


**ZONING BOARD OF APPEALS OFFICE**  
 NEW BEDFORD, MA

City Hall, Room 303

133 William Street,

New Bedford, MA 02740 2015 MAY -6 A 9:14

(508)979-1488

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CITY CLERK

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

**NOTICE OF DECISION**

Case Number:	#4180			
Request Type:	Variance			
Address:	25 Elm Street			
Zoning:	Mixed Use Business District			
Recorded Owner:	Ottaway Newspapers, INC.			
Applicant:	Bay Coast Bank; and Local Media Group, Inc. F/K/A Dow Jones Media Group, Inc., F/K/A Ottaway Newspapers, Inc.			
Applicant Address:	330 Swansea Mall Drive Swansea, MA 02777; and 25 Elm Street New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
March 27 <sup>th</sup> , 2015	April 23 <sup>rd</sup> , 2015	April 23 <sup>rd</sup> , 2015		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
53	27 & 289	3307 & 5804	256 & 39	

Application: Variance under provisions of Chapter 9, Comprehensive Zoning Sections 3200 (Sign Regulations), 3201 (Purpose), 3250 (Regulations Governing Particular Types of Signs), and 3255 (Area Restrictions for Ground Sign); relative to property located at 25 Elm Street, Assessor's Map Plot 53 Lot 27 & 289 in a Mixed Use Business District. To allow the petitioner to erect a ground sign which will exceed maximum amount of square footage by section 3255 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 May 6<sup>th</sup>, 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.

May 6, 2015

Date

*Allen Parker*

Clerk, Zoning Board of Appeals

### 1.) APPLICATION SUMMARY

The petitioner is proposing to erect a ground sign which will exceed maximum amount of square footage by section 3255 as plans filed, which will require a Variance under Chapter 9 Comprehensive Zoning Sections 3200 (Sign Regulations), 3201 (Purpose), 3250 (Regulations Governing Particular Types of Signs), and 3255 (Area Restrictions for Ground Sign); relative to property located at 25 Elm Street, Assessor's Map Plot 53 Lot 27 & 289 in a Mixed Use Business District.

### MATERIALS REVIEWED BY THE BOARD

#### Plans Considered to be Part of the Application

- Site Layout, drawn by SITEC, Inc, Stamped Received by City Clerk's Office March 27<sup>th</sup>, 2015.
- Conceptual Design Drawing, "Monument Sign Rte 18", drawn by Poyant Signs Inc, dated 10/27/1014

#### Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office March 27<sup>th</sup>, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 30<sup>th</sup>, 2015.
- Letter to ZBA from City Planner, Jill Maclean, dated April 15<sup>th</sup>, 2015.
- Certificate of Appropriateness from the Historical Commission, dated February 25<sup>th</sup>, 2015
- Notice of Decision for Case #06-15 from the Planning Board, Stamped Received by City Clerk's Office April 15<sup>th</sup>, 2015.
- Conceptual Design Drawing accepted by Planning Board, "Monument Sign Rte 18", drawn by Poyant Signs Inc, last revision date 2/6/15.

### 2.) DISCUSSION

Board Members I. Comerford, A. Decker, L. Schick, 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 March 30<sup>th</sup>, 2015; the Communication from the Office of City Planner dated April 15<sup>th</sup>, 2015; the Certificate of Appropriateness issued from the Historical Commission of the City of New Bedford dated February 25<sup>th</sup>, 2015; the Notice of Decision of the Planning Board of the City of New Bedford clocked in April 15<sup>th</sup>, 2015; the appeal packet; the plan as submitted; and, that the

owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. Motion seconded by D. Trahan. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

Representatives of the petitioner: Attorney Robert Feingold (700 Pleasant Street New Bedford, MA) spoke about the petition and reasons for the requested relief. Attorney Feingold provided information about the development of the project and the collaborative process of the two businesses, Bay Coast Bank and the Standard-Times newspaper, went through in the development of the project. He spoke about the desire of the bank to have a more visible and accessible location in the Downtown to serve its customers.

Attorney Feingold acknowledged the presence of and ability to answer question for the Board by the following individuals at public hearing this evening: Mr. Steven Gioiosa of SITEC, the Site Engineer for this project; Mr. Jim Wallace, Chief Financial Officer for BayCoast Bank, Mr. Richard Poyant and Ms. Stephanie Moran of Poyant Signs, and Mr. Mike Joje in charge of maintenance at the Standard-Times building.

Attorney Feingold spoke about the development of the proposal and the applicants meetings with the City. Attorney Feingold explained they have already gone before the Historic Commission, the Planning Board, and other city departments. He explained that originally the applicants wished to have a fifteen foot pylon sign along Route 18 however they were told in these meetings that would not be the right fit at the entrance to the historic district of downtown. Attorney Feingold explained the applicants worked with the City and agreed not to have a pylon sign. He stated that these are two big businesses that need visibility along Route 18. He further explained that the property does not have visibility along the north or south sides of the lot, and as the building is set back on the lot you cannot see a sign on the building from Route 18.

Attorney Feingold addressed the criteria for the board. He stated the shape and topography of this lot are unique conditions that can allow the variance to be granted. He explained the site lines with the curve of the lot in relation to the roadway are unique and therefore a large sign is needed for visibility. Attorney Feingold explained that without a sign there is a financial hardship as they are retail businesses that need visible signage. He also spoke about the need for both businesses to need a sign and the size of a sign allowed under code presumes one business, yet this proposal is for two businesses on the sign. Attorney Feingold said they believed the proposal would not hurt anyone nor derogate from the intent or purpose of the Zoning Ordinance.

Attorney Feingold then turned over the remainder of the presentation to Steve Gioiosa of SITEC Engineering (449 Faunce Corner Road Dartmouth, MA). Mr. Gioiosa also stated he is a resident of New Bedford and travels Route 18 daily. An aerial image of the site was on

display for the board. Mr. Gioiosa explained the petition is for a variance for a sign along the frontage of the property. Mr. Gioiosa explained the uniqueness of the property by pointing out that property is boarded on three sides by roadways, the Elm Street parking garage blocks visibility to the site on the west side, and the unique gradual slope, shape of the property and location of the building on the property limits visibility at the site. Mr. Gioiosa also spoke about the topography of the site and the abutting properties specifically, the grade around the Route 6-New Bedford Fairhaven Bridge roadway ramps and that the ramps themselves block visibility approaching the site from Route 18 southbound.

Mr. Gioiosa then displayed a site plan colored drawing. Mr. Gioiosa pointed out the sign location in the drawing, adjacent to Route 18. He stated the sign met the setback requirements and they have incorporated it into the landscaping of the facility. Mr. Gioiosa explained how the design evolved with a number of meetings with the City officials, Historic Commission, and Planning Board. They looked at a number of designs while designing and incorporated the sign into the design of the property. He explained that the sign from the base at its lowest elevation to the top of the sign will be ten (10) feet high. The sign is eight feet but they are placing it on a two (2) foot high retaining wall that is part of the landscaping. He further explained there will be low level plantings around the sign and extending into a portion of the state owned property. Mr. Gioiosa described the landscaping plan as robust compared to the grass landscaping that currently exists at the property. He stated they have married the sign into the landscaping plan. He further described how the proposal has taken into consideration the concerns of City officials. He described the sign will only be externally illuminated to keep it low key and in the character of the neighborhood. He further stated it will not have any scrolling or moving elements. He stated the design of the site with the landscaping and incorporation of the sign in this way will make a significant entry gateway in keeping with the historic district of New Bedford.

Mr. Gioiosa also described the design of the sign by Poyant signs. He described how the design took into consideration the architectural design features, shape and colors of the building. There is a notch in the top of the sign design to mirror the building architecture. The color of the sign is to match the building, as well as, the brick retaining wall will match the brick portion of the building. All of these elements he explained were discussed extensively with the Historical Commission.

Therefore, Mr. Gioiosa explained, with the unique shape of the lot, combating the embankment on the northwest side of the site, high speed traffic along Route 18, and a design that is nonintrusive to the neighborhood, the size of the sign is important to ensure the sign has adequate visibility.

Mr. Gioiosa explained that the sign was in keeping with the intent of the zoning ordinance by not being intrusive in the neighborhood. He stated compared to the size of the building the sign is of a reasonable scale in size. And, the sign would not be a

detriment to the neighborhood as it has incorporated the design elements of the historic neighborhood and the input from the city departments, Historic Commission, and Planning Board.

A .Decker asked if there were any limitations on the external illumination. Attorney Feingold stated there were no limitations placed on the lighting for this sign.

Attorney Feingold also informed the Board that this will be the main branch of the bank.

A .Decker stated the intersection at Elm Street has a traffic light and a cobblestone effect to slow traffic in the area. He asked what the speed limit is around the intersection. L. Schick stated it is 35 miles per hour in that area. Attorney Feingold stated the traffic only stops when the light is red.

A .Decker expressed concerns about the size of the sign. He stated he did not put a lot of credence into the fact that two businesses are located inside the building. He further stated that if the ordinance wanted to take into account the number of business at a location it could have been addressed and it wasn't. So, he expressed his difficulty with understanding why the sign needed to be double the size. He did appreciate it was not on a post. A .Decker stated it is a gateway property to the historic district and he recognizes there is not much going on the corner right now and the need for visibility at that location. He also wished to clarify if this was in addition to or in place of the branch on William Street. Attorney Feingold stated it was in place of.

Mr. Giosioa also wished to inform the Board the petitioner has met with MassDOT as the proposal includes planting on their property. They have reviewed the proposal for sight lines in relation to the roadway right of way, he said.

A .Decker clarified with the applicant that the sign is not a pylon sign as indicated on the site plan given to the Board. Attorney Feingold explained that the sign design drawing given to the Board is the sign design, not a pylon sign, yet the location of the sign will be where the site plan indicated the pylon sign would have gone.

Chairperson I. Comerford confirmed with the applicant that the sign design before the Zoning Board was approved by the Historical Commission and Planning Board. The applicant explained the approvals given by the Historical Commission and Planning Board and explained that the plan before the Zoning Board incorporates the conditions of those approvals.

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.

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

The Board members discussed concerns for lighting and conditions for approval. D. Trahan expressed concerns for future owners adding rotation and movement to the sign, so she wished to make a condition of approval with a restriction for those elements. A. Decker confirmed the applicants understood the discussion and the conditions being discussed. They indicated understanding.

#### 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 the circumstances in this case are the shape of the lot and topography of the site hinder the adequate visibility of the sign. The hardship being that both businesses need visibility to attract and direct customers to the business.

- 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.

- 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 3200 (Sign Regulations), 3201 (Purpose), 3250 (Regulations Governing Particular Types of Signs), and 3255 (Area Restrictions for Ground Sign); relative to property located at 25 Elm Street, Assessor's Map Plot 53 Lot 27 & 289 in a Mixed Use Business District; To allow the petitioner to erect a ground sign which will exceed maximum amount of square footage by section 3255 as plans submitted as revised per the public hearing.

**6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY**

- a. That the applicant abide by the Certificate of Appropriateness issued by the City of New Bedford Historical Commission dated February 25<sup>th</sup>, 2015;
- b. That the applicant abide by the Notice of Decision of the Planning Board of the City of New Bedford clocked in April 15<sup>th</sup>, 2015;
- c. That the ground sign have no movement or illumination other than ground spotlighting as applied for this evening;
- d. The project shall be set forth according to plans submitted with the application as revised per the public hearing;
- e. 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;
- f. 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 D. Trahan to grant the requested Variance, the vote carried 5-0 with members I. Comerford, A. Decker, L. Schick, R. Schilling, and D. Trahan, voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

May 6, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals