

## MINUTES OF BOARD OF APPEALS MEETING OF December 3, 2013: Town Hall Banquet Room

### I. ADMINISTRATIVE BUSINESS

Chairman Peter DeTerra – Opened the meeting at 6:00 p.m.

#### Quorum/Attendance

Members Present – Chairman Peter DeTerra, Fran Cox, Jr., Daryl Manchester, Peg Cook, Al Silva (Assoc.), Rene Fleurent, Jr. (Assoc.), Ken Kendall (Assoc.) and Jaime DeSousa (Assoc.)

Minutes: Chairman DeTerra asked for a motion to accept the minutes of November 5, 2013. Mr. Cox, Jr. motioned to accept the minutes. Mr. Kendall seconded. The vote was unanimous.

### II. PUBLIC HEARING:

1. Petitioner: William Ashworth, RE: 8 Mina Street, Plat 37A, Lot 487, Book 7708 and Page 007;  
Administrative Appeal: Administrative Appeal of issuance of a Building Permit for a two-car garage at 8 Mina Street.

The petition was read and there were 34 abutters notified. The petitioner was represented by Attorney Donna M. Sowa of New Bedford. A letter written by the attorney was read and is part of this record. Mr. Ashworth as an abutter opposes the garage permit issued for 8 Mina Street. He had spoken with the Building Commissioner Mr. Fostin regarding the permit and was told that Mr. Fostin would have the owner, Mr. Miranda sign on the plans that the garage would not be used for storage and any drainage from the structure would be directed toward Mina Street and away from Mr. Ashworth's property on Nancy Street.. Attorney Sowa stated the lot is undersized, variances were required to build the house, and therefore variances must be required for the garage. Mr. DeTerra, Chairman, stated the petition is to appeal the garage permit only and asked that the attorney speak to that topic only. Mr. DeTerra further stated the proposed garage is in full compliance with the zoning requirements. Mr. Fostin stated that the garage is in full compliance for an Accessory Structure. Attorney Sowa distributed a handout of the history of the property to the Board which is part of this record. She questioned why Mr. Fostin did not require the applicants to sign the stated limitations. He responded he has no authority to require the statements but was hoping the applicants would sign in order to eliminate neighborhood problems. Mr. Fostin stated per the By-Law as long as the garage is less than 700 square feet, it can be used for storage. Attorney Sowa stated there is an existing drainage problem and the new structure will exacerbate it. The drainage problem has been reported to the Town and worked on by the Town but it is not presently eliminated. Photos and site plans in the handout were reviewed. Attorney Sowa stated the Town appears to enforce against her client but not against the property at 8 Mina Street and stated that this is unequal protection under the law.

Ms. Rowse, owner of 8 Mina Street spoke stating the drainage issued has been settled out of court and is not an issue. She presented a written timeline of the property construction which is part of this record. Ms. Rowse stated she and Mr. Miranda, co-owner of 8 Mina Street, have done all that was expected of them: a land survey, construction of a retaining wall and changing their initial garage plans just to keep peace in the neighborhood. The garage will add value to the house and be a place to secure their vehicles. Mr. Miranda spoke in favor of the garage.

Motion to approve the Administrative Appeal was made by Mr. Cox, Jr.; seconded by Mr. Silva.

Members voting to grant the Administrative Appeal: None.

Members voting Not to grant the Administrative Appeal: Mr. Cox, Jr., Ms. Cook, Mr. Silva, Mr. Kendall and Mr. DeSousa.

The Administrative Appeal is DENIED with a vote of none (0) in favor and five (5) opposed.

2. Bruce Medeiros, RE: 16 Narragansett Boulevard, Plat 30A, Lots 101, 102 & 103, Certificate #23138; 198-18: Short 20' of the required 100' frontage on lots 101, 102 and 103 in a RA District.

The petition was read and there were 15 abutters notified. The petitioner was represented by David Davignon, P.E. of N. Douglas Schneider & Associates, Inc. of Mattapoisett who presented plans showing the three lots. The intent is to create a buildable lot with 80' frontage from lots 101 and 102, at 16,589 square feet which presently has no structure and used as lawn/yard at 16 Narragansett Boulevard. Lot 103 has a single family dwelling on it-16 Narragansett Boulevard- is 15, 295 square feet and is in full zoning compliance. The proposal does not change lot lines, combines existing lots only and is consistent with the neighborhood with examples given. The Board approved a similar variance at 32 Narragansett Avenue recently. Kerry Lyons co-owner of the property spoke in favor of the petition. No one spoke against the petition.

Mr. Fleurent, Jr. questioned if the property was held in common ownership and if it was, then the Board could not grant a variance that would create non-compliant lots. Mr. Fleurent, Jr. asked the petitioner when the property was purchased and was told two years ago. Mr. Fleurent, Jr. stated the owners bought the lot knowing it was in common ownership. The Board had this very issue before it in June with a review by Town Counsel affirming this outcome.

Mr. Davignon stated the matter is a discretionary matter for the Board of Appeals. No lot lines would be changed.

Mr. Fleurent, Jr. motioned to grant the Variance; Mr. DeSousa seconded.

Members voting to grant the Variance: None.

Members voting Not to grant the Variance: Mr. Cox, Jr., Ms. Cook, Mr. Manchester, Mr. Fleurent, Jr. and Mr. Kendall

The Variance is DENIED with a vote of none (0) in favor and five (5) opposed.

Ms. Lyons questioned what alternative there might be now for development of the land. Mr. DeTerra explained the petitioner must wait two years to resubmit the petition to the Board of Appeals or if there is significant change in the proposal, approval for a repetitive petition must be approved by the Planning Board in order to be heard by the Board of Appeals before the two year wait period.

### **III. OTHER BUSINESS: None**

### **ADJOURNMENT**

Mr. Cox, Jr. moved to adjourn the meeting; Mr. Kendall seconded. The vote was unanimous. The meeting was adjourned at 6:50 PM.

Respectfully Submitted,  
Patricia Fowle, Secretary