



ZONING BOARD OF APPEALS
 City Hall, Room 303
 133 William Street,
 New Bedford, MA 02740
 (508)979-1488
 www.newbedford-ma.gov

CITY OF NEW BEDFORD
 JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:		#4168	
Request Type:		Variance	
Address:		377 Cedar Street	
Zoning:		Mixed Use Business District	
Recorded Owner:		P6 Management Group, LLC	
Applicant:		P6 Management Group, LLC c/o Bruce Duarte; and Basalam Alum	
Applicant Address:		14 Parker Street New Bedford, MA 02740; and 397 Sawyer Street New Bedford, MA 02746	
Application Submittal Date		Public Hearing Date	Decision Date
December 19 th , 2014		January 22 nd , 2015	January 22 nd , 2015
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number
77	122	7369	319

CITY CLERK
 2015 JAN 31 P 1:24
 CITY CLERKS OFFICE
 NEW BEDFORD, MA
 2015 FEB 11 P 1:45
 CITY CLERKS OFFICE
 NEW BEDFORD, MA

Application:

Variance under provisions of Chapter 9, Comprehensive Zoning Sections 3100 (Parking and Loading), 3116 (Applicability) and 3130 (Table of Parking and Loading Requirements) Appendix-C; relative to property located at 377 Cedar Street, Assessor's Map Plot 77 Lot 122 in a Mixed-Use-Business Zoned District. To allow the petitioner to open a convenience store as plans filed.

Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached Decision with the Conditions as described in the attached Decision.
 (See Attachment)

A copy of this Decision was filed with the City Clerk of the City of New Bedford on February 3rd, 2015. Any person aggrieved by this decision has twenty (20) days to appeal the decision in accordance with the procedures set forth in Section 17 of Chapter 40A of the General Laws of Massachusetts.

February 3, 2015
 Date

William P. Decker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioners are proposing to open a convenience store as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 3100 (Parking and Loading), 3116 (Applicability) and 3130 (Table of Parking and Loading Requirements) Appendix-C; relative to property located at 377 Cedar Street, Assessor's Map Plot 77 Lot 122 in a Mixed-Use-Business Zoned District.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan drawn by Image Signs & More, not dated.

Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office December 19th, 2014.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, dated December 23rd, 2014.
- Letter to ZBA from City Planner Jill Maclean, dated January 9th, 2015.
- Memorandum and photos showing work that was done before and after the permit was rejected; from Commissioner of Building & Inspectional Services, stamped received by City Planning January 22nd, 2014.

3.) DISCUSSION

Board Members I. Comerford, J. Mathes, A. Decker, D. Trahan, and R. Schilling were present on the evening of the public hearing.

City of New Bedford Staff Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services), and Jennifer Gonet (Assistant Project Manager) were present during proceedings for the subject case review.

A .Decker read and motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated December 23rd, 2014; to have the appeal be received and placed on file; to have the plan be received and placed on file; that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the Communication from the Office of City Planner dated January 9th, 2015 be received and placed on file. Motion seconded by J. Mathes. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

The Petitioner: Bruce Duarte (14 Parker Street New Bedford, MA 02740), stated owner of the property, described the reasoning for the requested relief. Mr. Duarte explained the property had been a store when they first purchased it. He explained the property was a store until the previous tenant left without notice. It has been closed for maybe two years,

he said. Mr. Duarte stated the neighborhood has asked him to bring back a store to this location. Mr. Duarte explained his process in finding a good store owner for the neighborhood. He said he has chosen these tenants over others after having visiting their other convenience store at the intersection of Sawyer St, County Street and Purchase Street. Mr. Duarte spoke about the financial commitment and work the tenants have already put into the property, such as painting it blue and renovating the interior. Mr. Duarte explained they are here today for a variance for parking. Mr. Duarte stated there are other similar stores located in the area which also have no need for parking. The customers are within walking distance and the neighborhood is waiting for the store to open, he explained. The neighborhood would like to be able to buy milk and bread for their kids, and we'd like to open the store for the neighborhood, Mr. Duarte said. Mr. Derek Yates (7 Blackbird Court Dartmouth, MA 02747), stated building contractor, said he is available to answer any questions about the proposal as well.

D. Trahan asked Mr. Yates if any building permits were pulled yet. Mr. Yates said none were pulled.

Chairman I. Comerford asked Commissioner Romanowicz to explain why the applicant needed a variance for relief from the parking requirement when the previous business at this location had no parking. Commissioner Romanowicz explained that if a location is vacant for two years or more it loses its grandfathered status. Commissioner Romanowicz explained this location has been out of business since 2010.

A. Decker asked the applicants if they understood what Commissioner Romanowicz had just explained. Mr. Duarte said yes.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. No one in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chairperson I. Comerford invited to the podium anyone wishing to speak in opposition of the petition. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Chairperson I. Comerford asked if the board members had any questions or concerns.

With no further stated questions or concerns, Chairperson I. Comerford declared the hearing closed.

The Board members discussed the pedestrian nature of the proposed business and their concerns for the hours of operation. The Board asked the applicant what the hours of operation are going to be. The applicant stated from 7am-10pm. The Board discussed making the hours a condition of their approval.

4.) FINDINGS

Criteria for Approval of Dimensional Variation (Ch. 9, Sect. 2730)

The Board of Appeals may vary otherwise applicable dimensional requirements pertaining to frontage, lot area, building height and sidelines upon finding the following:

- a.) *That owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;*

The Board found that a literal enforcement of the dimensional requirements of the zoning district would constitute a hardship for the applicant.

- b.) *That desirable relief may be granted without substantial detriment to the public good;*

The Board found that sufficient information and testimony had been given to determine that granting the required relief would not result in substantial negative impact to the public good. The Board found that the traffic to the business would be primarily pedestrian in nature.

- c.) *And, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*

The Board found that the impact of the dimensional relief would be minimal, and would not substantially derogate from the intent of the zoning ordinance.

5.) RELIEF

With respect to the relief requested by the Applicant, the Board has been presented with sufficient information at the hearing to justify the relief described below, subject to the conditions set forth below in Section 6.

The Board grants the Applicant's request for relief from Chapter 9, Comprehensive Zoning Sections 3100 (Parking and Loading), 3116 (Applicability) and 3130 (Table of Parking and Loading Requirements) Appendix-C; relative to property located at 377 Cedar Street, Assessor's Map Plot 77 Lot 122 in a Mixed-Use-Business Zoned District. To allow the petitioner to open a convenience store as plans filed.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. The hours of operation are not to begin before 7am and not to exceed 10pm.
- b. The project shall be set forth according to plans submitted with the application;
- c. That the applicant shall ensure that a copy of this decision, bearing the certification of the City of New Bedford Clerk's Office, is recorded in the Registry of Deeds;
- d. And that the rights authorized by the granted Variances must be exercised, by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date they were granted or they will lapse.

7.) DECISION

Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby GRANTS, WITH CONDITIONS, the requested Variance.

On a motion by A. Decker seconded by J. Mathes to grant the requested Variance, the vote carried 5-0 with members D. Trahan, A. Decker, R. Schilling, I. Comerford and J. Mathes voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

February 3, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals