



MAYOR
JON MITCHELL
PLANNING DIRECTOR
TABITHA HARKIN

City of New Bedford Department of City Planning

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2020 APR -8 A 11:02

CITY CLERK

ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS VIRTUAL MEETING Thursday, April 23, 2020

MINUTES

PRESENT: Leo Schick, (*Chairperson*)
Stephen Brown, (*Clerk*)
Allen Decker
Robert Schilling
Celeste Paleologos

ABSENT: None

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

Petitioners were then confirmed as present by Ms. Goncalves, who provided participants with remote meeting guidelines and protocols.

1. CALL TO ORDER

Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order. Chairperson Schick then explained the meeting process and protocol.

2. PUBLIC HEARINGS:

ITEM 1 – CASE #4407 - Petition of: City of New Bedford (133 William Street, New Bedford, MA 02740) and Waterfront Historic Area League (WHALE), C/O Teri Bernert (15 Johnny Cake Hill, New Bedford, MA 02740) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430-2432 (nonconforming structures, other than single- and two- family structure) and 5300-5330 & 5360-5390 (special permit); relative to property located at 109 Hillman Street, Assessors' map 58 lot 157 in a Mixed Use Business [MUB] zoned district. The petitioner is proposing to rehabilitate and change the use of an existing vacant building into a 9 unit mixed residential building per plans filed. Continued Agenda Item from February 13, 2020.

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A motion was made (SB) and seconded (RS) that the following be received and placed on file: communication from the Commissioner of Buildings and Inspectional Services dated 1/27/20; staff comments from the Office of City Planning dated 2/3/20; 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.

Rachel Allison, Project Manager WHALE, provided the building background and location within the Historic District. She discussed the new proposed housing use, as one of the few viable building uses. Ms. Alison referred to the project's appearance before the planning board, which was approved. She described the project plans for restoration, as well as unit number modifications from 9 to 8.

Ms. Allison discussed the current site plan including permeable green space, drainage, and parking.

In response to Board Member Decker, Ms. Allison explained the allocation of available parking spaces/on-street parking. She noted a meeting with the traffic commission to try to address the issue.

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

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

After brief discussion, including input from Danny Romanowicz, a motion was made (SB) and seconded (CP) to grant a special permit under provisions of provisions of the City Code of New Bedford relative to property located at 109 Hillman Street, Assessors' map 58 lot 157 in a Mixed Use Business [MUB] zoned district, to allow the petitioner to rehabilitate and change the use of an existing vacant building into a 8 unit mixed residential building per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 2400, 2410, 2430-2432 and 5300-5330 & 5360-5390. In accordance with the City of New Bedford Code of Ordinances Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effect of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. Including consideration of the following: social, economic and community needs which are served by the proposal, traffic flow and safety, including parking and loading, adequacy of utilities and other public services, neighborhood character and social structure, and impact on the natural environments.

With the following specific conditions:

- This proposal requires site plan review by the Planning Board. Any conditions imposed by the Planning Board decision shall also be conditions of this special permit.

The general conditions are as follows:

- That the project be set forth according to the plans submitted with the application.

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- That the applicant shall ensure a copy of the Notice of Decision bearing certification from the City Clerk's Office be recorded at the Registry of Deeds.
- That the rights authorized by the granting of the 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:

Board Member Schick - Yes
Board Member Brown - Yes
Board Member Decker - Yes

Board Member Paleologos - Yes
Board Member Schilling - Yes

Motion passed 5-0

A motion was made (SB) and seconded (RS) to hold the following public hearings concurrently.
Motion passed unopposed.

ITEM 2 CASES #4408/#4409

Case #4408 - Petition of: Charter Dartmouth II, LLC, C/O Charter Realty & Development Corp. (75 Holly Hill Lane, Suite 305, Greenwich, CT 06830) and Mechanics Cooperative Bank, C/O John McMahon (PO BOX 552, Taunton, MA 02780) for a Variance under Chapter 9, Comprehensive Zoning Sections 3200 (sign regulations), 3201 (purpose), 3210 (general regulations), 3250 (regulation governing particular types of signs), 3255 (area restrictions for ground signs-in Mixed Use Business districts, no ground sign shall exceed one square foot in area for each linear foot of street frontage of the lot upon which it is erected, but in no event shall such sign exceed twenty-five (25) SF in area, nor shall there be a distance of more than ten (10) Ft. from the ground to the bottom of the sign and more than fifteen (15) Ft. from the ground to the top of the sign) and 3256 (location restrictions. No ground sign shall project over a public way, nor shall a ground sign be located closer than six (6) Ft. from a lot line. Only one ground sign shall be permitted per lot in a Mixed Use Business district); relative to property located at 1238 Kempton Street, Assessors' map 54 lot 6 in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to install an electronic message board to a new free-standing ground sign which measures 121.4 SF, 10' to the bottom, 22'.3" to the top of the sign, and within 6' of the front lot line per plans filed. Continued Agenda Item from February 13, 2020.

Case #4409 - Petition of: Charter Dartmouth II, LLC, C/O Charter Realty & Development Corp. (75 Holly Hill Lane, Suite 305, Greenwich, CT 06830) and Mechanics Cooperative Bank, C/O John McMahon (PO BOX 552, Taunton, MA 02780) for an Administrative Appeal under Chapter 9, Comprehensive Zoning Sections 3200 (sign regulations), 3201 (purpose), 3220 (prohibited signs), 3222 (any sign which incorporates moving, flashing, animated or intermittent lighting, excluding public service signs such as those that display time and temperature), 5220 (powers) and 5223 (to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L.A. c. 40A, §§ 7, 8 and 15); relative to property located at 1238 Kempton Street, Assessors' map 54 lot 6 in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to install an electronic message board to a new free-standing ground sign which measures 121.4 SF, 10' to the bottom, 22'.3" to the top of the sign, and within 6' of the front lot line per plans filed. Continued Agenda Item from February 13, 2020.

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A motion was made (SB) and seconded (CP) that the following be received and placed on file with regard to both cases: communication from the Commissioner of Buildings and Inspectional Services dated 1/27/20; staff comments from the Office of the City Planner dated 4/6/20; 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 Baptista, Mechanics Cooperative Bank, along with John McMahon present, spoke to the variance request in case 4408, along with the relocation/replacement of the existing ground sign. He noted the ground sign size. Mr. Baptista referenced their two planning board appearances, noting the revisions made at the board's request. He then addressed Case #4409, noting the revisions to the electronic message board size. He stated they received approval. Mr. Baptista then invited questions.

In response to Board Member Decker and Chairperson Schick, Mr. Baptista explained details of the electronic messaging board.

Board Member Decker confirmed that this would be the bank's first location in New Bedford.

Board Member Brown commented on application comments related to the sign with regard to his observations of their other locations. He stated he did not feel that what they are asking does what the ordinance is trying to prevent.

In response to Chairperson Schick's invitation to speak or be recorded in favor. Councilor Scott Lima voiced his favor for the petition. Councilor Lima noted communication he had sent in support of the project.

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

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

After a motion made and seconded and passed without opposition, Councilor Lima's referenced correspondence dated April 23, 2020 was read into the record.

Board Member Brown discussed visibility and electric lines discussed in their application creating a hardship.

The public hearing on this matter was closed.

There being no discussion, a motion was made (SB) and seconded (CP) to grant administrative appeal on Case #4409 under provisions of the New Bedford Code relative to property located at 1238 Kempton Street, Assessors' map 54 lot 6 in a Mixed Use Business [MUB] zoned district to allow the petitioners appeal to install an electronic message board to a new free-standing ground sign which measures 64.6 SF, 10' to the bottom, 17'10" to the top of the sign, and within 6' of the

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front lot line per plans filed. The appeal of the petitioner be granted per the administrative Appeal Process under Provisions of Chapter 9, Comprehensive Zoning Sections 3200, 3201, 3220, 3222, 5220 and 5223. Having reviewed this petition in light of the City of New Bedford's Code of Ordinances under Chapter 9, cited sections, and the provisions of M.G.L. Chapter 40A, §7, 8 and 15, the board finds the following facts:

- That the proposal has already been modified to meet the recommendations of the Planning Board.
- That the sign can be categorized as a public service sign
- That the applicant will operate the sign in accordance with the City's preference to limit moving, flashing, animated or intermittent lighting.

ROLL CALL VOTE:

Board Member Schick - Yes
Board Member Brown - Yes
Board Member Decker - Yes

Board Member Paleologos - Yes
Board Member Schilling - Yes

Motion Passed 5-0

A motion was made (SB) and seconded (RS) to grant a variance on Case #4408 under provisions of the New Bedford Code relative to property located at 1238 Kempton Street, Assessors' map 54 lot 6 in a Mixed Use Business [MUB] zoned district, to allow the petitioners to install an electronic message board to a new free-standing ground sign which measures 64.6 SF, 10' to the bottom, 17'10" to the top of the sign, and within 6' of the front lot line per plans filed, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 3200, 3201, 3210, 3250, 3255 and 3256. Having reviewed this petition, including materials submitted and testimony heard, in accordance with the City of New Bedford Code of Ordinances and M.G.L. Chapter 40A, §10, the board finds that the applicable requirements have been met.

This determination includes consideration of the following: The board finds there are circumstances related to the soil conditions, shape or topography specifically effecting 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 instance, the circumstances are that the new proposed location is the only viable location for clearance from electric lines while solving poor visibility issues. Two, due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or applicant. In this case, the hardship is that in order to meet economically viable signage and branding is critical for a new business. Three, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. Four, the desirable relief may be granted without substantial detriment to the public good.

With the following specific conditions:

- This proposal requires site plan review by the Planning Board. Any conditions imposed by the Planning Board decisions shall also be conditions of this variance.

General conditions are as follows:

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

ROLL CALL VOTE:

Board Member Schick - Yes
Board Member Brown - Yes
Board Member Decker - Yes

Board Member Paleologos - Yes
Board Member Schilling - Yes

Motion Passed 5-0

ITEM 3 – CASE #4410 - Petition of: Ian Shields, (PO Box 51204, Boston, MA, 02205) for a Variance under Chapter 9, Comprehensive Zoning Sections 3100 (parking and loading), 3110 (applicability), 3130 (table of parking loading requirements-Appendix C, business engaged in retail sale of goods and services, not elsewhere enumerated herein, business engaged in the warehousing and distribution of goods and materials including building & construction contractors, equipment & supplies on premises; relative to property located at 138-142 Arnold Street, Assessors' map 45 lot 212 in a Mixed Use Business [MUB] zoned district. The petitioner is proposing to operate a grocery store, with no parking per plans submitted. Continued Agenda Item from February 13, 2020.

A motion was made (SB) and seconded (RS) that the following be received and placed on file with regard to both cases: communication from the Commissioner of Buildings and Inspectional Services dated 1/27/20; staff comments from the Office of the City Planner dated 2/3/20; a 2/11/20 letter in opposition by Mary McMahon, a 3/2/20 letter revoking opposition letter and now in support of the project by Mary McMahon; 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; in addition to a letter of support by Scott Lima received this day.

Motion passed unopposed.

Councilor Scott Lima, allowed to speak out of turn, expressed support for the project, noting he had met with Mr. Shields and discussed the project and plans.

Ian Shields, proprietor, provided the background of the project, noting he had purchased the vacant property some five years ago. He feels this will meet neighborhood needs. Mr. Shields then discussed the relief sought, including parking, and addressed the necessary criteria.

Mr. Shields stated he expects 7:00 a.m. – 7:00 p.m. hours of operation most days and addressed available on-street parking.

Chairperson Schick noted his familiarity and experience with the subject area.

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Mr. Shields discussed his interaction and discussions with neighbors, noting their parking concerns. He invited questions.

In response to Board Member Paleologos, Mr. Shields stated the 2nd floor contains three one-bedroom residential units.

In response to Board Member Decker, Mr. Shields stated he will be seeking a license for alcoholic beverages, specifically beer and wine. There was then discussion on parking with relation to delivery times, as well as the nature of products at the proposed store.

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

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

There being no further questions or discussion, a motion was made (SB) and seconded (RS) to grant a variance under provisions of the City of New Bedford Code relative to property located at 138-142 Arnold Street, Assessors' map 45 lot 212 in a Mixed Use Business [MUB] zoned district, to allow the petitioner to operate a grocery store, with no parking per plans submitted, which requires a variance under provisions of Chapter 9, Comprehensive Zoning Sections 3100, 3110, 3130 -Appendix C, business engaged in retail sale of goods and services, not elsewhere enumerated herein, business engaged in the warehousing and distribution of goods and materials including building and construction contractors, equipment and supplies on premises. Having reviewed this petition, including materials submitted and testimony heard, in accordance with the City of New Bedford Code of Ordinances and M.G.L. Chapter 40A, §10, the board finds that the applicable requirements have been met.

This determination includes consideration of the following: The board finds there are circumstances related to the soil conditions, shape or topography specifically effecting 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 instance, the circumstances are that configuration of the existing structure on parcel hinders availability to provide off-street parking. Two, due to those circumstances especially effecting the land or structure, literal enforcement of the provisions of the zoning ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or applicant. In this case, the hardship is that without the relief, the existing building would have to be altered or demolished to create on-site parking. Three, the desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. Four, the desirable relief may be granted without substantial detriment to the public good.

With no specific conditions.

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 from the City Clerk's Office be recorded at the Registry of Deeds.
- That the rights authorized by the granting of the variance must be exercised by issuance of a building permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted, or they will lapse.

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ROLL CALL VOTE:

Board Member Schick - Yes
Board Member Brown - Yes
Board Member Decker - Yes

Board Member Paleologos - Yes
Board Member Schilling - Yes

Motion Passed 5-0

Board Member Allen Decker notified the board of his need for recusal on the following matter.

ITEM 4: Case #4411 - Petition of: NB Practice Realty, LLC, (906 Hathaway Road, New Bedford, MA 02740) and Marc R. Deshaies, Esq., (115 Orchard Street, New Bedford, MA 02740) for an Administrative Appeal under Chapter 9, Comprehensive Zoning Sections 3200 (sign regulations), 3201 (purpose), 3220 (prohibited signs), 3222 (any sign which incorporates moving, flashing, animated or intermittent lighting, excluding public service signs such as those that display time and temperature), 5220 (powers) and 5223 (to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L.A. c. 40A, §§ 7, 8 and 15); relative to property located at 906 Hathaway Road, Assessors' map 120 lot 16 in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to install an electronic message board to an existing ground sign per plans filed. Continued Agenda Item from March 19, 2020.

A motion was made (SB) and seconded (RS) that the following be received and placed on file with regard to both cases: communication from the Commissioner of Buildings and Inspectional Services dated 2/24/20; staff comments from the Office of the City Planner dated 3/6/20; the appeal packet as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

Att. Marc Deshaies, New Bedford, on behalf of the petitioner, stated this administrative appeal relates to denial of a building permit related to a sign. Att. Deshaies provided background on the matter, including a previous sign on the site. He stated this case has been presented to the Planning Board for site plan approval, which was approved. He provided details on the proposed sign. Att. Deshaies noted a Dartmouth abutter who was concerned about the sign illumination, which resulted in the Planning Board's restriction on hours of sign operation. He then invited questions.

William Herr of 906 Hathaway, the petitioner, provided some clarification on the planned sign usage details, including public service messages.

There were no board questions or discussion.

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

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

The public hearing was closed.

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Board Member Brown commented on the quality of the package assembled. Board Member Brown expressed his support and reasoning for the same.

There being no discussion, a motion was made (SB) and seconded (RS) to grant Administrative Appeal on Case #4411, under provisions of the New Bedford Code relative to property located at 906 Hathaway Road, Assessors' map 120 lot 16 in a Mixed Use Business [MUB] zoned district, to allow the petitioners to replace an existing non-illuminated ground mounted monument sign with a double sided LED illuminated sign of greater dimensions per plans filed. Motion that the Administrative Appeal be granted per the administrative Appeal process and the provisions of Chapter 9, Comprehensive Zoning Sections 3200, 3201, 3220, 3222, 5220 and 5223, and under provisions of M.G.L. Chapter 40A, §7, 8 and 15. Having reviewed this petition, including materials submitted and testimony heard, in accordance with the City of New Bedford Code of Ordinances, as cited, the board finds the following facts:

- That the LED sign as proposed would not materially affect the surrounding neighborhood and would not contribute to light pollution.

ROLL CALL VOTE:

Board Member Schick - Yes

Board Member Paleologos - Yes

Board Member Brown - Yes

Board Member Schilling - Yes

Motion Passed 4-0

ITEM 5: Case #4413 – Petition of: Deolinda Sylvia (22 Pope Street, New Bedford, MA 02740) and Karen Sylvia-Simmons (15 Pope Street, New Bedford, MA 02740) for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2420 (nonconforming uses) and 5300-5330 & 5360-5390 (special permit); relative to property located at 22 Pope Street, Assessors' map 72 lot 81 in a Residential B [RB] zoned district. The petitioner is proposing to change the use of the 2nd floor commercial space into a residential apartment per plans filed.

A motion was made (SB) and seconded (CP) that the following be received and placed on file with regard to both cases: communication from the Commissioner of Buildings and Inspectional Services dated 3/27/20; staff comments from the Office of the City Planner dated 4/6/20; the appeal packet 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.

Karen Sylvia-Simmons gave details and history on the property. She is looking to change the property back to a two-family dwelling. She explained the parking situation and noted to additional utilities would be necessary. Mrs. Sylvia-Simmons commented on the surrounding residential neighborhood and the parking relief this proposal would provide. She invited questions.

There were no board questions.

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

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

The public hearing was closed.

After brief board discussion and comments from Danny Romanowicz, a motion was made (SB) and seconded to grant a special permit under provisions of the City Code of New Bedford relative to property located at 22 Pope Street, Assessors' map 72 lot 81 in a Residential B [RB] zoned district, to allow the petitioner to change the use of the 2nd floor commercial space into a residential apartment per plans filed, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 2400, 2410, 2420 and 5300-5330 & 5360-5390. In accordance with the City of New Bedford Code of Ordinances Chapter 9, section 5320, the benefit to the city and the neighborhood outweighs the adverse effect of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. Including consideration of the following: social, economic and community needs which are served by the proposal, traffic flow and safety, including parking and loading, adequacy of utilities and other public services, neighborhood character and social structure, and impact on the natural environment.

With no specific conditions.

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 from the City Clerk's Office be recorded at the Registry of Deeds.
- That the rights authorized by the granting of the 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:

Board Member Schick - Yes
Board Member Brown - Yes
Board Member Decker - Yes

Board Member Paleologos - Yes
Board Member Schilling - Yes

Motion Passed 5-0

3) APPROVAL OF MINUTES

A motion was made (SB) and seconded (RS) to approve the meeting minutes of January 16, 2020. Motion passed unopposed.

4) OLD/NEW BUSINESS

A motion was made (SB) and seconded (RS) regarding Case #4412 to receive and place on file the communication letter dated 4/2/20 requesting a continuance to the May 2020 meeting. Board Member Brown read into the record the reason for the same. Motion passed unopposed.

A motion was made (SB) and seconded (RS) regarding Case #4415 to receive and place on file the communication letter dated 4/2/20 requesting a continuance to the May 2020 meeting. Board Member Brown read into the record the reason for the same. Motion passed unopposed.

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A motion was made (SB) and seconded (RS) regarding Case #4394 to receive and place on file the communication letter dated 4/1/20 requesting a continuance to the May 2020 meeting. Board Member Brown read into the record the reason for the same.
Motion passed unopposed.

5) ADJOURNMENT

This Zoning Board of Appeals meeting was adjourned.

NEXT MEETING IS SCHEDULED FOR MAY 28, 2020.



Stephen Brown, Clerk

June 8, 2020

Date