



# City of New Bedford

## Department of Planning, Housing & Community Development

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**PATRICK J. SULLIVAN**  
DIRECTOR

## STAFF COMMENTS

### PLANNING BOARD MEETING

March 9, 2016

**Case # 08-16: REZONING**

458 Dartmouth Street  
Map: Map 18 Lot 106

**Petitioner:** City Councilor Joseph P. Lopes  
(Ward 6)  
133 William Street, Room 215  
New Bedford, MA 02740

**Owner:** Richard Brisson  
PharmaHealth Real Estate LLC  
132 Alden Road  
Fairhaven, MA 02719



**458 DARTMOUTH STREET**  
VIEW FROM THE SOUTHWEST LOOKING NORTHEAST

**Overview of Request:**

The Planning Board reviews rezoning petitions as standard practice and provides a recommendation based on their findings to the City Council Committee on Ordinances. This case requests the rezoning of a parcel of land from its existing Industrial B (IB) zoning designation to a Mixed Use Business (MUB) zoning district. The request has been put forth by New Bedford City Councilor Joseph P. Lopes.

**Existing Conditions:**

The parcel contains 0.288 acres/12,536 SF of land classified for assessment purposes as retail. The existing structure was constructed in 1965 in mid-century modern vernacular style with a California-style low pitch roof and blond brick exterior facade. The 2564 SF building was designed for retail banking purposes (this is the former Mutual Bank building) and still includes the walk-in vault. The site is located in a densely populated area on a public transportation line near the intersection of Rockdale Avenue, and has 100 linear feet of frontage along Dartmouth Street. The most recent business use at this site was a neighborhood pharmacy (PharmaHealth).



Site views, clockwise from top left: drive thru window, view of building front looking south, view of building rear.

The subject parcel is located in the Industrial B zoning district, a classification most likely driven by the former manufacturing structure located at 105 Rockdale Avenue constructed in 1917 to the separate and buffer the industrial use from nearby residential dwellings.

The lot sits within a large city block and shares unmarked/indiscernible property boundaries with the Douglas Wine & Spirits plaza/laundromat to its north and east (Yale New Bedford Trust, owner), Felicio Franco Hair Design salon to its southeast and J.N. Phillips Auto Glass to its southwest. Neighboring commercial entities include Stop & Shop grocery store and gas, P & K Nail Salon, Torman Chiropractic and Cumberland Farms. The New Bedford Housing Authority's 150 unit "Blue Meadows" housing is across the street from the site.



**Proposed Conditions:**

The land owner, via Councilor Lopes, has stated the purpose for the rezoning petition to the Planning Board for recommendation to City Council (Attachment 2). In his request to Councilor Lopes, Richard Brisson, owner, notes that due to the current zoning of the lot he is having *“a difficult time in selling the property because the current zoning only allows for very few types of businesses to be able to operate at my location.”* His request goes on to note the change in the immediate area’s make up from industrial uses to now, primarily retail business. The property, according to the owner, has been on the market for *“well over a year...”* and that the use for which the building was originally built—a bank—would not be allowed today under the existing IB zoning designation.

In light of this, the request that will be decided by the City Council is whether or not to rezone this parcel from its existing Industrial B (IB) zone to a Mixed Use Business (MUB) zone. Uses permitted by-right in each of those zones are, according to the city’s zoning ordinance, (Appendix A-Table of Principal Use Regulations), as follows:



**NOTE:** Both existing and proposed zoning districts allow for many of the same by-right “exempt and institutional uses” including: use of land/structures for religious purposes, educational purposes on land owned or leased by the Commonwealth/religious sect or denomination/nonprofit educational corporation, child care facilities in existing or new buildings, use of land for the primary purpose of agriculture, horticulture, etc., facilities for the sale of produce/wine/etc produced on a 5+ acre parcel, municipal facilities and essential services.

**Input From Other City Departments:**

The rezoning request was distributed to City Clerk, City Solicitor, Health Department, Inspectional Services, Engineering, Public Infrastructure, Conservation Commission, Fire Department and School Department.

The City Solicitor’s Office is completing its review and their comments will be available at the Board meeting.

The Commissioner of Inspectional Services has identified this request as being “spot zoning.”

No additional comments have been received as of the production date of these Planning Staff Comments.

**For Board Member Consideration:**

**MERITS**

This particular request seeks to rezone the subject parcel from Industrial B (IB) to Mixed Use Business (MUB) within the context of an entire city block currently zoned as IB. Despite its industrial zoning, the entire city block is predominantly retail. By contrasting the existing zoning designation with what is actually happening in the zone, it is readily apparent that a significant shift has occurred over the years that has effectively *transformed* the once industrialized area to now one which is a neighborhood retail hub.

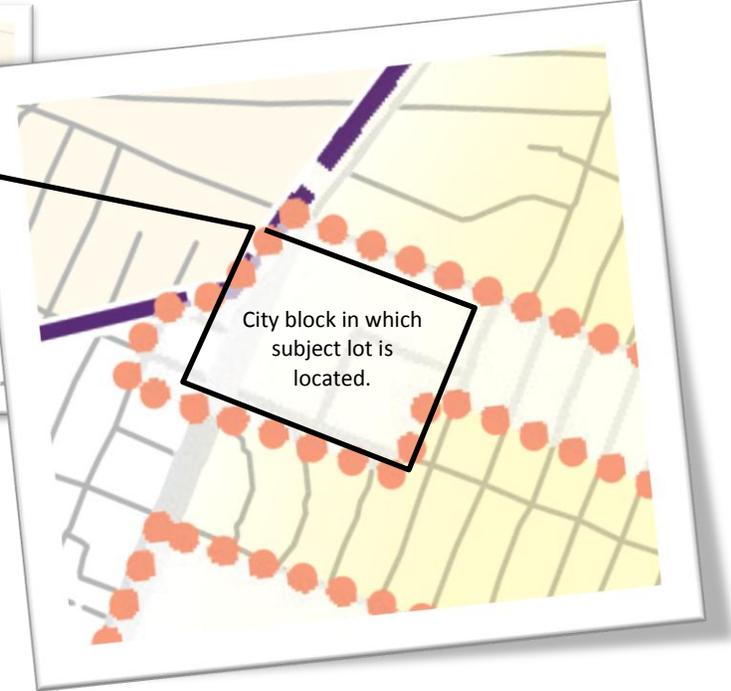
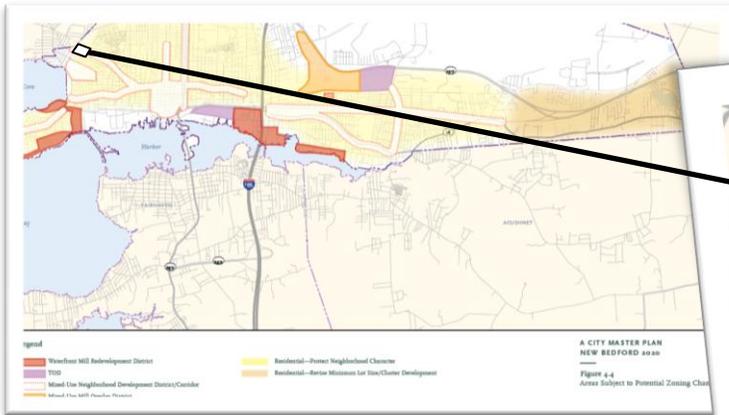
Unfortunately in the course of this shift, the City of New Bedford has not yet considered nor moved to rezone the entire block. As a result, nonconformities abound and existing retail uses are left to constantly struggle against the backdrop of use, dimensional and/or parking requirements that are incongruent with the very nature of their businesses. One such example of this is the petition before the Planning Board in this instance.

In his efforts to sell his commercial property, the applicant is faced with having to try and convince a potential buyer that the underlying industrial zoning will not impair or negatively affect their future use. However, because of the existing zoning, the subject building/site are non-conforming in use and cannot, according to the Zoning Enforcement Officer, be “expanded, extended, or remodeled to an extent which triggers a violation of Chapter 9 Comprehensive Zoning Section 2200 Use Regulations.” Thus, the applicant now finds that after having this property on the market for roughly 13 months and not being able to close any deal let alone entice prospective commercial buyers, the only solution is rezoning. In so doing, the proponents intent is to broaden the possibilities for this site, bringing it in line with actual surrounding uses.

**CONCERNS**

Regardless of the importance inherent in the petitioner’s circumstance and despite the need for the city’s consideration of rezoning the entire block, the Planning Board must ensure that should it recommend approval of this request to City Council, it not be considered an instance of “spot zoning” nor a signal that such isolated zone changes are the norm rather than the exception.

Requests to change zoning that do not advance a general public purpose in land use run the risk of having a court rule that such request represents an instance of illegal spot zoning based on an arbitrary decision. This risk is diminished if the Planning Board finds that the rezoning does not make an unjustified exception for this parcel of land—meaning, the board must determine that not only is this request consistent with the city’s Master Plan 2020, but that the rezoning, itself, does not provide an unjustified benefit to the property owner to the detriment of the public good.



**Master Plan.2020**

As the board no doubt recalls, the Master Plan, produced in 2010, called for the immediate update and recodification of the city’s zoning code reflecting the city’s vision as articulated that plan at some length. As a part of that articulation, the MasterPlan.2020 includes a figure<sup>2</sup> depicting areas subject to potential zoning changes. It is interesting to note that the area specific to this requested zoning change is identified in that map (as shown above) as being, “Mixed-Use Neighborhood Development District/Corridor,” effectively serving as the gateway to this Dartmouth Street corridor.

Unfortunately, no such wholesale updates to the city’s zoning map nor zoning code have been made since the release of the master plan. Had they been done, today’s zoning map may have shown the petitioner’s property located in a mixed use business zone, as is his intent with this pending application. Staff acknowledges that this should *not* be considered a *fait d’accompli* as other comments in the plan<sup>3</sup> reinforced the importance of keeping industrial uses over mixed use zones.

Nevertheless, this proposal to rezone the parcel is consistent with the master plan’s goal of establishing a sound foundation for further growth that expands workforce opportunities, improves the pedestrian walkability of the neighborhood, and communicates a positive message for small business development.

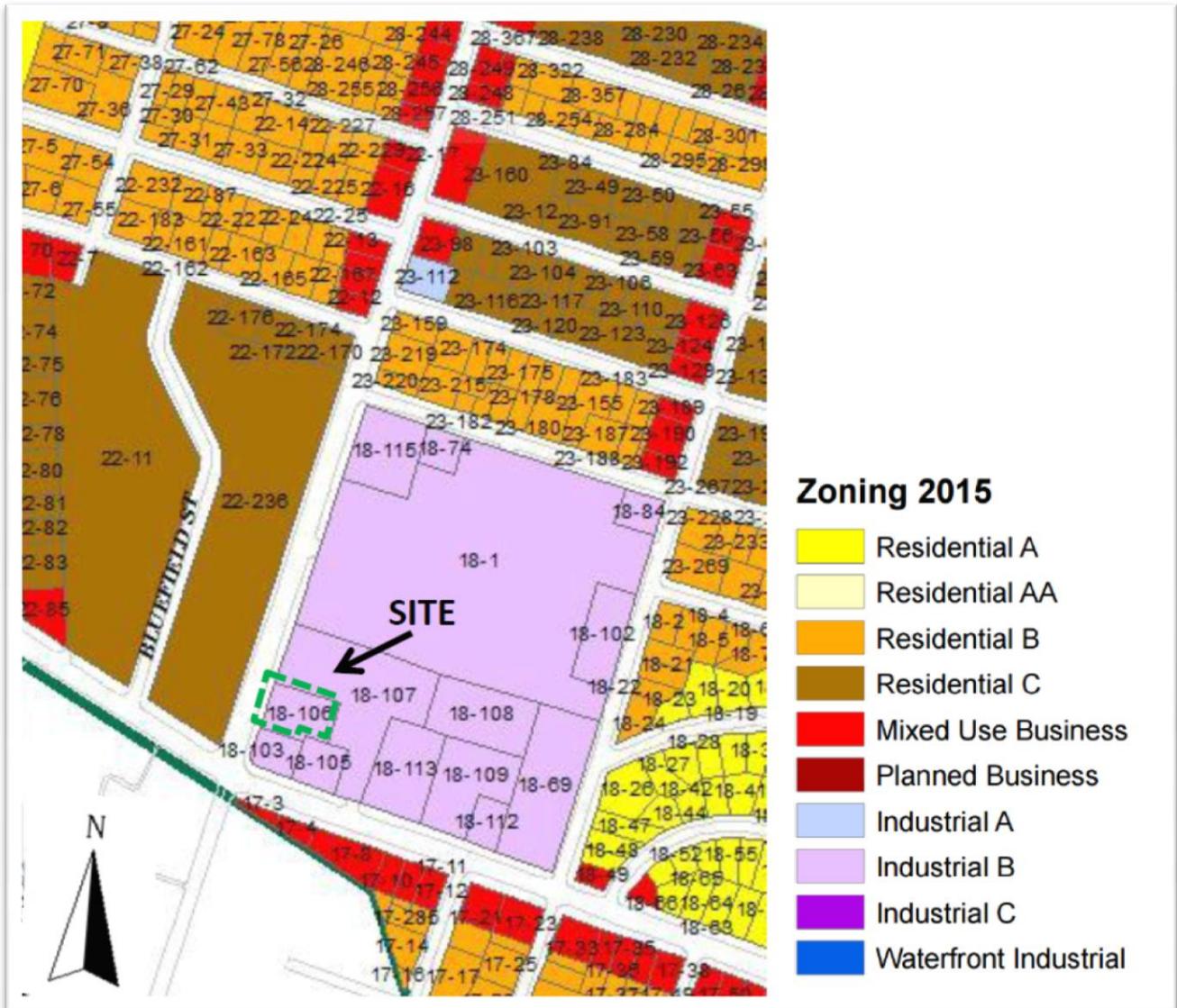
**Standards for Evaluating Rezoning Requests**

The Planning Board has previously relied on the following criteria in its evaluation of other rezoning requests so as to ensure its action is consistent with case law:

- Uniformity: the extent to which the zoning change would resemble the surrounding zoning;
- Consistency: whether or not the parcel is being singled out for a zoning change;
- Surroundings: how the proposal would change the neighborhood;
- Fiscal Impact: what impact on local/city economic development the rezoning would have; an

<sup>2</sup> A City Master Plan: New Bedford 2020 Figure 4.4 Page 50

<sup>3</sup> Example: Master Plan Focus Group comment for future consideration noted that “land currently zoned for industrial uses needs to be preserved for such uses rather than have it developed as mixed-use/commercial.” A City Master Plan: New Bedford 2020 Appendix B Page B-11



- Discriminating Benefit: an assessment of whether the reclassification of a single parcel that allows a use beneficial to the property owner is made to the detriment of the neighbors or community-at-large.

**Attachments:**

1. Written Motion by City Councilor (Ward 6) Joseph P. Lopes
2. Letter from constituent



*Planning Board*

# CITY OF NEW BEDFORD

## CITY COUNCIL

February 11, 2016

### WRITTEN MOTION

Requesting that the Committee on Ordinances and the Planning Board consider rezoning the lot at 458 Dartmouth Street, Map 18/Lot 106, from Industrial B to MIXED-USE BUSINESS. (To be Committee on Ordinances and the Planning Board.)

Joseph P. Lopes, Councillor Ward Six

IN CITY COUNCIL, February 11, 2016

Referred to the Committee on Ordinances and the Planning Board. Dennis W. Farias, City Clerk

a true copy, attest:

*Dennis W. Farias*

City Clerk

ATTACHMENT 1

PLANNING  
FEB 16 2016  
DEPARTMENT  
CASE 08-16

City of New Bedford  
Councilor Joseph P. Lopes  
Ward 6  
133 William Street  
Room 215  
New Bedford MA 02740

February 4, 2016

RE: Zoning change  
458 Dartmouth Street  
New Bedford, MA 02740

Dear Councilor Lopes,

I would like to request a zoning change for my property at 458 Dartmouth Street in New Bedford from Industrial B to Mixed Use Business. The reason for my request is that due to the current zoning of Industrial B, I am having a difficult time in selling the property because the current zoning only allows for very few types of businesses to be able to operate at my location.

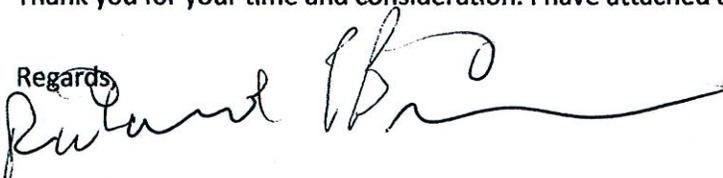
If you look at the neighborhood, you can see that the whole dynamic of the area has changed and is primarily made up of retail business and very little, if any, industrial uses. Every neighboring property on the block is currently being used in a retail/office capacity including Dartmouth Tire, Stop & Shop, Douglas Wine & Spirits, Auto Zone, J.N. Phillips Auto Glass, Dominos Pizza, Felicio Franco Hair Salon and Torman Chiropractic. Additionally, the former mill on Rockdale Avenue is being used as a U-Haul rental business.

I have had the property on the market for well over a year and recently had a sale fall through once the buyers learned of the restricted zoning of Industrial B. The buyers had wanted to open a professional office which would not have been allowed. Even the use as a bank, which is what the building was originally built for would not be allowed today.

As I mentioned, the characteristics and dynamics of the neighborhood have changed and reflect more of retail rather than industrial. So I respectfully ask of you to take up the zoning change matter with the appropriate officials to see if I can get some relief of the restrictive industrial zoning. I think the neighborhood could do well with having a new local retail or professional office locate at this property.

Thank you for your time and consideration. I have attached a copy of my online record card for your convenience.

Regards,



Richard Brisson

P.S. I may be reached via mail at 48 Moreland Terrace, New Bedford, MA 02740 or at 508-801-0612 or email at rxman913@gmail.com

You may also contact my REALTOR, David Arruda at 508-728-2540 or his email realestate582@cs.com should you have any questions.

ATTACHMENT 2

PLANNING  
FEB 16 2016  
DEPARTMENT  
Ctbl 08-16