schick closed the hearing.

After further board discussion, a motion is made (JW) and seconded (RS) to approve the variance to allow the petitioner approval of a driveway installed without the required four foot (4') buffer as plans filed, which requires a variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720, 2750 and 2755 relative to property located at 36 Rogers Street, assessor's map 55 lot 187 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 with respect to these sections 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 according to the applicant before the work was done the neighbor's grass was higher in elevation than the applicant's and that a 4' buffer zone would create a depression for water to settle. And that 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, that hardship, according to the petitioner, is that a 4' buffer would create a depression that would allow ice and water to accumulate. 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. Therefore, this motion as made includes the following conditions: 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:

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Acting Clerk Walsh – No

Board Member Schilling - Yes

Fails – 3-1

ITEM 2 – Case #4262 - Petition of: Robert J. and Pauline A. Bowcock (290 Maple Street New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-B, Rear yards), 2750 (yards in residence districts), and 2753 (rear yard); relative to property located at 290 Maple Street, assessor's map 44 lot 79 in a residential A [RA] zoned district. The petitioner proposes to erect an addition and a 20'x20' deck as plans filed.

A motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 12/29/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 1/19/17; the appeal package; the plan 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 Clerk Walsh noted a letter dated 1/5/17 received from City Councilor Winterson, which then was motioned (JW) and seconded (SM) to be received and placed on file. Motion passed unopposed.

The letter was read into the record.

Acting Chair Schick declared the hearing open.

Robert Bowcock of 290 Maple Street stated that he and his wife have lived in this 100 year old house since 1984. He stated he is proposing to put a one-story addition onto the west side of the house located on this unique piece of property. He stated the way the house currently sits on the lot encroaches within the 30' buffer required by current zoning, but does meet the side and front yard requirements.

Mr. Bowcock stated they only found out about the encroachment after having the plans drawn and the lot surveyed. He stated the need to do this is from his wife becoming handicapped. He stated she could also access their above-ground pool without climbing stairs and ladders per their plan to install a deck on the rear of the house. He explained the height of the deck and stated it is consistent with other decks in the same block.

Mr. Walsh inquired regarding the application section requiring the applicant to list any circumstances related to soil conditions, et cetera, which Mr. Bowcock did not fill out. After direction from Ms. McTigue, Mr. Walsh apologized for not seeing the attachment addressing the same.

Ms. McTigue discussed the height above grade for the deck. Mr. Bowcock noted the granite foundation is 3'-4' above ground level, explaining they would exit the back of the house with one step down to the deck.

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

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

Mr. Schilling confirmed that all abutters were notified and they provided no response.

Acting Chair Schick closed the hearing.

There being no further discussion, a motion was made (JW) and seconded (SM) to approve the variance to allow the petitioner to erect an addition and a 20'x20' deck as plans filed which requires a variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720, 2750 and 2753, relative to property located at 290 Maple Street, assessor's map 44 lot 79 in a residential A [RA] 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 requirements are met. In addition to the foregoing sections, this petition has also been found to be in accordance with MGL Chapter 40A, §10 relative to the granting of variances, because the board has found that there are circumstances relating to the soil condition, 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 lot was established prior to any zoning requirements, and that the house was situated in the lot such that if a variance was not granted the homeowner would have to incur significant expense to design a structure addition that would comply with zoning requirements. The previous statement explains the hardship, which is the expense involved. The board finds there are circumstances relating to the soil conditions which effect the land but not the district. Due to those circumstances we find that literal enforcement would have a substantial financial hardship to the applicant. Also, 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. Therefore, in light of its review of the specifics noted in this motion, the board finds the material presented is complete, and after its' careful consideration of the petitioner's request, the Zoning Board of Appeals finds the petitioner 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 the plans submitted with the application, 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:

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Acting Clerk Walsh – Yes

Board Member Schilling - Yes

Passes 4-0

ITEM 3 – Case # #4264 - Petition of: Popes Island Harbor Development Corp. c/o Mark W. White (867 Middle Road Acushnet, MA 02743) and Kenneth Tetrault (74 Willis Street #2 New Bedford, MA) for a Special Permit under Chapter 9 Comprehensive Zoning sections 4200-4267 (Body Art), and 5300-5330 & 5390 (Special Permit); relative to property located at 213 Popes Island, Assessor's map 60, lot 12 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to operate a body art establishment, tattoo and piercing doing business as Flyin Aces Tattoo as plans filed.

A motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 12/30/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 1/19/17; the appeal package; the plan 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. An additional motion was made (JW) and seconded (SM) to also receive and place on file communication from Brenda Wise dated 1/9/17, an abutter indicating she has no concerns. Motion passed unopposed.

Kenneth Tetrault stated he was here for a special permit to change tenancy. He stated his current tattoo studio is located at 858 Kempton Street, and he would like to relocate it to 213 Popes Island, Lot 12.

Ms. McTigue inquired as to the reason for the move. Mr. Tetrault stated the owner of his current location is planning to sell the property and Mr. Tetrault doesn't want to wait until the last minute to find adequate space. He stated he has looked at other locations, but they did not fall within zoning requirements. He stated that in addition, the new location has great parking and accessibility, as opposed to his current basement location with limited parking which affects his business.

In response to Mr. Walsh, Mr. Tetrault confirmed he is relocating his business to somewhere where he would be surrounded by businesses and not residences, as well as better lighting.

In response to Ms. McTigue, Mr. Tetrault confirmed he would be keeping the same number of booths and discussed his planned changes to the new location.

In response to Ms. Gonet and Ms. McTigue, Mr. Tetrault acknowledged he is presently proposing 3-5 employees servicing 4-8 patrons per day.

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

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

Acting Chair Schick closed the public hearing.

After brief discussion, a motion was made (JW) and seconded (SM) to approve the special permit to allow the petitioner to operate a body art establishment, with tattoo and piercing, doing business as Flyin Aces Tattoo as plans filed, which requires a special permit under Chapter 9 Comprehensive Zoning Sections 4200-4267, and 5300-5330 & 5390, relative to property located at 213 Popes Island, Assessor's map 60, lot 12 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 with respect to these sections the conditions have been met. In addition to the foregoing sections, this petition has also been found to be in accordance with the City of New Bedford Code of Ordinances Chapter 9, Section 5300 -5330, 5360-5390, relative to the granting of special permits because the board found 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, the board found with respect to social, economic and community needs

served by the proposal, the special permit is servicing an existing need. With regard to traffic flow and safety, the board has found it will have no negative impact at the new location and would likely have a positive impact at the old location, because there would be a traffic decrease there. With respect to the adequacy of utilities and other public services, the business will use existing utilities. With respect to neighborhood character and social structures, the business will now be located in a mixed use business district and is consistent. Impacts on the natural environment are neutral. With regard to potential fiscal impact, including impact on the city services, tax base and employment, this will have a neutral to positive effect, as the business would continue to employ its present employees and may employ additional employees in the future. 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, 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:

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Acting Clerk Walsh – Yes

Board Member Schilling - Yes

Passes – 4-0

ITEM 4 - CASE #4265 - Notice is given of a public hearing on the petition of: Ryan W. Pina (42 Briarwood Court New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2300 (Accessory Buildings and Uses) 2330 (accessory structures), 2338 (protection of swimming pools and fish ponds), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-appendix-B-Height of buildings, # of stories); relative to property located at 42 Briarwood Court, assessor's map 136-C, lot 79 in a residential A [RA] zoned district. The petitioner proposes constructing habitable space in the basement and attic and is seeks approval of the existing extension of the deck/structure as plans filed.

A motion was made (JW) and seconded (SM) that the following be received and placed on file: the communication dated 12/30/16 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 1/19/17; the appeal package; the plan 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, passed out photos to the board. He described the 2010 and 2007 Google images.

A motion was made (JW) and seconded (RS) that the photos be received and placed on file. Motion passed unopposed.

Mr. Pereira stated the existing .237 acre parcel consists of a wood framed, single family two-story dwelling with an unfinished attic which is somewhat framed. He stated there is an unfinished basement. He stated the structure was built in 1971 and has a pool installed in 1974, with the second floor addition erected in 2008. He stated there is deck on the east side flush with the interior of a sunroom. He stated the applicant acquired the property through a 2016 foreclosure. Mr. Pereira stated they are seeking to finish the basement for a recreation room area, and to finish the attic space. He stated they are also requesting to keep the existing deck and guardrail.

Mr. Pereira went over drawings, explaining the apparent uses of the previous owner. He went over the first floor, sunroom and deck, as well as the bedrooms. He then went over the second floor of the dwelling. He stated they submitted a first proposal with the first and second floors, and now this subsequent submittal for the basement and attic. He explained the plan for the basement, and went over the changes made to the first floor and second floor.

Mr. Pereira then covered the proposed changes for the attic space. He then referred the board back to the photos, pointing out the pre-existing deck area as well as an addition and the sliding doors.

He stated any potential to add an addition to the house is landlocked.

In response to Mr. Walsh, Mr. Pereira confirmed they cannot expand the building, but can expand the square footage of living space, without creating a detriment to the neighborhood. He noted a dried up creek in the back of the property presenting conservation issues.

Ms. McTigue confirmed there was no room for expansion on the property.
Mr. Pereira confirmed for Mr. Walsh that the footprint stays the same.

A female audience member spoke and was interrupted from speaking further.

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

In response to Acting Chair Schick's invitation to speak or be record in opposition, abutter Grace Silveira, 39 Briarwood Court, stated she is likely the last of the original persons from when the properties were constructed. She commended Mr. Pina for his excellent job with the property, which she feels adds value to the neighborhood. She stated her concerns were regarding traffic. She stated she is sorry she did not come to the prior hearings regarding construction of homes, because she now has water in her basement. Ms. Silveira stated she is concerned about other people moving into the property, which will create traffic and parking problems. She commented on the activities on the property over the years. She thinks she may be in favor, but is concerned about the number of stories.

Mr. Pereira stated it would be a garrison.

Ms. McTigue stated that parcel look-up will tell what the structure is.

Ms. Silveira stated she was concerned that whatever they do will effect her property when she tries to sell.

Mr. Walsh explained this was a single family residence.

Ms. McTigue stated it is listed as a colonial style.

Ms. Silveira tried to date the erection of the sunroom/deck/railing.

Acting Chair Schick closed the hearing.

A motion was made (JW) and seconded (SM) to approve the variance to allow the petitioner to construct habitable space in the basement and attic and have approval of the existing extension of the deck/structure as plans filed, which requires a variance under Chapter 9 Comprehensive Zoning Sections 2300, 2330, 2338, 2700, 2710, 2720, relative to property located at 42 Briarwood Court, assessor's map 136-C, lot 79 in a residential A [RA] 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 with respect to these sections the criteria has been met. In addition to the foregoing sections, this petition has also been found to be in accordance with MGL Chapter 40A, §10 relative to the granting of variances, because the board has found that there are circumstances relating to the soil condition, 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 based upon the size of the existing lot and the size of the building upon it, the homeowner cannot expand the square footage of the building and remain in compliance with zoning ordinances. The proposed plan will increase living space without increasing the footprint. Due to those circumstances especially effecting 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. The hardship is that if the variance were not granted, the applicant could not maximize the use of his property and the value of his property. Also, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law. And the desirable relief may be granted without substantial detriment to the public good. Therefore, in light of its review of the specifics noted in this motion, the board finds the material presented is complete, and after its' careful consideration of the petitioner's request, the Zoning Board of Appeals finds the petitioner satisfactorily meets the basis for the requested relief. Therefore, this motion is made and includes the following conditions: that the project be set forth according to the plans submitted with the application, 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:

Acting Chairperson Schick – Yes

Board Member McTigue – Yes

Acting Clerk Walsh – Yes

Board Member Schilling - Yes

Passes 4–0

3. OLD BUSINESS/NEW BUSINESS:

Mr. Walsh noted a letter received from Att. Thomas Crotty dated 12/13/16 requesting the board reconsider its decision in Case #4236. A motion was made (JW) and seconded (SM) to receive and place on file. Motion passed unopposed.

A motion was made (JW) and seconded (SM) that given the fact that there is not a full board this evening, nor are all members present who voted on the initial case, he moved that the matter be tabled until the sitting board for the case is reconvened. Motion passed unopposed.

4. APPROVAL OF MINUTES

A motion was made (JW) and seconded (RS) to approve the minutes from the meetings of November 17, December 6 and December 15.

5. ELECTION OF OFFICERS:

John Walsh nominated Debra Trahan for Chair, Leo Schick for Vice-chair, and Allen Decker for Clerk. After discussion with Ms. Gonet, John Walsh nominated Debra Trahan for Chair, Sherri McTigue for Vice Chair and Allen Decker for Clerk. Ms. Gonet suggested the matter be tabled to the next meeting.

6. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 7:28 p.m..

Next meeting – February 16, 2017

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL – Room 306
WILLIAM STREET
NEW BEDFORD, MA
Thursday, February 16, 2017**

MEETING MINUTES

CITY CLERKS OFFICE
NEW BEDFORD, MA
2017 AUG 30 P 3:07
CITY CLERK

- PRESENT:** Debra Trahan (*Chairperson*)
Allen Decker (*Clerk*)
Leo Schick
Sherry McTigue
Robert Schilling
- ABSENT:** None
- STAFF:** Dan Romanowicz, Commissioner Inspectional Services
Jennifer Gonet, *Assistant Project Manager*

1. CALL TO ORDER

Chairperson Trahan called the meeting of the City of New Bedford Zoning Board to order at 6:04 p.m. and explained the process and protocols to those in attendance.

2. APPROVAL OF MINUTES

None

3. PUBLIC HEARINGS

ITEM 1: Case #4217- Request for extension (administrative)

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

Board Member Decker recused himself from hearing this matter and left the room. Chair Trahan remained the petitioner that in Board Member Decker's absence, the petitioner needs all four board member votes. The petitioner chose to go forward.

Att. Marc Deshaies, counsel for the YWCA of Southeastern Massachusetts, presented regarding the special permit granted approximately a year ago. He stated that the special permit, under zoning by-laws, needs to be exercised within one year. He stated there had been a change in architects and as well as funding issues. He stated he expects the necessary plans to be ready in 4-6 weeks. He addressed

Minutes
Zoning Board of Appeals
2/16/17
2 of 5

other funding applications in process for the development, and stated they expect to break ground in September 2017. Att. Deshaies asked for a one year extension of the permit to February 18, 2018.

There being no questions of the board, a motion was made (DT) seconded (RS) to grant the petitioner's request.

Roll-call vote as follows:

Chairperson Trahan – Yes

Board Member McTigue – Yes

Board Member Schilling - Yes

Board Member Schick - Yes

Motion passed – 4-0

Board Member Decker returned to the meeting after case #4217 concluded.

ITEM 2: Cases #4266/#4267 - Public hearing on the petition of: Brian Andrade, Trustee of Broadway Laundry Realty Trust (173 Rear Broadway Taunton, MA 02780) and Signs by Tomorrow (65 Belmont Street South Easton, MA 02375) for an Administrative Appeal under Chapter 9 Comprehensive Zoning sections 5223 (administrative appeal for Prohibited signs), 3210 (general regulations), 3220 (prohibited signs), and 3222; relative to property located at 80 Summer Street, assessor's map 58 lot 414 in a mixed use business zoned district [MUB]. The petitioner proposes to change the face design and add a digital display to an existing ground sign as plans filed.

Case #4267 - Public hearing on the petition of: Brian Andrade, Trustee of Broadway Laundry Realty Trust (173 Rear Broadway Taunton, MA 02780) and Signs by Tomorrow (65 Belmont Street South Easton, MA 02375) for a Variance under Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3201 (Purpose), 3210 (general regulations), 3254 (ground signs), 3255 (area restrictions), 3256 (location restrictions); relative to property located at 80 Summer Street, assessor's map 58 lot 414 in a mixed use business zoned district [MUB]. The petitioner proposes to change the face design and add a digital display to an existing ground sign as plans filed.

Per a suggestion from Clerk Decker, a motion was made (LS) and seconded (SM) to place both cases together.

Roll-call vote as follows:

Chairperson Trahan – Yes

Board Member McTigue – Yes

Clerk Decker – Yes

Board Member Schick - Yes

Board Member Schilling - Yes

Motion passed – 5-0

In regard to Case #4266, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 1/30/17 from the Commissioner of Buildings & Inspectional

Minutes
Zoning Board of Appeals
2/16/17
3 of 5

Services; communication from the Office of the City Planner, dated 2/26/17; 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.

In regard to Case #4267, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 1/30/17 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 2/26/17; 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.

Chair Trahan declared the hearings open.

Jim Haluch, of Signs by Tomorrow (65 Belmont Street S. Easton, MA), stated he appears representing Laundry Mat Holding Company, d/b/a Easy Clean Laundry Center. He stated the hearing is in regard to the roadside pylon sign at 80-82 Summer Street. He stated they are looking to take down the actual sign on the existing pylon pole and replace it with a new internally illuminated sign as presented to the board, along with a small digital display mounted below. Mr. Haluch stated that the current sign is 28 sf., the city allowing 25 sf.. He stated they are requesting 31.5 sf.

Mr. Haluch stated the city setback requirement is 6', the sign currently being within that. He stated the signs will actually be smaller and therefore produce some gain on the setback, but will not achieve the full 6 feet.

He noted that the board has allowed other businesses to have the digital display.

In response to Board Member Schick, Mr. Haluch stated the digital display has the capability of producing multicolor characters. Board Member Schick noted there have been issues in the past with bright colors and constant flashing messages. Mr. Haluch stated there are sign sensors installed that allow the sign to dim in the evening, which can be controlled.

Board Member Schilling confirmed that neighboring property owners have been notified of the hearing.

In response to Board Member McTigue, Mr. Haluch stated there should not be movement in these displays. He stated the owner expects to change the message once a day.

In response to Board Member Schick, Mr. Haluch stated the sign will be off by eleven o'clock, and would not come on prior to six a.m.

In response to Board Member Schilling, Mr. Haluch explained that the Easy Clean Laundry Center sign [as shown on the rendering submitted] will not be digital, but is internally LED illuminated, which will be less bright than the current sign.

In response to Board Member Decker, Mr. Haluch confirmed the sign will be visible on both sides.

Board Member McTigue expressed concern about the lower sign being within arm's reach of potential vandalism and not necessarily safe to someone on the sidewalk.

Chair Trahan affirmed that concern and any associated liability.

Board Member Decker inquired as to the issue that prevents the sign from being moved back to comply with the lot line setbacks. Mr. Haluch stated one issue is the significant cost, another is the loss of parking spaces.

There was no response to Chair Trahan's invitation to speak in opposition.

Mr. Haluch added that the owner has a few of these businesses in the Taunton/Raynham area, noting that the properties are extremely well kept and the owner takes pride in his property.

Mr. Haluch could not confirm Chair Trahan's inquiry as to whether the property was transferred in 2015.

Board Member Schilling noted the lower 7' sign display is 26" away from the sidewalk.

Chair Trahan inquired as to employment numbers. Mr. Haluch could not answer.

Chair Trahan noted for the record that the owner should be present to answer the board's business questions. She stated too many applicants send others to represent them and the board cannot get needed answers because the representatives cannot answer.

Chair Trahan stated she had received a number of complaints and meeting minutes for variances given where the board allows the representation of applicants that any problems will be taken care of, yet that representation is absent in their submissions and what is ultimately recorded. Therefore the board cannot enforce such problems, because people aren't doing what they tell the board at their hearings that they will do. She felt conditions need to be included.

Board Member Schick stated that he too was disappointed that one of the owners was not present.

Board Member Schilling inquired of any current procedure to request someone with ownership interest to appear. Chair Trahan noted that applicants can sign a paper allowing someone to represent them at the meeting.

Board Member Schick stated that he felt the matter should be continued.

Chair Trahan stated the applicant's paperwork indicates that there are currently five employees, and he expects the addition of the sign will increase that number to ten. She stated she cannot ask the owner why he believes that, because he is not present and Mr. Haluch cannot answer such questions.

Chair Trahan expressed that board decisions need to be based on information received, and when information is lacking it is hard for the board to make an appropriate decision.

Board Member Schilling stated he was prepared to vote yes based on what he has before him, but understands that the board desires someone with an ownership interest to appear.

A motion was made (LS) and seconded (SM) to continue these matters to the next Zoning Board meeting and requests that an owner or someone with ownership interest appears at the same.
Motion passed 5-0.

Board Member Schilling again suggested the information be included in future hearing scheduling. Board Member Decker stated that often the board determines that another department in the process will be addressing potential problems noted.

Chair Trahan again stated she has had meeting minute requests. As an example she referenced that board requiring flowers or fence between the properties, and that applicants agree at the meeting and two years later they haven't complied. She suggests more specificity in the future.

4. ELECTION OF OFFICERS:

Board Member Leo Schick volunteered for the position of vice chair. Board Member Decker compiled the slate as Debra Trahan as the Chair, Board Member Schick as the vice chair, and Board Member Decker as the clerk.

There was no response to Chair Trahan's invitation for any other interest in positions.

A motion (AD) was made and seconded (SM) that the names as mentioned was the slate of officers for calendar year 2017.

Roll-call vote as follows:

Chairperson Trahan – Yes

Board Member McTigue – Yes

Clerk Decker – Yes

Board Member Schick - Yes

Board Member Schilling - Yes

Motion passed – 5-0

5. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 6:36 p.m..

Next meeting – March 16, 2017

**ZONING BOARD OF APPEALS
NEW BEDFORD CITY HALL - 3rd Floor
WILLIAM STREET
NEW BEDFORD, MA
Thursday, March 16, 2017**

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

ABSENT: Bob Schilling

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

CITY CLERKS OFFICE
NEW BEDFORD, MA
2017 AUG 30 P 2:44
CITY CLERK

1. CALL TO ORDER

Chairperson Trahan called the meeting of the City of New Bedford Zoning Board to order at 6:10 p.m.. Clerk Decker explained the process and protocols to those in attendance.

2. OLD BUSINESS

ITEM 1: Cases #4266/4267-

#4266 -Petition of Brian Andrade, Trustee of Broadway Laundry Realty Trust (173 Rear Broadway Taunton, MA 02780) and Signs by Tomorrow (65 Belmont Street South Easton, MA 02375) for a Variance under Chapter 9 Comprehensive Zoning sections 3200 (sign regulations), 3201 (Purpose), 3210 (general regulations), 3254 (ground signs), 3255 (area restrictions), 3256 (location restrictions); relative to property located at 80 Summer Street, assessor's map 58 lot 414 in a mixed use business zoned district [MUB]. The petitioner proposes to change the face design and add a digital display to an existing ground sign as plans filed.

#4267 Notice is given of a public hearing on the petition of: Brian Andrade, Trustee of Broadway Laundry Realty Trust (173 Rear Broadway Taunton, MA 02780) and Signs by Tomorrow (65 Belmont Street South Easton, MA 02375) for an Administrative Appeal under Chapter 9 Comprehensive Zoning sections 5223 (administrative appeal for Prohibited signs), 3210 (general regulations), 3220 (prohibited signs), and 3222; relative to property located at 80 Summer Street, assessor's map 58 lot 414 in a mixed use business zoned district [MUB]. The petitioner proposes to change the face design and add a digital display to an existing ground sign as plans filed.

A motion was made (AD) and seconded (LS) to re-open the above cases.
Motion passed unopposed.

Clerk Decker, upon notation from Mr. Walsh, stated that Case #4267 is an administrative appeal, for which he had no prepared explanation to read to the public. He believed the applicant of an administrative appeal needs four affirmative votes in order to prevail.

Jim Halleck, Signs By Tomorrow, representing the Laundromat Holding Company. He stated they are looking to install a pylon sign outside the building, including a digital display unit. He inquired as to whether he needed to reiterate all the details gone through at the prior meeting, but stated his understanding was that the board had questions they wanted the owner present to answer.

The board declined to have the variance package presentation repeated.

Mr. Halleck reiterated that they believed they had met the burden for their reasons for having the sign and digital display. He stated that the future sign would be so much nicer than what was present, and he believed the board should take that into consideration.

Brian Andrade, Lordan Road, Raynham, invited questions from the board.

Chairperson Trahan noted that some information on opening days and hours had been provided. Chairperson Trahan noted that within the petition it mentioned a doubling of employees, which left the board wondering about the sufficiency of the parking.

Mr. Andrade stated there are presently three employees who, for the most part, are part-time workers. He stated they are presently open from 7:00 a.m. to 9:00 p.m.. He stated with the display they expect to advertise and get more drop off service, as opposed to walk-in service. He stated they believe the sign will attract dry cleaning and drop-off service.

In response to Board Member Schick, Mr. Andrade stated the sign operation hours would be 7:00 a.m. to as late as possible. Mr. Halleck stated the sign display will be programmed to turn on and off per city by-laws, which he stated is typically no earlier than 6:00 a.m. and has to be off by either 10:00 or 11:00 p.m..

Board Member. Schick inquired as to whether the digital display would be multi-color or single color. Mr. Halleck stated the display proposed is a multicolor, but can be made monochrome.

Board Member Schick inquired as to an output/lumen rating. Mr. Halleck stated he did not have the maximum lumens the sign can generate with him. Mr. Schick stated there had been a sign in the city that was so bright it was blinding to on-coming traffic. Mr. Halleck stated today's digital displays have sensors that will automatically turn down the brightness as it gets darker.

In response to Board Member Schick, Mr. Halleck stated the sign is capable of animation and flashing, but most business owners find it makes no sense to change the message more than every seven minutes.

Board Member Schick noted a neighboring residence and he is concerned for the intensity of the sign disturbing them.

In response to an inquiry by Board Member McTigue, Chairperson Trahan noted that owners had been notified of this matter, which does not mean that the residences' occupants had.

There was board discussion about conditioning that the sign change no more than every seven minutes.

Chairperson Trahan stated the application states there are now five employees and the applicant expects to have ten. Mr. Andrade stated he presently has three employees. In response to Chairperson Trahan, Mr. Andrade stated there are thirteen parking spaces.

In response to Board Member McTigue, Mr. Andrade stated they have not touched the present sign. Board Member McTigue stated her biggest concern was the closeness to the sidewalk and the height as a safety issue. She stated the zoning officer would determine if the height was satisfactory.

Mr. Halleck stated that with the digital display they will be at a lower height, but with the new sign and digital display they will be farther away from the sidewalk than the current sign, and the new sign would not be over the sidewalk area.

Board Member McTigue inquired as to installation of some protection to the base, such as rocks. Mr. Halleck stated there is presently a steel pole in a footing with an aluminum shroud around it which is destroyed. Board Member McTigue re-iterated her desire to see some protection, and her concern about the safety of people walking under this 6' sign.

Mr. Halleck stated the current sign is 8'.

Board Member McTigue stated that her thought was to protect the base so the pedestrians could not walk under the sign. Mr. Andrade stated they could add bollards to the corner of the sign. Board Member McTigue also noted it could be a target for vandalism.

Mr. Andrade noted all the work he had done on the building, and referred the board to the proposed plan, containing a before and after.

Mr. Walsh noted that the sign and digital display would be 6' when it should be 8' under the ordinance.

Mr. Halleck stated the applicant is more than happy to put any necessary barrier. In response to Board Member Schick, Mr. Halleck stated the reason for the sign being 6' is so that they could use the existing steel pole. He stated that raising the signs could require a new pole, which would be a huge cost burden to the applicant.

Board Member McTigue suggested the possibility of putting the digital sign on the building.

Mr. Romanowicz stated the applicant is seeking appeal because the digital display is prohibited. He stated the applicant seeks the variance to cover the sign regulations, general regulations, ground sign, area restrictions and distance restrictions. He read the related ordinance for the board.

Mr. Walsh suggested that the board first vote on the appeal, as that will determine whether the board can move onto the variance. He stated his understanding of the appeal is that Mr. Romanowicz has made a decision that the digital display is in violation of Chapter 9, Section 3230. Mr. Walsh added that he too believed it to be in violation. He stated he believed the board's job was to decide whether Mr.

Romanowicz was in error and had misinterpreted the ordinance. He stated he felt the board had no leeway regarding the regulation; which either prohibits the proposed sign or it does not.

Chairperson Trahan inquired whether Mr. Andrade would still change the sign if the board denied the digital sign. Mr. Andrade stated he had to change the sign due to the wrong name being on the present sign. Mr. Halleck noted that other businesses have a digital sign.

Chairperson Trahan stated that each application is individual and in this case the location is heavily residential, and she is concerned that the residents did not receive notice of this matter and had no chance to appear and voice their concerns. She invited any alternative from the applicant.

Mr. Halleck disagreed that the sign would be flashing and would be a detriment to the folks sleeping. He stated if the only concerns for the board are the flashing and brightness of the sign, the applicant will gladly re-propose or stipulate that. He stated the board could deem those things as part of the acceptance.

Mr. Andrade welcomed any stipulation from the board. He stated that at that point he would decide if he would proceed with the digital sign.

There was no response to Chairperson Trahan's invitation to speak or be recorded in opposition, noting there was also none at the prior meeting on this matter.

Chairperson Trahan declared the hearing closed.
She noted the discussion and vote would be on Case #4267.

Mr. Walsh reiterated that the appeal is on whether or not Mr. Romanowicz's decision that the digital sign is in violation of Chapter 9, 3220 is valid or invalid.

Ms. McTigue noted that all cases before the board go against someone or the code in general. It's not that Danny's right or wrong. It's in this case do we think it's okay or it's not.

Board Member Schick expressed he would at least want a condition on the digital display.

Mr. Walsh repeated his position that he will be looking at whether the digital display is a violation of the four corners of the statute, and Chapter 9, 3220 stating these signs are prohibited. He stated he did not believe the board could re-write the regulations, as this is not a request for variance.

Board Member Decker believed Mr. Walsh's comments to be on point, and stated he was inclined to vote against it.

Ms. McTigue noted she had seen such signs, but not near residents, and they are on the building or in a large parking plaza.

After further board discussion on content, a motion was made (AD) and seconded (JW) in Case #4267, concerning property located at 80-82 Summer Street, assessor's map 58 lot 414 in a mixed use business

zoned district [MUB], to approve an administrative appeal as follows: To allow the petitioner to change the face design and add a digital display to an existing ground sign as per the plans filed per the administrative appeal process under Chapter 9 Comprehensive Zoning Section 5223, 3210, 3220 and 3222 relative to property located at 80-82 Summer Street, assessor's map 58 lot 414 in a mixed use business zoned district [MUB]. Having reviewed this petition in light of the City of New Bedford Code of Ordinance Chapter 9, section as cited, and under the provisions of MGL Chapter 40a Sections 7, 8 and 14, the board finds the following facts:

- That as proposed, the digital element of the sign will be capable of animation intermittence movement and flash as concerns said lighting
- That the zoning enforcement officer has determined this element violates Section 3222 of the City of New Bedford Zoning Ordinance
- That the petitioner is asking for an appeal of the said finding of violation by the zoning enforcement officer

Roll-call vote as follows:

Chairperson Trahan – No

Board Member McTigue – No

Clerk Decker– No

Board Member Schick - No

Board Member Walsh - No

Motion failed – 5-0

After board discussion and consultation with Mr. Romanowicz, there was a concern that as advertised, the petition's request for variance in Case # 4266 could not be voted upon as it too includes the digital sign. Mr. Walsh noted that the board could carve out the digital sign component as a condition.

Mr. Andrade noted that he can replace the existing sign. The variance was for a digital display underneath, and as such he does not believe he needs a variance any longer. Mr. Andrade stated he is only putting a new face on the existing sign, making it a round circle instead of a rectangle.

Mr. Andrade withdrew his request for variance without prejudice.

A motion was made (AD) and seconded (JW) in regard to Case # 4266 to allow the petitioner to withdraw his request for variance without prejudice.

Motion passed unopposed.

PUBLIC HEARINGS:

ITEM 1 - Case #4268 – Petition of: 899 Pleasant Street, LLC (34 Hillman Street New Bedford, MA 02740) and Architectural Consulting Group, Inc. c/o Michael W. Josefek (2206 Acushnet Avenue New Bedford, MA 02745) for a Special Permit under Chapter 9 Comprehensive Zoning sections 2200 (use regulations), 2210 (general), 2230 (tables of use regulations-appendix A, #20 Medical Office, Center, or

Clinic), and 5300-5390 (Special Permit); relative to property located at 899 Pleasant Street, Assessor's Map 58, Lot 300302, 304, 499 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to erect a dental office as plans filed.

Board Member Decker disclosed that the petitioner is his dentist. He stated he did not believe this would impact his impartiality. Board Member Decker stated he was happy to recuse himself, and noted that in his absence the petitioner would need four affirmative votes.

Mike Josefek, Architectural Consulting Group, after consulting with Mofta El-ghadi, he stated it was acceptable to go forward with Board Member Decker present.

In regard to Case #4268, a motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 2/24/17 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 3/16/17; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairperson Trahan declared the hearing open.

Mike Josefek displayed for the board the current site, which has an 1860 structure on it with a garage that may have formerly been a barn. He noted a large parcel of land and a parking area behind the structure where a house was apparently torn down in the past creating a parking lot. He drew the board's attention to the assessor's map, noting the property is comprised of five separate lots to be combined into two lots. Mr. Josefek stated they had met with representatives from various city departments, and originally all the old buildings were to be taken down. He stated that after discussion with Historic and Building and Planning, it was agreed to try and save the building in spite of the additional cost. He stated they had the engineer do a Form A, not yet submitted, where the barn will be moved to the other lot, saving the historic structure to be made into an office. Mr. Josefek noted in its current state it does nothing positive for the neighborhood. He stated the proposal is to put an addition sympathetic to the historic nature of the current structure.

Mr. Josefek displayed and discussed the floor plan cutaway showing existing conditions, adding that they will maintain the original fabric as much as possible and restore it. He stated all materials used will be historically appropriate. He stated plans will include removing the tin siding, installing new windows, and maintaining the trim, keeping the historic aspect of the current structure.

Mr. Josefek stated that having worked on many historic restoration projects with the city, what will be built alongside will not replicate the current structure, so that the new addition will look somewhat the same, but will have visible nuances which still fits the character and the neighborhood. He felt this would bring new life to the corner and eliminate current foot traffic and the empty parking lot.

Mr. Josefek stated the doctor has had his current operation in cramped quarters down the hill for some fourteen years. He stated the petitioner is providing the same community services up the hill with some expansion and more advanced technology than what is currently available to him.

Mr. Josefek noted the petitioner's commitment to New Bedford by purchasing property and generating more taxes. He stated the site is fully served by all utilities, including underground electric. With regard to traffic flow and safety, he stated there are nine employees anticipated throughout the day from 8:00 or 9:00 a.m. to 5:00 p.m. He stated the practice generates approximately four people per hour. He noted they had started site plan review, which has been continued. He stated they will meet all site plan requirements, including a new underground retention area.

Mr. Josefek stated there will be no additional impact on the natural environment and the impervious surfaces should not increase, as they are looking at pervious surface for additional required parking, eliminating any need for a parking variance.

He stated that turning this structure into a house would be less beneficial to the city regarding taxes and burdens on city services. He stated they would be a handicap accessible main entry as well as an elevator.

Mr. Josefek invited questions.

Board Member McTigue confirmed the dental practice will be on the first floor. Mr. Josefek stated the second floor is not currently being looked at, but in the future it may be developed into office space. He stated the two stories fit far better than erecting just a one-story building.

Chairperson Trahan inquired as to the need for two separate lots. Mr. Josefek stated that after discussion with city boards, the garage/barn that was originally to be taken down was instead slated to be kept standing and moved to the other lot. He stated parking from the two structures will be shared.

Chairperson Trahan noted that with two separate lots one could later be sold. Mr. Josefek stated you can legally have shared or joint parking by deed. He stated that not saving the garage/barn is not a problem for the petitioner. It was something that was being done for the city because the historic department wanted to save it. He stated they won't keep it at the expense of the whole project.

Mr. Romanowicz added that you can only have one major building on a lot. That is why they are moving the barn onto a separate lot.

Mr. Josefek referenced the Standard Times Building project he had worked on and the parking accommodations that included use of the parking garage. He stated shared parking is addressed like an easement. He again stated they are happy to let the city have the barn and move it themselves, but were trying to be cooperative.

Chairperson Trahan expressed further concern about the potential for any future sale of the additional lot and its lack of parking. Mr. Josefek again expressed willingness to take the garage/barn out of the mix and have it gotten rid of if the city wants to come and pick it up.

Mr. Romanowicz added that the building is over 75 years old and could be up to a year delay to be moved.

Board Member Decker referenced a note from the city planner regarding the square footage of the improvements not matching in the application and the drawings, which would affect the required parking. Mr. Josefek stated he believed it had been corrected with amended drawings and parking plans. He assured the board there was more than enough parking.

Board Member Decker inquired as to the future additional impervious surface versus green space. Mr. Josefek reiterated the planned changeover to a pervious parking area, stating there is little more than a few percent additional impervious surface anticipated.

Board Member McTigue confirmed the plans before the board were the older version. Mr. Josefek further explained the planned changes to the board, including recharge areas.

Mofta El-ghadi, petitioner, addressed the board, stating that with regard to the barn, the historic commission informed them. He stated he loves the building's aesthetics, but originally intended to tear it down and build a more modern looking office. He stated that he saw the inside as well and then wanted to duplicate the aspects and felt it would look beautiful and fit the area. Mr. El-ghadi stated he has no intention of selling anything, stating the concern was the historical commission's desire to keep the structure, wherein the compromise was to move it over. He again stated he had no intention of selling that lot or anything.

Chairperson Trahan explained her concern to Mr. El-ghadi that if he sold his business, someone else could sell. She noted that the board decision would go onto the property permanently, and someone else may not share his intentions.

Mr. El-ghadi stated he just wanted to make clear that he had no intention of selling anything.

Chairperson Trahan inquired as to the petitioner's willingness to have a conditions of approval that it would be two separate lots, but not sold separately.

Mr. El-ghadi felt he could not answer that question without thinking and talking about it.

Chairperson Trahan expressed that while loving the project, she is concerned that board decisions have been made and then later turned around, either by sale or people not doing what they said they would, against the intentions the board was granting.

Mr. Josefek stated the special permit is only being sought because the MUB requires a dental office to go for a special permit. He stated as a lawyer's office, there would be no need for a special permit. The need arises because of his practice. He stated they could have legal discussion, but were not prepared tonight to address legal what ifs. He stated that as a lifelong resident, there are many things that bother him in the city, but stated they are trying to accomplish something positive.

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

Upon invitation, Mr. El-ghadi stated his practice has moved from Foster to Hillman and now hopefully back up. He stated one primary reason for this move is the lack of Comcast cable. He stated he has a limited amount of internet capability, and with the advent of technology, such as scanning, more high speed technology is necessary. He stated his current location can no longer account for the need. He stated it makes far more sense to invest in the proposed new location.

Mr. Josefek invited questions.

Chairperson Trahan closed the hearing.

There being no further board questions, an amended motion was made (AD) and seconded (LS) with regard to Case #4268, 899 Pleasant Street, LLC of 32 Hillman Street, relative to property located at 899 Pleasant Street, Assessor's Map 58, Lot 300-302, 304 and 499 in a Mixed Use Business [MUB] zoned district, to approve a special permit to allow the petitioner to erect a dental office as per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230 Appendix A, and 5300-5390, relative to property located 899 Pleasant Street.

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 with respect to those sections the petition is in compliance. In addition to the foregoing sections, this petition has also been found to be in accordance with the City of New Bedford Code of Ordinances, Chapter 9, Sections 5300-5330 and 5360-5390, relative to the granting of special permits, because the board 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 regarding the social, economic or community needs served by the proposal, the proposal keeps an existing dental practice in operation, continuing to serve community needs. Regarding traffic flow and safety, including parking and loading, the board has found the proposal adequately addressed on-site traffic flow and adds additional parking spaces. Regarding adequacy of utilities and other public services, the board has found the proposal is neutral because existing adequate utilities are in place. Regarding the neighborhood character and social structures, the board has found the proposal fits within the neighborhood's character, inclusive of mixed use business and its development. Regarding the impacts on the natural environment, the board has found that the proposal includes pervious pavement for additional parking, thereby not adding significant impacts. Regarding the potential fiscal impact, including the impact on city services, tax base and employment, the board has found that the proposal adds to the city's tax base without significant increased demand on the city's services.

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. Thereby, with the following conditions: that the project be set forth according to the plans submitted, that site plan review with the City of New Bedford Planning Board be achieved, 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.

Zoning Board of Appeals
2/16/17
10 of 6

Roll-call vote as follows:

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

Board Member McTigue – Yes
Board Member Schick – Yes

Motion passes

3. APPROVAL OF MINUTES:

A motion was made (SM) and seconded (JW) to approve meeting minutes dated January 19, 2017, for Case #4261, Case #4262, Case #4254, and Case #4265. Clerk Decker abstaining.

A motion was made (AD) and seconded (LS) to approve meeting minutes of February 16, 2017 for Case #4217, Case #4266 and Case #4267

Motions passed unopposed.

4. ADJOURNMENT:

After a reminder that board members complete their ethics test, the meeting was adjourned at 7:48 p.m..

The next Zoning Board of Appeals Meeting is scheduled for April 27th, 2017

**ZONING BOARD OF APPEALS
NEW BEDFORD MAIN PUBLIC LIBRARY
PLEASANT STREET
NEW BEDFORD, MA
Thursday, April 27th, 2017**

CITY CLERKS OFFICE
NEW BEDFORD, MA
2017 AUG 30 P 2:44
CITY CLERK

MINUTES

PRESENT: Debra Trahan (*Chairperson*)
Allen Decker (*Clerk*)
Robert Schilling
Sheri McTigue
Steve Brown

ABSENT: None

STAFF: Dan Romanowicz, *Commissioner Inspectional Services*
Jennifer Clarke, *Acting City Planner*

1. CALL TO ORDER

Chairperson Trahan called the meeting of the City of New Bedford Zoning Board to order and Clerk Decker explained the process and protocols to those in attendance.

2. PUBLIC HEARINGS

ITEM 1: Case #4269- Petition of: Raymundo Juarez Ramos and Lidia A. Escobar Juarez (24-26 DeWolf Street New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements- Appendix B, Height of buildings, (# of stories), residential); relative to property located at 24-26 DeWolf Street, assessor's map 76 lot 11 in a Residential B zoned district. The petitioners propose to finish the basement by adding a family room, bath, kitchen, bedroom, and storage room as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication from the Commissioner of Buildings & Inspectional Services dated 3/31/17; communication from the Office of the City Planner, dated 4/27/17; the appeal package submitted; the plan submitted; and, that the owners of the lots as indicated are the ones deemed by this board

to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairperson Trahan declared the hearing open.

Ramundo Juarez, 26 DeWolfe Street, *(through a female translator)* stated he wants to build his basement and put two rooms, a kitchen and bath. A family room in the basement.

In response to Chairperson Trahan inquiry as to how many families live there presently, Mr. Juarez *(through a female translator)* stated two.

In response to Board Member Decker's inquiry as to who would be using the basement space, Mr. Juarez *(through a female translator)* stated that sometimes he has family visit and there is no room in the apartment.

Board Member Decker inquired as to which floor the basement use would be associated with. Mr. Juarez stated he lives on the second floor. Mr. Juarez stated he is going to move to the first floor, connect the basement to the first floor, and rent the second floor.

Board Member McTigue expressed concerns over the kitchen related to fire, egress, and safety. She also related concerns that a kitchen and a bathroom could result in the building being sold as a three-family.

Mr. Juarez explained that people visit and want their own kitchen.

Commissioner Romanowicz explained that other than for storage

Board Member Brown asked the petitioner to describe the exits from the basement. Mr. Juarez stated there are two exits.

Board Member McTigue confirmed with Mr. Juarez what the plan showed. Mr. Romanowicz added that escape windows would also need to be installed.

Chairperson Trahan asked the applicant to explain the hardship that is the basis for this request.

Mr. Juarez stated he liked the house when he first saw it, and did not consider making a change to the basement at that time, but now he wishes to. He stated he does not want to rent the basement.

Chairperson expressed concern that the applicant did not understand what he needed to present to the board and suggested postponing the hearing until Mr. Juarez could get advice. Chairperson Trahan explained that the petitioner must show a hardship, and simply saying he wants to do something does not present a hardship.

Board Member Schilling read the application comments into the record regarding needing more space for growing family and down being the only way to go. Board Member Schilling asked who lives in the first floor presently.

Mr. Juarez stated his friend.

Board Member Shilling confirmed the friend will swap and move to the second floor. Board Member Schilling tried to confirm that Mr. Juarez's need was for a growing family. Mr. Juarez stated that sometimes his family comes for one or two days. Board Member Schilling asked how many people will live on the first floor if this change is made. Mr. Juarez stated three more; his wife and two brother-laws.

Chairperson Trahan expressed concern that the applicant understood. Board Member Decker also expressed difficulty in seeing any hardship at this time. Chairperson Trahan stated that she wanted to give the applicant a chance to seek advice.

At Chairperson Trahan's request, a motion was made (SB) and seconded (SM) to continue the hearing until the next ZBA meeting on May 18th to allow the applicant to seek counsel to improve his application, especially with regard to hardship.

Motion passed unopposed.

ITEM 2 – Case #4270 - Petition of Eurico F. Varela and Matilde Tavares (9-11 Ocean Street New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, Height of buildings, (# of stories), residential); relative to property located at 9-11 Ocean Street, assessor's map 45 lot 149 in a Residential B zoned district. The petitioners propose to finish the basement with a half bath, bedroom, family room, and laundry room as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication from the Commissioner of Buildings & Inspectional Services dated 3/31/17; communication from the Office of the City Planner, dated 4/27/17; the appeal package submitted; the plan submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairperson Trahan declared the hearing open.

Eurico Varela, of 9-11 Ocean Street, explained that when the house was purchased, the basement was somewhat finished, but it was not done right. He stated his family has grown and he is trying to make a little more room, a family room, bedroom and bathroom. He stated he wants to make the space bigger and better for his kids, as there are six of them in the house now. He stated he is not

financially able to buy a single family home with more room. He stated the second floor of this two-family is rented. He stated he lives on the first floor and the basement space is not to rent. Matilde Tavares stated her children range from four to thirteen years old. She stated the older child likes quiet time and wanted him to have a bedroom to himself.

Board Member McTigue stated the plan does not show a bedroom. Mr. Varela stated that they may have one in the future if there's room, as they're also adding an exit. Board Member McTigue explained that a bedroom or kitchen makes it a habitable space. Mr. Varela stated they don't care about a kitchen. He stated they just want a family room for the kids for now, and perhaps in the future can make a bedroom for the kids.

In response to Chairperson Trahan, Mr. Varela stated they have been in the property for 7-8 years.

Board Member McTigue asked if the utilities were in an open space. Mr. Varela stated the location is open. Board Member McTigue expressed concern and Commissioner Romanowicz explained it would need to be enclosed. Mr. Varela was amenable to that.

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

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

The hearing was closed.

After brief board discussion and input from Commission Romanowicz, a motion was made (SM) and seconded (SB) to receive and place on file an addendum to the plan, indicating that the storage is now a bedroom.

Motion passed unopposed.

Chairperson Trahan stated that the board needs to be more specific about the language contained in future motions; i.e. what is allowed and forbidden, and what the board expects when it conditions a fence, shrubbery, et cetera.

After brief board discussion, a motion was made (AD) and seconded (SM) regarding petitioners Eurico Varela and Matilde Tavares relative to property located at 9-11 Ocean Street, New Bedford, MA , (Assessors Map 45, Lot 149) in a Residential B (RB) zoned district, to allow the petitioners to finish the basement with a half bath, bedroom, family room, and laundry room as per plans filed and amended, which requires variance under Chapter 9 Comprehensive Zoning sections 2700, 2710, 2720 -Appendix B.

Having reviewed this petition in light of the City of New Bedford Code of Ordinance Chapter 9, Comprehensive Zoning Sections as cited, the board finds that in respect to these sections the application is in accordance with MGL Chapter 40A, §10 relative to the granting of variances, because the board has found that there are circumstances related 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. 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. 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 of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on those items, along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. Conditions on this decisions are as follows: the use shall remain in the cottage style with no kitchen and shall not be rented separately from the first floor unit, and that adequate egress to the improvements shall be incorporated as part of this particular application. Also, that the project be set forth according to the plans submitted with the application; that the applicant ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of this variance must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of decision or the approval will lapse.

Roll-call vote as follows:

Chairperson Trahan – Yes

Board Member Schilling – Yes

Clerk Decker– Yes

Board Member Brown - Yes

Board Member McTigue - Yes

Motion passed 5-0

ITEM 3 – Case #4271 - Petition of Nauka Patel (1155 Purchase Street New Bedford, MA) and North & Foster, LLC (48 North Street New Bedford, MA) for a Special Permit under Chapter 9 Comprehensive Zoning sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations-appendix A, #20 Medical Office, Center, or Clinic), and 5300-5330 & 5360-5390 (special permit); relative to property located at 46 Foster Street, assessor's map 58, lot 369 in a Mixed Use Business Zoned district. The petitioners propose to operate a walk-in medical office and car rental office as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 3/31/17 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 4/27/17; the appeal package as submitted; the plan submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Chairperson Trahan declared the hearing open.

Att. Chris Saunders, Pleasant Street, New Bedford, addressed the board on behalf of the applicant. He stated his client entered into a purchase and sale agreement for the Foster Street property. He stated one of the conditions of the agreement is that it is subject to any and all permitting. Att. Saunders stated that Dr. Patel operates Metro Medic, some two blocks to the north, where he is renting. He stated they are looking to revitalize the substantially vacant Foster Street building and move the Metro Medic Clinic to this facility. Att. Saunders stated the petitioner does not expect much buildout, if any. Att. Saunders stated the petitioner plans to occupy the ground level of the building, which if looking at the property from Pleasant Street would appear as the first floor.

Att. Saunders stated the petitioner also has a car rental business, which would have a small administrative office located in the building, with no rental cars on-site. He stated there will be a slight buildout for an x-ray area, which will be licensed by the Mass Department of Public Health.

Att. Saunders stated that the existing building and lot requires fifteen parking spaces for this use, and the applicant has the requisite amount of spaces. He stated they are seeking the special permit only for the change in use, as the planned use for the current professional offices will include a medical and car rental component.

Att. Saunders stated the staff comments were on point. He stated the lot will be restriped and improved. With regard to deliveries to the facility, the petitioner stated lab work will be picked up after 5:00 p.m., similar to many downtown businesses. He stated office supply deliveries will be sporadic. He stated that Dr. Patel is required to properly dispose of any biohazard material, which is currently done every three months by a licensed vendor.

Att. Saunders then addressed the specific requirements to be met in order to grant the special permit. With regard to precedent, Att. Saunders noted that a special permit had been granted for another planned medical office nearby.

He requested a favorable vote in the request and invited questions.

Board Member McTigue confirmed that the remaining floor spaces are not yet laid out. Att. Saunders stated that the Patels will occupy the entire bottom floor of the three floor facility.

In response to Board Member Schilling, Att. Saunders stated the facility will be an urgent care practice.

In response to Chairperson Trahan, Dr. Patel stated the hours will be 8:00 a.m. to 7:00 p.m., and Saturdays 9:00 a.m. to 2:00 p.m..

In response to Board Member Brown, regarding the three addresses on the plot plan, Att. Saunders stated at original development the area was held in common ownership. He stated the applicant seeks to purchase 46. He stated the building at 38 Foster Street, has been sold to another entity. He stated they are seeking an easement agreement for the six parking spaces at the rear of 38 Foster Street, which are actually on the land the Patels are purchasing.

In response to Board Member Brown, Att. Saunders stated he does not believe there will be any new jobs associated with the ground floor at the present time. He is hopeful the clinic will expand and potentially employ more people. He stated other tenants may wish to move to other floors in the building. He stated the third floor office space is now used by a construction company who does not have a lease, so he could not offer information on their intentions. Att. Saunders stated the intent is to have the entire building occupied.

In response to Board Member Decker, Att. Saunders stated there will be regular maintenance and the clinic is interested in adequate and safe parking without any defects in service, especially regarding requirements for insurance coverage.

Dr. Patel stated that they expect to be seeking to add counselors in the future.

In response to Chairperson Trahan's invitation to be recorded in favor were the following:
Nauka Patel, 1155 Purchase Street, New Bedford;
Victor Alves, 95 Capitol Street, New Bedford

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

Chairperson Trahan closed the hearing.

After brief board discussion, including car rental business restrictions concerning vehicles onsite, a motion was made (AD) and seconded (SM) regarding the petition of Nauka Patel (1155 Purchase Street New Bedford, MA) and North & Foster, LLC (48 North Street New Bedford, MA) relative to property located at 46 Foster Street, assessor's map 58, lot 369 in a Mixed Use Business Zoned district, the request being to operate a walk-in medical office and car rental office as per plans filed, which requires a special permit under Chapter 9 Comprehensive Zoning sections 2200, 2210, 2230 - Appendix A, #20, and 5300-5330 & 5360-5390.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made based on these items, along with all properly submitted materials and testimony made, and the board's 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 special condition: that vehicles associated with the car rental business will be on premises for no more than four hours. General conditions are that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded

at the Registry of Deed; and that the rights authorized by the granting of this special permit must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of decision or the rights will lapse.

Roll-call vote as follows:

Chairperson Trahan – Yes

Board Member Schilling – Yes

Clerk Decker– Yes

Board Member Brown - Yes

Board Member McTigue - Yes

Motion passed 5-0

3. APPROVAL OF MINUTES:

A motion was made (AD) and seconded (SM) to approve the meeting minutes of March 16, 2017 as submitted, concerning Cases #4266, #4267, #4268.

Motion passed unopposed.

4. OLD/NEW BUSINESS:

Chairperson Trahan reiterated her concerns that the board must include specifics in the motion conditions so that there is enforcement available to the board.

5. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 7:25 p.m..

NEXT MEETING SCHEDULED FOR MAY 18, 2017

(Whereupon proceedings concluded)

**ZONING BOARD OF APPEALS
NEW BEDFORD MAIN PUBLIC LIBRARY
PLEASANT STREET
NEW BEDFORD, MA
Thursday, May 18, 2017**

MINUTES

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

ABSENT: Debra Trahan

STAFF: Dan Romanowicz, *Commissioner Inspectional Services*
Jennifer Clarke, *Acting City Planner*

CITY CLERK'S OFFICE
NEW BEDFORD, MA
2017 AUG 30 P 2:44
CITY CLERK

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. and explained the process and protocols to those in attendance.

2. APPROVAL OF MINUTES

None

At Acting Chairperson Schick's request, a motion to have Case # 4273 heard directly after Case #4269 was made (JW) and seconded (SB).

Motion passed unopposed.

3. CONTINUED PUBLIC HEARINGS

ITEM 1: Case #4269- Petition of: Raymundo Juarez Ramos and Lidia A. Escobar Juarez (24-26 DeWolf Street New Bedford, MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, Height of buildings, (# of stories), residential); relative to property located at 24-26 DeWolf Street, assessor's map 76 lot 11 in a Residential B zoned district. The petitioners propose to finish the basement by adding a family room, bath, kitchen, bedroom, and storage room as plans filed.

A motion was made (JW) and seconded (AD) for the following addition to be made to the case file: Communication from the Office of the City Planner, dated 5/18/17.
Motion passed unopposed.

Board Member Walsh commented that he had reviewed the tape of the last meeting wherein the applicant was seeking a variance regarding height and number of stories regarding a basement renovation. He stated he did not believe that a basement was a story under the city code, according to Chapter 9, §1200. Mr. Walsh read the definition into the record. He stated a story is the first level fully above grade, and a basement is not fully above grade. He stated, therefore, from his point of view no variance is required.

Mr. Romanowicz noted this would not be the first time a variance was required for a story below grade. He stated that according to the building code, habitable space, which this is going to be, is considered a story. He stated any issue not covered in zoning regulations, reverts to the building code. He stated had he known Att. Walsh's position, he would have brought in the appropriate building code paperwork.

Board Member Walsh stated that based upon his reading of the local regulations. He stated he is not sure there is a reversion to the state building code, as this item is defined in the city's code and therefore would not revert to the state building code.

Mr. Romanowicz stated that habitable space is not defined.

Mr. Walsh disagreed that habitable space equates to a story.

Board Member Decker stated that his memory of the previous meeting was that a concern existed in the basement space becoming a separate unit, as there was a plan for a kitchen buildout.

Board Member Schilling agreed, noting Chairperson Trahan had expressed concern over zoning board rulings that could lead to a three unit building versus a two unit building.

Board Member Walsh again disagreed that it becomes a three unit building. He stated he believed it remains a two unit building, noting many people want to put a kitchen in their basement. He also expressed that the board ought not punish people preemptively for what they may do in the future. He stated he believes the applicant has a right to expand their 1st floor living space.

Board Member Decker stated he was under the impression that the basement would be tied to the first floor unit, creating a single two floor unit.

Board Member Brown stated that any condition restricting the applicant from creating a third rentable living space would be moot if Att. Walsh were correct, as the board would have no standing to constrain the resident in the use of his property. He added that any ruling made today would be dependent on whether the applicant needed to come before the board at all.

Ms. Clarke suggested the board take action on what is before it this evening. She stated that as staff they are certainly willing to speak with the zoning enforcement officer and city solicitor to examine the matter for clarification.

Board Member Decker confirmed that Nora Andino from the Department of Community Services would be providing interpreter services to the applicant. Board Member Decker repeated his concern that the basement would be only an extension of the first floor living, and sought verification of the same.

Ms. Andino stated they had met with Jen Gonet on 5/9/17, and wondered if an addendum was filed. Board Member Decker confirmed the board had seen it, but wanted it addressed for the record in this public hearing.

Interpreter Andino related to the board that the applicant stated the basement would be an extension of his first floor. She stated the applicant has no intention of renting the unit.

Board Member Schilling noted that the applicant has indicated that in spite of his preference, he would be willing to forego installation of a stove in the basement. Interpreter Andino confirmed the same.

In response to Acting Chairperson Schick's invitation to speak in favor of the petition, Christian Farland of New Bedford noted the state building code definition of a story, reading the same into the record. He stated that in his professional opinion this would not classify as a story above grade.

In response to Acting Chairperson Schick's further invitation to speak in favor of the petition, Councilor Hugh Dunn stated he was in favor as long as it remained one unit.

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

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

The hearing was closed.

After board discussion, including the concerns of this becoming a third unit within the building, the foregoing of a kitchen/stove, as well restrictions on the installation of the stove, and failure to establish hardship, a motion was made (AD) and seconded (JW) regarding Case #4269, relative property located at 24-26 DeWolf Street (Assessor's map 76, Lot 11) in a Residential B zoned district, to allow the petitioner to finish the basement by adding a family room, bath, kitchen, bedroom, and storage room as per the plans filed, which requires a variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720 Appendix B.

Having reviewed this petition in light of the City of New Bedford Code of Ordinance Chapter 9, section as cited, the board finds that in respect to these sections the petition has been found to be in accordance with MGL Chapter 40A, §10 relative to the granting of variances, because the board has found that there are circumstances related 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 structure is such that adding exterior space is not

possible. 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, not allowing expansion into the basement presents a hardship for the applicant to adequately house family members on extended visitations. 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 of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on those items, along with all properly submitted materials and testimony made, and the board's 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 specific conditions: use of the basement must remain tied to the first floor unit, with no possibility of use as a separate rental unit. General conditions are as follows: that the project is set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded at the Registry of Deeds, and that the rights authorized by the granting of this variance must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of decision or the rights will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker – Yes

Board Member Brown - Yes

Board Member Walsh - Yes

Motion passed 5-0

4. PUBLIC HEARINGS

ITEM 2 – Case #4273 - Petition of: Michael Silva (389 Cottage Street New Bedford, MA) for a Special Permit under Comprehensive Zoning sections 1200 (Definitions-frontage of), and 5300-5330 & 53605390 (Special Permits); relative to property located at 389 Cottage Street, assessor's map 65 lot 247, in a residential-B [RB] zoned district. The petitioner proposes to construct a driveway in the rear of the building as plans filed.

A motion was made (AD) and seconded (JW) that the following be received and placed on file: the communication dated 5/1/17 from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 5/18/17; the appeal package; the plan 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.

Michael Silva stated that crosswalks at Sycamore and Cottage Streets prevent the applicant from installing the driveway on his street address, due to a lack of footage. He is proposing to put an 18' wide x 21' deep driveway on the back of the house. He stated it will 1.5' from the boundary line, accommodating for rain runoff.

Board Member Decker clarified the dimensions stated by the applicant.

A motion was made (AD) and seconded (JW) to accept a plan submitted 5/12/17.
Motion passed unopposed.

In response to Board Member Decker, Mr. Silva stated he currently parks on Sycamore St., and the driveway would eliminate two vehicle and any family members coming over. He stated he will install a bumper if necessary, but he plans to continue his fence.

In response to Board Member Brown, Mr. Silva addressed water runoff, referencing the 1.5' of grass he has planned for.

Florence Blake, of Sycamore Street, didn't understand why she received notice. The board explained. She stated she was not in opposition as long as it didn't interfere with her property.

Acting Chairperson Schick closed the hearing.

After brief board discussion regarding installation of a bumper guard, a motion was made (AD) and seconded (JW) regarding the petition of Michael Silva, relative to property located at 389 Cottage Street, assessor's map 65 lot 247, in a residential-B [RB] zoned district, to construct a driveway in the rear of the building as plans filed, which requires a Special Permit under Comprehensive Zoning sections 1200, and 5300-5330 & 5360-5390.

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, specifically the social economic or community needs served by the proposal, this proposal removes vehicles that are currently parking on the street. Concerning traffic flow and safety, including parking and loading, said application allows for the removal of vehicles, eases traffic flow and makes the street less congested. Regarding adequacy of utilities and other public services, this application is neutral. Regarding the neighborhood character and social structures, adding a driveway to this property fits within the neighborhood's character and social structures as other properties in the immediate area have the same benefit.

Regarding the impacts on the natural environment, while the driveway removes some pervious space on the lot, at least 40% of the lot will remain unbuilt upon. Regarding the potential fiscal impact, including the impact on city services, tax base and employment, the board finds no negative impacts.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made based on those items, along with all properly submitted materials and testimony made, and the board's 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 no specific conditions and the following general conditions: that the project is

set forth according to the plans submitted with the application; that the applicant ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded at the Registry of Deeds, and that the rights authorized by the granting of this special permit must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of decision or the rights will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker– Yes

Board Member Brown - Yes

Board Member Walsh - Yes

Motion passed 5-0

ITEM 3 – Case #4272 - Petition regarding 791-797 Purchase Street, New Bedford.

Board Member Decker recused himself from hearing this case, due to a conflict of interest.

Acting Chairperson Schick informed the applicant he would now need a unanimous vote of the remaining board members and offered the applicant an opportunity to postpone the matter. The applicant elected to proceed.

A motion was made (JW) and seconded (RS) that the following be received and placed on file: the communication from the Commissioner of Buildings & Inspectional Services; communication from the Office of the City Planner, dated 5/12/17; the appeal package submitted; the plan 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.

Christian Farland, Farland Corp., also an owner of the subject property, noted for the board that the site is walking distance from the Elm Street and Zeiterion Garages, and reminded the board that all surrounding businesses also have no parking available. He stated the site contains approximately 9,281 S/F. He referenced previous board relief granted for 68 parking spaces for use of the 1st floor and a portion of the 2nd floor. He noted the expanded need for a private function space on the 2nd floor, which requires an additional 18 parking spaces.

In response to Acting Chairperson Schick, Mr. Farland stated currently the majority of parking is utilizing on-street parking during the day, with the parking garage being used at peak hours during lunchtime. He noted the business has valet service Wednesday thru Sunday, which is primarily used during evenings and weekends. He also noted the free city lot available after 5:00 p.m..

Mr. Farland stated he has also had discussions with neighbors regarding parking practices. He estimated that 95% of downtown businesses will appear before the board for the same relief. He stated that as a New Bedford resident, he feels it's a great asset to have. He further stated that until the parking garages are at capacity, there is no reason he sees that the zoning board would not grant relief,

especially for businesses helping to revitalize the downtown area. He stated that without parking relief the properties are valueless. He noted his appearance is due to an expansion of the business, even serving customers from all over the state visiting the City of New Bedford.

He addressed the hardship issues, identical to the July hearing, such as the building occupying the entire lot, et cetera. He referred the board to the staff comments and invited any questions.

In response to Board Member Schilling, Mr. Farland noted the previous proposal originally included 6 residential units and triggered a requirement for 12 additional parking spaces. He stated the event space use has picked up and there is nothing like this unique location.

Board Member Schilling referenced recent news reports regarding lack of residential units in the downtown area.

In response to Board Member Brown, Mr. Farland stated the business as is employs 45 people, with an additional 6 employees planned for this function space expansion. He again referenced the staff review related to any employee parking with the 2nd floor use as a place of assembly. He noted the 12 employee spaces were for the bar/restaurant use. Mr. Farland stated he expects this smaller space will be used by business professionals and has a board room. He stated he believes max capacity to be 48 seats, versus the downstairs function room holding 185 seated. He noted a neighborhood business partner currently has a waiting list for use of their function room, again displaying a need for such space in the city.

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

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

Acting Chair Schick declared the hearing closed.

In response to Board Member Schilling, Mr. Farland was amenable to a condition that valet service not utilize on-street parking, at least early in the evening.

Acting Chairperson Schick reminded the board that a previous petition for a downtown hotel conditioned that valet service use the Elm Street Garage.

After further board discussion concerning parking, especially on-street parking, along with parking availability for downtown residents versus businesses, including input from Commissioner Romanowicz, a motion was made (JW) and seconded (RS) with regard to Case #4272, petitioner 791 Purchase Street, LLC, with an address of 791-797 Purchase Street, assessor's map 52 lot 292 in a Mixed Use Business [MUB] zoned district, to approve the request for an indoor/outdoor bar/restaurant on the 2nd floor, which requires a variance under Comprehensive Zoning Sections, 3000, 3100, 3110 and 3130.

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 these sections have been met. In addition to the foregoing sections, this petition has also been found to be in accordance with the MGL Chapter 48, §10, relative to the granting of variances, because the board has found 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, like most of the downtown buildings, this building occupies the entire lot, so there is no room for additional parking on the property. And that 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 applicant, because if the petitioner was not granted this relief he couldn't have full use of his business in this building. And that 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. There is no detriment because there is sufficient off-street parking, in light of parking garages such as the Zeiterion and Elm Street.

In light of its review of the specifics of this case, the applicable section of the city's zoning ordinance, and the findings subsequently made based upon these items, along with the all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. A condition will be set forth that to the extent the business provides valet parking for its customers, the valets shall not use on-street parking for customers' vehicles prior to 10:00 p.m., and after 10:00 p.m. they can use public spaces on the street.

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

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker– Yes

Board Member Brown - Yes

Board Member Walsh - Yes

Motion passed – 4-0

5. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 7:25 p.m..

**ZONING BOARD OF APPEALS
NEW BEDFORD MAIN PUBLIC LIBRARY
PLEASANT STREET
NEW BEDFORD, MA
Thursday, June 22, 2017**

MINUTES

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

ABSENT: Debra Trahan

STAFF: Dan Romanowicz, *Commissioner Inspectional Services*
Jennifer Gonet

CITY CLERK
2017 AUG 30 P 2:44
CITY CLERKS OFFICE
NEW BEDFORD, MA

1. CALL TO ORDER

Acting Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:02 p.m. and explained the process and protocols to those in attendance.

2. PUBLIC HEARINGS

ITEM 1: #4274 - Petition of Alcides Maocha (634 Summer Street New Bedford, MA) and Elmer Paz-Cruz (499 Rivet Street #3 New Bedford MA) for a Variance under Chapter 9 Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements - Appendix B, Height of Buildings, #Stories) relative to property located at 45 Richmond Street, assessor's map 70 lot 67, in a Residential-B [RB] zoned district. The petitioner proposes to add a family room, bath and bedrooms in the attic connected to the second floor (no kitchen on 3rd floor) as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 5/26/17 from the Commissioner of Buildings & Inspectional Services; communication from the Office Planning, Housing and Community Development dated 6/22/17; 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.

Alcides Maocha stated the property had fire damage in 2015. He stated when repairing the building, he noticed a big space in the attic that could be utilized as living space. He hired a contractor and engineer to design a plan where he could have a couple of more rooms in the attic, rather than waste the space.

Mr. Maocha stated he did not understand why his application was denied, and Board Member Decker explained zoning limitations on stories in a house. He explained that finishing off the space in question actually completes a third story. Mr. Maocha stated it would still be a two and a half, as it would be combined with the second floor, confirming that he would tie attic use to the second floor existing use. He proposed no additional changes but for the bathroom, family room, and a couple of bedrooms.

Mr. Maocha stated the present hardship is his family is expanding, and though city records stated six bedrooms, there are only four, which is small for a big growing family and needs expansion.

Board Member Brown noted the purchase of the property in 2008 and confirmed that the first floor is rented. Mr. Maocha stated he had little ones in the same room who can no longer share the same room.

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

The public hearing was closed.

After a brief board discussion on conditions and the safety created by allowing additional use only as tied to an existing living space, a motion was made (AD) and seconded (SM) regarding Case #4274, Petitioner Alcides Maocha (634 Summer Street New Bedford, MA) and Elmer Paz-Cruz (499 Rivet Street #3 New Bedford MA) relative property located at 45 Richmond Street, assessor's map 70 lot 67, in a Residential-B [RB] zoned district, to add a family room, bath, and bedrooms in the attic connected to the second floor (no kitchen on 3rd floor) as per plans filed, which requires a Variance under Chapter 9 Comprehensive Zoning Sections 2700, 2710, 2720 Appendix B.

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 there are circumstances related 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 structure on the property does not allow for expansion of improvements on the property. Second, due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, not permitting the variance presents the applicant with a hardship, because

of the growing family and need for more living space. 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 of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on those items, along with all properly submitted materials and testimony made, and the board's 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 specific conditions: use of the space to be finished on the third floor must remain tied to the use on the second floor. General conditions are as follows: that the project be set forth according to the plans submitted with the application; that the applicant ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of this variance must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of decision or the rights will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker – Yes

Board Member Brown - Yes

Board Member McTigue - Yes

Motion passed 5-0

ITEM 2: #4275 - Petition of Joseph E. Dupre III (369 Nash Road New Bedford MA) and Greg Demers (24 Howard Street New Bedford, MA) for a Variance under Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Requirements – Appendix-B, Green Space), 2756 (Special Driveway Side Yard Requirement), 3100 (Parking and Loading) and 3150 (Size of Parking Space) relative to property located at 274 Allen Street, assessor's map 35 lot 188 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to install a new concrete driveway and driveway entrance to the abutting property's foundation as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 5/26/17 from the Commissioner of Buildings & Inspectional Services; communication from the Department of Planning, Housing and Community Development dated 6/22/17; 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.

Joe Dupre, of Dupre Incorporated, representing the owners, stated they are seeking installation of a concrete driveway alongside the house, which would abut the neighbor's property at 270 Allen Street, the driveway going from foundation to foundation.

Board Member Decker inquired as to the anticipated effects of water. Mr. Dupre stated they would pitch the driveway away from each structure to the center of the new driveway, as well as to the back yard grass area.

Board Member McTigue expressed concern that the applicant had permission from the abutting lot owner to proceed with the project, and would have preferred to have heard from that owner. Mr. Dupre noted submission of a notarized letter from the abutter, the Amarals.

Board Member Schilling stated that having received notice, the abutters could have expressed any objections.

Board Member McTigue noted a precedent in the neighborhood for such projects, and inquired as to the applicant's hardship. Mr. Dupre stated the hardship is limited parking, as well as danger in exiting their vehicle and bringing in groceries, et cetera.

Board Member Decker confirmed that the driveway length would allow for two cars front to back, as well as parking on only one side of Allen Street in the immediate area.

Board Member Schilling confirmed the close proximity of St. Luke's Hospital and the emergency vehicles using Allen Street to reach the hospital.

Board Member Brown noted the owner's address is not the 274 Allen Street address, and inquired as to the occupancy on the subject property.

Greg Demers stated his mother-in-law and father-in-law are the current residents, after the family swapped houses. He stated they are experiencing trouble getting across the street, have lost two vehicles in front of the property due to hit and runs.

Board Member Brown inquired as to the Amarals' amenability to the project, where it means giving up a portion of their property.

Mr. Demers stated the present grass area is a nightmare for the Amarals to keep cleaned up, as it is not wide enough to even mow.

Board Member Schilling noted that the driveway would also open up more street parking the Amarals could utilize.

Mr. Demers stated that, in spite of having their own parking lot, employees of a neighboring office building use the street parking on Allen Street, leaving none for the residents.

In response to a concern from Board Member McTigue, Mr. Demers stated the access stairs shown will be moved to the front, with the remainder of the porch unchanged. Mr. Dupre stated there would be protective bollards around the gas meter.

In response to Acting Chairperson Schick's invitation to speak in favor, Robert Daigle, of 274 Allen Street, confirmed they had lost two vehicles. He explained he even rents a neighborhood garage for his second vehicle. He stated groceries, shoveling snow, and the speed of vehicles are a nightmare on Allen Street.

In response to Acting Chairperson Schick's invitation to speak in favor, Carol Raposo, of 280 Allen Street, stated she has a home and business on Allen and Oak Streets, and confirmed the street is an unbelievable nightmare, with people almost getting hit by cars, and parked cars getting hit. She expressed her support of the proposed driveway.

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 hearing.

Ms. McTigue indicated she would like to make a condition about the stairs, in a way that gets them out of the driveway but also keeps the porch intact.

Mr. Brown informed the board he wished for the variance to pass as it is a very persuasive case but he would be voting in opposition. He explained his opposition was because the notarized letter provided wasn't property notarized. He explained there are three signatures on it and the notary block is incorrect to the guidelines signed by Governor Mitt Romney.

After brief board discussion, including the notarized letter submitted and a condition related to the stairs, a motion was made (AD) and seconded (SM) regarding Case #4275, Petitioners Joseph E. Dupre III (369 Nash Road New Bedford MA) and Greg Demers (24 Howard Street New Bedford, MA) relative to property located at 274 Allen Street, assessor's map 35 lot 188 in a Mixed Use Business [MUB] zoned district, to install a new concrete driveway and driveway entrance to the abutting property's foundation as per plans filed, which requires a Variance under Comprehensive Zoning sections 2700, 2710, 2720 Appendix-B, 2756, 3100 and 3150.

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, there are circumstances related 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, there's nowhere else to located off-street parking on the lot, given the location of the existing structure. 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, on-street parking is extremely limited on Allen Street, creating a safety issue for the applicants. 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 of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made on these items, along with all properly submitted materials and testimony made, and the board's 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 specific condition: the front porch access stairs be reconfigured such that they do not lead directly from the porch to the location of the proposed driveway. General conditions are as follows: that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of this variance must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of decision or the rights will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker – Yes

Board Member Brown - No

Board Member McTigue - Yes

Motion passed 4-1

ITEM 3: #4276 - Petition of John Barros (6 Oaklawn Drive, Dartmouth, MA) for a Variance under Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), 2712 (Merger of Lots), 2720 (Table of Dimensional Requirements - Appendix B, Minimum Lot Size), 2750 (Yards in Residence Districts) and 2755 (Side Yards); relative to property located at 113 Grinnell Street, assessor's map 37 lots 21 and 22 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to erect a 52' x 25' single family dwelling with a 3-car garage as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 5/26/17 from the Commissioner of Buildings & Inspectional Services; communication from the Department of Planning, Housing and Community Development dated 6/22/17; 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.

Ed Kwiecien, project builder, stated they are looking to construct a modular building and three car garage on the underside lot. He stated engineered plans were before the board this evening. In response to Board Member Decker, Mr. Kwiecien stated the garage will have a residential use above it.

In response to Board Member McTigue's and Schilling's inquiries as to whether the garage would be commercial or used by residents, Mr. Kwiecien confirmed it would be for the residents.

Mr. Kwiecien stated the site meets all the sidelines and setbacks, but is short about 1,300 S/F. He stated there had been a previous structure that was removed. Mr. Barros stated he has owned the property over twenty years, and nobody wants to buy the lot.

Board Member McTigue confirmed a dust issue with the neighbors due to the lot being open which has gone unaddressed. Mr. Barros felt a house would be a great improvement.

In response to Board Member Brown, Mr. Barros stated that once built, he hopes to sell the house. In response to Board Member McTigue, he stated he will have a 4'x 8' rear deck with stairs. He stated he is doing three garages, which is not consistent with the surrounding historic neighborhood, because he didn't want a raised ranch. She noted an upper level sliding door with nothing below it. Mr. Kwiecien stated there was one, but Board Member McTigue wanted to see it. The applicant stated they will draw plans for the same.

In response to Board Member Decker, Mr. Barros stated his hardship is that he has paid taxes for over twenty years on the vacant property. He stated without being able to build, he will give it back to the city. He explained the financial burdens associated with the ownership.

Board Member Brown stated he supports the plan based on the square footage requirement, and stated there appear to be many area grandfathered homes that would also be in violation of the zoning ordinance.

In response to Acting Chairperson Schick's invitation to speak in favor, Manuel Pereira, of 297 Purchase Street, noted the lot has been empty for years, and living across the street he would like to see something built to improve the neighborhood.

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

The public hearing was closed.

After brief board discussion, to include Board Member McTigue's issue with not being able to view the plans associated with the upper sliding door and the representation that there will be a deck and egress, a motion was made (AD) and seconded (SM) with regard to Case #4276, Petitioner John Barros (6 Oaklawn Drive, Dartmouth, MA), relative to property located at 113 Grinnell Street, assessor's map 37 lots 21 and 22 in a Mixed Use Business [MUB] zoned district, to erect a 52' x 25' single family residence with a 3-car garage as per plans filed, which requires a variance under Comprehensive Zoning sections 2700, 2710, 2712, 2720 - Appendix B.

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 with respect to these sections there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not effect generally the zoning district in which the land or structure is located. These circumstances are that the lot size is undersized given current zoning for any structures. 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 applicant. In this case not being able to build upon the lot presents a financial hardship for the upkeep, real estate taxes and trash removal necessary on the property. 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 of this case, the applicable section of the city's zoning ordinance, and the findings subsequently made based upon these items, along with the all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. Specific conditions in this case are that the second floor rear slider must have a connection to an unroofed deck. The general conditions are that the project be set forth according to the plans submitted with the application; that the applicant shall ensure a copy of the Notice of Decision bearing certification from the City of New Bedford City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of the variance must be exercised by the issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date of the decision granted or they will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Clerk Decker– Yes

Board Member McTigue - Yes

Board Member Schilling – Yes

Board Member Brown - Yes

Motion passed 5-0

ITEM 4: #4277: Petition of Jason Audette (12 Velvet Avenue, Westport, MA) and Times Square Realty (902 Purchase Street New Bedford MA) for a Special Permit under Comprehensive Zoning sections 4200-4267 (Body Art) and 5300-5330 and 5360-5390 (Special Permit); relative to property owned by Time Square Realty located at 880-902 Purchase Street, assessor's map 53 lot 35 in a Mixed Use Business [MUB] zoned district. The petitioner proposes to change a vacant first floor unit into a tattoo studio as plans filed.

A motion was made (AD) and seconded (SM) that the following be received and placed on file: the communication dated 5/26/17 from the Commissioner of Buildings & Inspectional Services; communication from the Department of Planning, Housing and Community Development dated 6/22/17 as amended; 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.

Jason Audette, North Atlantic Tattoo, stated he has a north end business location with proper zoning. He stated they decided to relocate to improve legitimacy, and they looked downtown. He noted New Bedford's art community and his clientele base. He felt increased visits to the downtown will be beneficial, as clients make a day of it.

Mr. Audette explained the location and the parking situation, noting his artist will rent spots in the parking garage.

Board Members Brown and McTigue expressed compliments on the application and the attention to health safety.

In response to Acting Chairperson Schick's invitation to speak in favor, Kelly Nieroda, wife of the applicant, stated they love New Bedford and want to bring high-end quality work to the area, and they are looking for a good area in the city in which to do that. She stated this downtown location is their dream.

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

The public hearing was closed.

After brief board discussion, a motion was made (AD) and seconded (SM) regarding Case #4277, Petitioner Jason Audette (12 Velvet Avenue, Westport, MA) and Times Square Realty (902 Purchase Street New Bedford MA) relative to property at 880-902 Purchase Street, assessor's map 53 lot 35 in a Mixed Use Business [MUB] zoned district, to change a vacant first floor unit into a tattoo studio as per plans filed, which requires a Special Permit under Comprehensive Zoning sections 4200-4267 and 5300-5330 and 5360-5390.

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 with respect to these sections and the ordinance section as follows: concerning 5321, social, economic or community needs served by the proposal, this proposal strive to meet the demands for tattooing services and keeps an existing business in the city in operation. As concerns 5322, traffic flow and safety, including parking and loading, traffic flow and safety is adequately covered through the tenant's lease with the property owner. Regarding 5323, adequacy of utilities and other public services, the proposed use is neutral as utilities are in place and available. Regarding Section 5324, neighborhood character and social structures, the proposal takes into account these factors and does not detract from that. Regarding Section 5323, the impacts on the natural environment, this is an existing office space in an existing building and the impacts are neutral on the natural environment. Regarding Section 5326, the

potential fiscal impact, including the impact on city services, tax base and employment, the board finds this proposal keeps an operating business in the City of New Bedford.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made based on those items, along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. With no specific conditions, there are the following general conditions: that the project is set forth according to the plans submitted with the application; that the applicant ensure a copy of the Notice of Decision bearing certification of the New Bedford City Clerks' Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of this special permit must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted or they will lapse.

Roll-call vote as follows:

Acting Chairperson Schick – Yes

Board Member Schilling – Yes

Clerk Decker– Yes

Board Member Brown - Yes

Board Member McTigue - Yes

Motion passed 5-0

3. APPROVAL OF MINUTES

A motion was made (AD) and seconded (SM) to accept the minutes of the meeting of April 27, 2017 as concerns Cases 4269, 4270 and 4271.

Motion passed unopposed.

A motion was made (AD) and seconded (RS) to accept the minutes of the meeting of May 18, 2017 as concerns Cases 4269, 4273 and 4272.

Board Member McTigue abstained from voting on the motion.

Motion passed unopposed.

4. ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 7:34 p.m..

NEXT SCHEDULED MEETING - JULY 20, 2017