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 2016 FEB -4 A 10:42
 CITY CLERK'S OFFICE
 NEW BEDFORD, MA

NOTICE OF DECISION

Case Number: #4203				
Request Type: Special Permit				
Address: 1771 Acushnet Avenue				
Zoning: Mixed Use Business Zoned District				
Recorded Owner: Michael W. Panagakos				
Owner's Address: 133 Faunce Corner Road Dartmouth, MA 02747				
Applicant: Panagakos Development				
Applicant's Address: 133 Faunce Corner Road Dartmouth, MA 02747				
Application Submittal Date	Public Hearing Date(s)			
August 11 th , 2015	September 17 th , 2015; November 19 th , 2015; December 17 th , 2015; January 21 st , 2016			
Decision Date				
January 21 st , 2016				
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
108	42, 43, & 44	10984	143	

Special Permit under provisions of Chapter 9, Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430-2431 (nonconforming structures, other than single-and two-family structures), 3149 (special permit for commercial parking in a residential district), and 5300-5330 & 5360-5390 (special permit); relative to property located at 1771 Acushnet Avenue, assessor's map 108, Lots 42, 43, and 44 in a mixed-use-business and Residential-C [RC] zoned district. To allow the petitioner to construct two (2) new commercial buildings as plans filed, with conditions.

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 4th, 2016. 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.

Feb. 4, 2016
Date

Allen Decker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner proposes to construct two (2) new commercial buildings as plans filed, which requires a Special Permit under provisions of Chapter 9, Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430-2431 (nonconforming structures, other than single-and two-family structures), 3149 (special permit for commercial parking in a residential district), and 5300-5330 & 5360-5390 (special permit); relative to property located at 1771 Acushnet Avenue, assessor's map 108, Lots 42, 43, and 44 in a mixed-use-business and residential-C [RC] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan Set, prepared by SITEC, last revision dated May 27th, 2015 including:
 - Site Layout
 - Locus Map
 - Site Grading & Utility
 - Landscaping Plan
 - Existing Conditions Plan
 - Demolition Plan
 - Erosion Control Plan
 - Detail Sheet
 - 4 sheets of floor plans & elevations

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, stamped received by City Clerk's Office August 11th, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated August 28th, 2015.
- Staff Comments to ZBA from City Planning Division dated September 14th, 2015.
- Agreement to Extend Time Limits, signed September 25th, 2015, date stamped received by City Clerk's Office October 1st, 2015.
- Request for Continuance to ZBA from Steven Gioiosa, date stamped received by City Planning November 19th, 2015.
- Agreement to Extend Time Limits, signed November 20th, 2015, date stamped received by City Clerk's Office November 25th, 2015.
- Request for Continuance to ZBA from Steven Gioiosa, date stamped received by City Planning December 17th, 2015.
- Agreement to Extend Time Limits, signed December 17th, 2015, date stamped received by City Clerk's Office December 18th, 2015.

3.) DISCUSSION

On the evening of the September 17th, 2015 meeting, board members: Leo Schick, John Walsh, Robert Schilling and Horatio Tavares were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Acting Chairperson Schick announced the case and it was noted the petitioner was not present at that time, though thought to have been seen in the room earlier. The next case was taken out of order allowing for the petitioner to possibly return to the room. On a second call of the case the petitioner was not present. A motion was made by Mr. Walsh, seconded by Mr. Tavares to continue the case to the October 22nd, 2015 meeting. A gentleman in the audience interjected, announcing he was an abutter for the case and unable to attend the October 22nd meeting and requested the continuance be to November 19th meeting. A brief discussion ensued. On a roll call vote to continue the case to October 22nd, 2015, the motion failed with Mr. Walsh voting in the affirmative, Mr. Tavares, Mr. Schilling, and Mr. Schick voting in the negative. A motion was made by Mr. Walsh and seconded by Mr. Schilling to continue the hearing to November 19th, 2015. With all in favor the motion carried.

On the evening of the November 19th, 2015 meeting, board members: James Mathes, Allen Decker, John Walsh, Leo Schick, and Sherry McTigue were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Mr. Decker acknowledged the board was in receipt of correspondence from the applicant, dated November 19th, 2015, requesting a continuance of the case to the next regularly scheduled meeting. Mr. Decker made a motion, seconded by Mr. Schick, to continue the case hearing to the December 17th, 2015 meeting. With all in favor the motion carried.

On the evening of the December 17th, 2015 meeting, board members: James Mathes, John Walsh, Debra Trahan, Sherry McTigue and Robert Schilling were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Acting Chairperson Mathes reported the Board had received a request for continuance from the petitioner. Mr. Walsh made a motion, seconded by Ms. Trahan, to continue Case #4203 to the January 21st, 2016 meeting. With all in favor the motion carried.

On the evening of the January 21st, 2016 meeting, board members: James Mathes, Allen Decker, John Walsh, Debra Trahan, and Leo Schick were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Mr. Decker made a motion, seconded by Mr. Walsh, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated August 28, 2015; the Office of the City Planner dated September 15th, 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. With all in favor, the motion carried.

Chairperson Mathes then declared the hearing open.

Representative of the petitioner: Mr. Steven Gioiosia (449 Faunce Corner Road Dartmouth, MA) of SITEC Engineering, with Mr. Michael Panagakos (133 Faunce Corner Road Dartmouth, MA) presented the petition before the board. Mr. Gioiosia explained the project is for a new commercial property at the site of the former Sullivan Brothers store, located at on Acushnet Avenue. Mr. Gioiosia displayed an aerial photo to show the location. Mr. Gioiosia then displayed a drawing of the pre-development conditions of the site. Mr. Gioiosia indicated the property had two commercial buildings previously. He pointed out the Sullivan's Brothers building was along the property line on Acushnet Avenue. The second building was in the northwest corner of the site and parking area in the southwesterly portion of the site. He explained there is split zoning on the property; the area adjacent to Acushnet Avenue is zoned Mixed Use Business [MUB] and the westerly 50 feet of the property is zoned Residential C [RC]. The lot has a condition where a commercial use was occupying the residential zoned and the mixed use business zoned areas, and a commercial parking lot in a residential zone, he explained. Mr. Gioiosia provided the lot is 12,658 square feet and the existing square footage of the buildings on the site is 6,100, with five off-street parking spaces. Mr. Gioiosia indicated the historical use at the property was commercial with a dry cleaner in the front, a garage with an office and maintenance facility in the rear. Mr. Gioiosia described the site as overdeveloped, with 100% of lot coverage and no green space. He also indicated the rear commercial building was encroaching on the northern abutting property and a zero set back on the westerly abutter. Mr. Gioiosia explained to the north the abutting properties are zoned mixed use business and westerly is residential c.

Mr. Gioiosia displayed a drawing of the proposed commercial property. Mr. Gioiosia described the proposal as a reduced commercial use at the property. He explained the proposal has two commercial buildings both with reduced footprints. The building close to Acushnet Avenue as proposed is 1,680 square feet down from approximately 4,500 square feet; and the building in the rear is reduced from 1,600 square feet to 600 square feet, he explained. Mr. Gioiosia pointed out the building in the rear was moved about ten feet from the north property line and twenty feet from the westerly property line. This he explained created an added green space to the abutters to the north and west, a net benefit he stated. He explained they are reducing the intensity of use on the site by reducing the building sizes. Also, the proposal provides additional off-street parking, indicating five parking space in the southwestern portion of the site with a curb cut onto Belleville Road and eight parking spaces on the northeast portion of the site with a curb cut onto Acushnet Avenue. The petitioners see the added parking as a benefit as it will take vehicles visiting the commercial use off of the neighboring streets. He further explained the green space and new drainage systems proposed for the site will reduce storm water impacts over existing conditions. Mr. Gioiosia explained the project has been reviewed and approved by the Planning Board for site plan review and the traffic commission for curb cuts.

Mr. Gioiosia then addressed the criteria necessary to grant the petition. In regards to the socioeconomic or community needs, he stated, the proposal has improved aesthetics with architectural elements such as peaked roofs. Mr. Gioiosia displayed elevation drawings of the proposal. He also indicated job creation as an economic benefit. Traffic flow and parking he reiterated has improved with the added onsite parking and reduced square footage of the buildings. He further cited the reduced size buildings will have less of an impact on utilities and city services. The surrounding

neighborhood is commercial uses along Acushnet Avenue and the proposed buildings are pulled farther away from the abutting residential properties. The property itself, he reiterated, was already a commercial use. The improved drainage, reduced storm water impacts and landscape improvements will be a benefit to the natural environment, Mr. Gioiosia further petitioned. In regards to potential fiscal impact, he indicated the commercial use would bring tax revenue and employment. The special permit falls under nonconforming uses and structures, which he explained, the board must find the proposal is not more detrimental than the existing conditions on the site. Mr. Gioiosia petitioned it was less with the improved green space, the added parking, and the proposal also includes a solid stockade fence around the north and west perimeter. Lastly, in regards to the special permit for commercial parking in a residential district, Mr. Gioiosia petitioned the parking has been there with no buffers to the adjacent properties, while this proposal adds a buffer from the parking and stockade fence to the residential properties.

Mr. Schick confirmed with Mr. Gioiosia the front building has already been demolished. Ms. Trahan asked if the proposed front building would have one or two tenants. Mr. Gioiosia said at this time they had not yet decided, but due to the size likely it will just be one tenant. Mr. Decker asked if the petitioner would be amendable to the Planning Board decision be included in this approval if granted. Mr. Gioiosia indicated the plans have already incorporated all the comments from the Planning Board but if the Zoning Board wished to refer to those conditions they would be amenable to it.

Following the petitioner's testimony, Chairperson Mathes 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 Mathes invited to the podium anyone wishing to speak in opposition of the petition. Mr. Joe Arrujo, stated owner of 22 Glennon Street, spoke in opposition of the proposal. Mr. Arrujo indicated he has concerns for the lighting and the hours of operation. He had concerns for losing tenants due to the proposed commercial building and parking in the rear. Mr. Arrujo indicated the back building was only being used for storage and it was quiet, with not many cars entering and exiting from there. Ms. Trahan informed the petitioner that lighting and hours of operation had been reviewed by the Planning Board. She inquired if Mr. Arrujo had attended that meeting. Mr. Arrujo stated he was not able to attend that meeting but his attorney did. Mr. Schick asked the representative of the petitioner about the lighting. Mr. Gioiosia described it as down lighting. Board members briefly discussed living in a city, the split zoning on the property, and the review by the other boards. Mr. Arrujo indicated he was concerned for an unknown retail tenant, the lighting, and the hours of operation near his property. No one else in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Chairperson Mathes offered a rebuttal to the representative of the petitioner. Mr. Gioiosia showed on the displayed site plan that the proposed light fixtures are primarily located in the Mixed Use Business zoned portion of the site. Mr. Gioiosia pointed out the only light in the residential zoned portion is in the southwestern portion parking area, which he stated was not near the opponents property. Mr. Gioiosia explained how the lighting plan submitted to the Planning Board shows the foot-candles or how far the lighting shines within the property. Mr. Gioiosia highlighted the proposed building has

moved ten feet further than the current building from the abutters property. Also, he stated no windows will be located in the rear of the building facing Mr. Arrujo's property.

Chairperson Mathes offered a rebuttal to the Mr. Arrujo. Mr. Arrujo indicated he had expressed all of his concerns.

With no further questions or concerns, Chairperson Mathes closed the hearing, and opened the floor for discussion amongst board members. Mr. Walsh stated he believed lighting is an issue for the Planning Board. He further stated he thought it was a good project that was less detrimental than what was there before. Ms. Trahan stated it was more conforming than it ever was. Mr. Decker asked if the Board wished to make the Planning Board decision a condition of the approval. The Board members indicated it was unnecessary to do so. Afterward, the board members indicated their readiness to vote.

4.) FINDINGS

The Board found that in accordance with City of New Bedford Code of Ordinances Chapter 9 Section 5320, the benefit to the City and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. This determination included consideration of each of the following:

- *Social, economic, or community needs which are served by the proposal;*
 - The Board found the community aesthetics served by the building design and streetscapes are improved.
- *Traffic flow and safety, including parking and loading;*
 - The Board found that improved parking and reduced square footage of commercial improvements are seen as net benefits.
- *Adequacy of utilities and other public services;*
 - The Board found, as designed, the proposal has adequate utility capacity through reduced intensity of use of the property.
- *Neighborhood character and social structures;*
 - The Board found the proposed use fits within the character of the neighborhood and improves aesthetics thereof.
- *Impacts on the natural environment;*
 - The Board found the proposal proposes a net increase in green space on the property and improved on-site water run-off discharge capabilities.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board found proposal has a continued commercial use of the property equating to net benefit on tax base and employment.

Additionally, in accordance with City of New Bedford Code of Ordinances Chapter 9 Section 2430, the Board of Appeals found that the proposed change will not be substantially more detrimental than the existing nonconforming structures to the neighborhood.

Additionally, in accordance with City of New Bedford Code of Ordinances Chapter 9 Section 3149, the Board found that said parking is not detrimental to public health and safety, and that said parking promotes a public benefit.

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 2400 (nonconforming uses and structures), 2410 (applicability), 2430-2431 (nonconforming structures, other than single-and two-family structures), 3149 (special permit for commercial parking in a residential district), and 5300-5330 & 5360-5390 (special permit); relative to property located at 1771 Acushnet Avenue, assessor's map 108, Lots 42, 43, and 44 in a mixed-use-business and Residential-C [RC] zoned district. To allow the petitioner to construct two (2) new commercial buildings as plans filed, with conditions.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. The project shall be set forth according to plans, submitted with the application, with conditions;
- b. 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;
- c. The rights authorized by the granted Special Permit 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 Special Permit.

On a motion by A. Decker seconded by L. Schick to grant the requested Special Permit, the vote carried 5-0 with members J. Walsh, D. Trahan, L. Schick, A. Decker, and J. Mathes voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

Feb. 4, 2016

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals