



## City of New Bedford

### Department of Planning, Housing & Community Development

608 Pleasant St, New Bedford, Massachusetts 02740

Telephone: (508) 979.1500 Facsimile: (508) 979.1575

**PATRICK J. SULLIVAN**

**DIRECTOR**

# STAFF REPORT

#### REPORT DATE

October 11, 2017

#### PLANNING BOARD MEETING

November 8, 2017

#### Case #39-17: REZONING

934 Ashley Boulevard  
Map 127D Lot 143, 144

**Petitioner:** City Councilor James Oliveira  
Ward 1  
133 William Street, Room 215  
New Bedford, MA 02740

**Owner:** Carol A. Duphily, Trustee  
for 934 Ashley Boulevard Realty  
934 Ashley Boulevard  
New Bedford, MA 02745

#### Overview

The Planning Board reviews rezoning petitions as standard practice providing a recommendation based on its findings to the City Council Committee on Ordinances. This case requests the rezoning of a parcel of land from its existing Residential A (RA) zoning designation to a Mixed Use Business (MUB) zoning district. The request has been put forth by New Bedford City Councilor James Oliveira and has been scheduled before Council on November 14, 2017.

#### Existing Conditions

The subject parcel contains 0.165 acres/7,200 SF of land classified for assessment purposes as professional office with a medical office style building. The existing structure on the site was constructed about 1949 based on City Assessor records and is 1270 SF. It is presently, and has been for 19 years, the chiropractic office of Dr. Carol Duphily, owner of the property. The site is located in an active commercial area fronting on two streets, Ashley Boulevard on which it fronts, and Oregon Street. The property enjoys 80 feet of linear frontage along the boulevard and 90 linear feet along the more residential Oregon Street.

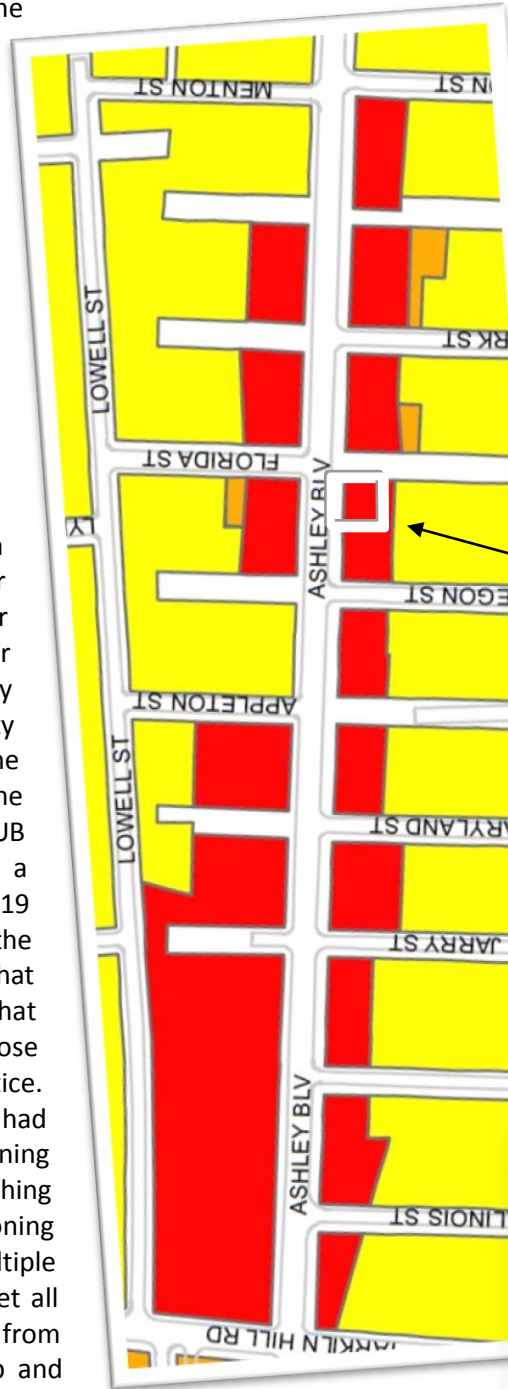
According to the Assessor's Office records, this property is zoned Residential A [RA], thereby rendering the building's use as one that is nonconforming. There appears to be some discrepancy in the city's records concerning this property, however, as the City's Zoning Map (dated 2015) does show this parcel as being zoned MUB. [See zoning discussion inset on page two of this report.] The site is the only RA zoned property along the



Ashley Boulevard commercial corridor in this immediate area. Lots both to the north and south of this address along the boulevard are all zoned MUB. In light of this, the subject lot is the anomaly and appears as a sort of “reverse” or “inadvertent spot zoning”.

To the immediate east of this lot is residentially zoned property as Oregon Street lends itself to single family house. It is quite possible that the 934 Ashley Boulevard lot’s zoning is directly attributable to a time prior to the commercialization of the boulevard. The boundary this lot shares with its eastern neighbor includes fencing and a mature arborvitae screen. Other neighboring entities include Desert Tanning Salon to the north, the Hughes Insurance Group to the south and the VFW Post 3260 and The Boat Restaurant to the west, all four of which are zoned MUB.

The land owner, Dr. Carolyn Duphily, has stated her interest in rezoning the property to ensure it is zoned MUB came as the result of a conversation she was having with her realtor related to the possibilities for the property in the future. The realtor advised Dr. Duphily that her property was zoned residential based on city records. This differed from the property owner’s understanding as she had assumed it was already zoned MUB because she has been taxed at a commercial rate on the property for 19 years. When she purchased the building in 1998 Dr. Duphily noted that the building on site was a house but that she bought the property for the purpose of turning it into a chiropractic practice. At no point in time was she told she had to do something to change the zoning district [or couldn’t do something commercial because of the zoning district]. She cites having had multiple inspections from the city and has met all commercial property requirements from emergency lighting to an ADA ramp and accessible parking. In 2001 she constructed an addition to her building and again, did so following all commercial codes.

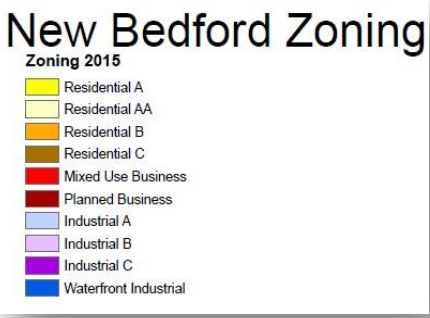


**EXISTING ZONING**

In the course of reviewing this rezoning request, Planning Staff has learned that there is some discrepancy in the city’s records relative to the actual zoning of the subject parcel. Although the Assessor’s record clearly identifies the subject lot as being zoned Residential A, the city’s most current zoning map (dated 2015) shows the lot as already being zoned the desired MUB (see illustration to the left).

Despite the zoning map showing this lot as an MUB zone, there is no record of this having been done by Council through the City Clerk’s Office.

In light of this, staff recommends proceeding with a clear Council action in this matter so that a record of the true zone can be properly memorialized.



**Uses Permitted in Zoning Districts discussed**

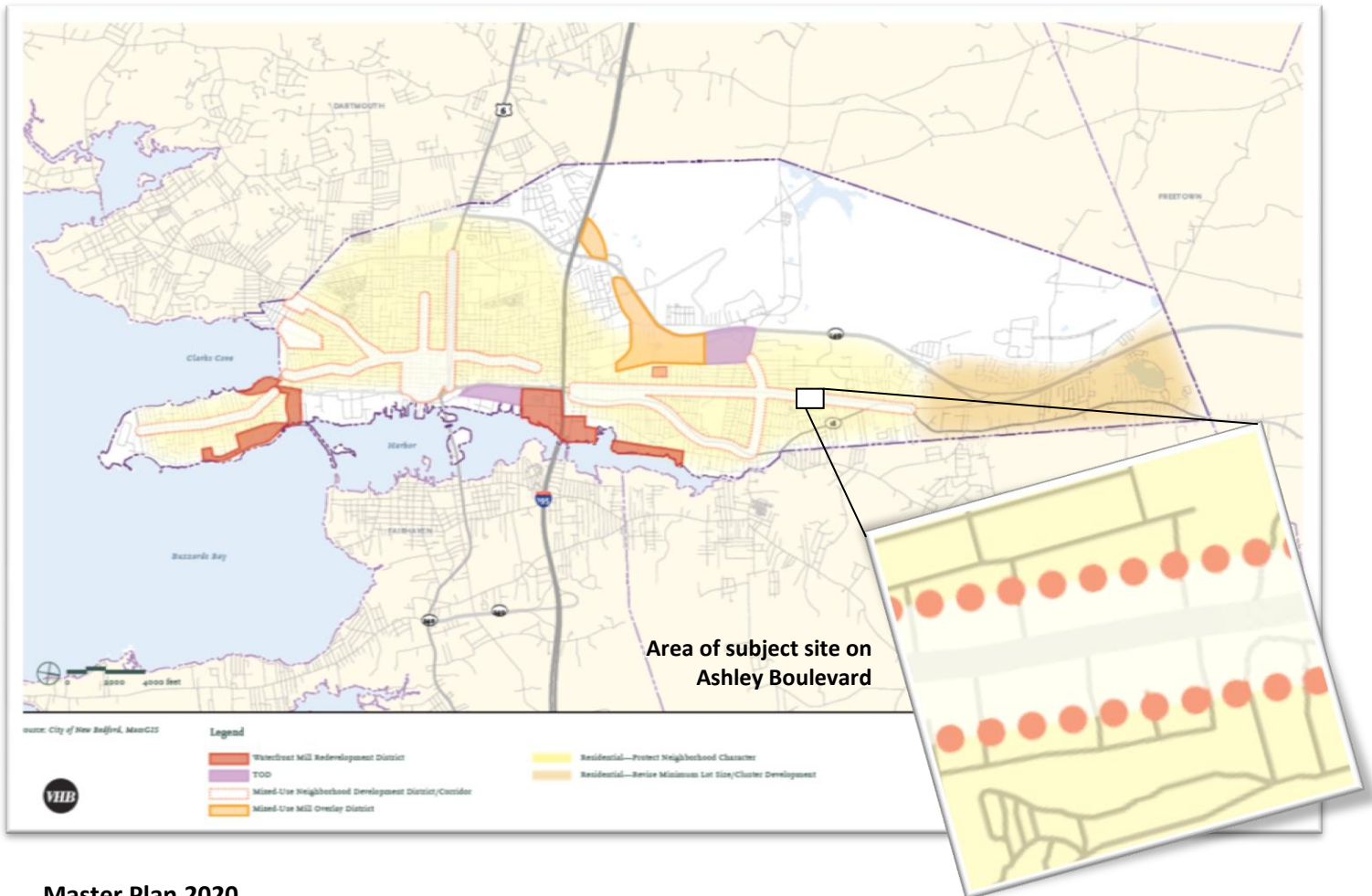
<b>EXISTING:</b>	
<b>RESIDENTIAL A</b>	
Single family dwelling	Y
Two family dwelling	N
Multi family dwelling	N
Boarding house	N
Group residence	BA
Assisted/Independent living facility	BA
Nursing or convalescent home	BA
Animals or head of poultry	Y
Use for religious purposes	Y
Use for educational purposes for Commonwealth land	Y
Child care facility in existing building	Y
Child care facility not in existing building	Y
Municipal Facilities	Y
Essential Services	BA
Cemeteries	Y
Hospital	Y
Nonexempt agricultural use	BA
Nonexempt educational use	N
Animal clinic /hospital/ancillary animal boarding	N
Adult day care	BA
Family day care	BA
Large family day care	BA
Club/lodge, nonprofit	CC
Funeral home	BA
Adult entertainment establishment	N
Bed & Breakfast	BA
Motel, hotel or inn	N
Retail stores and services not elsewhere set forth	N
Motor vehicle sales/rental	N
Motor vehicle general repairs	N
Motor vehicle light service	N
Restaurant	N
Restaurant, fast food	N
Business or professional office	N
Medical offices, center or clinic	N
Bank, financial agency	N
Indoor commercial recreation	N
Outdoor commercial recreation	N
Wireless Communications Facilities	PB
Theaters and auditoriums	N
Convention centers	M
Research, devt or testing laboratories/facilities	N
Contractor's Yard	N

<b>PROPOSED:</b>	
<b>MIXED USE BUSINESS DISTRICT</b>	
Single family dwelling	Y
Two family dwelling	Y
Multi family dwelling	Y
Boarding house	BA
Group residence	BA
Assisted/Independent living facility	BA
Nursing or convalescent home	BA
Animals or head of poultry.	Y
Use for religious purposes	Y
Use for educational purposes for Commonwealth land	Y
Child care facility in existing building	Y
Child care facility not in existing building	Y
Municipal Facilities	Y
Essential Services	BA
Cemeteries	Y
Hospital	Y
Nonexempt agricultural use	BA
Nonexempt educational use	Y
Animal clinic / hospital/ancillary animal boarding	SP
Adult day care	BA
Family day care	BA
Large family day care	BA
Club/lodge, nonprofit	CC
Funeral home	BA
Adult entertainment establishment	CC
Bed & Breakfast	BA
Motel/hotel/inn	Y
Retail stores/services not set forth elsewhere	Y
Motor vehicle sales/rental	CC
Motor vehicle general repairs	CC
Motor vehicle light service	CC
Restaurant	Y
Restaurant, fast food	BA
Business or professional office	Y
Medical offices, center or clinic	BA
Bank, financial agency	Y
Indoor commercial recreation	Y
Outdoor commercial recreation	BA
Wireless Communications Facilities	PB
Theaters and auditoriums	PB
Convention centers	PB
Research, devt or testing laboratories/facilities	Y
Contractor's Yard	Y

All highlighted/shaded uses shown in the Mixed Use Business District column represent those uses that would be newly allowed—either outright or via special permit—on the subject site if the land was rezoned to MUB.

**Input From Other City Departments:**

The rezoning request was distributed to the City Solicitor’s Office and Department of Inspectional Services. Any comments they provide will be made available to the Planning Board at its meeting of November 8, 2017.



**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>1</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 an important commercial corridor for the city’s near north end.

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 her intent with this pending request. In light of this, the 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.

<sup>1</sup> A City Master Plan: New Bedford 2020 Figure 4.4 Page 50

### **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; and
- ❑ 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.

---

**Materials Provided by the Applicant** (available at: <http://www.newbedford-ma.gov/planning/planning-board/agenda-item-info-2017/>)

1. Written Motion by City Councilor (Ward 1) James Oliveira