



JONATHAN F. MITCHELL
MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

133 William Street, New Bedford
Massachusetts 02740
Telephone: (508) 979.1488
Facsimile: (508) 979.1576

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CITY CLERK

2016 FEB -4 A 10:42

CITY CLERKS OFFICE
NEW BEDFORD, MA

NOTICE OF DECISION

Case Number:	#4215			
Request Type:	Special Permit			
Address:	4334 Acushnet Avenue			
Zoning:	Mixed Use Business Zoned District			
Recorded Owner:	Melissa F. Coelho			
Owner's Address:	4334 Acushnet Avenue New Bedford, MA 02745			
Applicant:	Heather Brito			
Applicant's Address:	47 Charlotte Street New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
December 18 th , 2015	January 21 st , 2016	January 21 st , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
137B	76			107892

Special Permit under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations-appendix-A, #20-medical offices, center or clinic), and 5300-53330 & 5360-5390 (special permits); relative to property located at 4334 Acushnet Avenue, assessor's map 137B, Lot 76 in a mixed use business zoned district. To allow the petitioner to move her counseling practice to the proposed location 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 Oester
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner proposes to move her counseling practice to the proposed location as plans filed, which requires a Special Permit under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulations), 2210 (general), 2230 (table of use regulations-appendix-A, #20-medical offices, center or clinic), and 5300-53330 & 5360-5390 (special permits). This petition is relative to property located at 4334 Acushnet Avenue, assessor's map 137B, Lot 76 in a mixed use business [MUB] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan drawn by CS Kelley Land Surveyors, dated December 11th, 2015.

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, stamped received by City Clerk's Office December 18th, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated January 4th, 2016.
- Staff Comments to ZBA from City Planning Division dated January 20th, 2016.

3.) DISCUSSION

On the evening of the January 21st, 2016 meeting, board members: James Mathes, Allen Decker, Sherry McTigue, 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 Ms. Trahan, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated January 4th, 2016; the Department of Planning, Housing and Community Development, dated January 20th, 2016; 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. Greg Denis (246 Old Fall River Road Swansea, MA), land surveyor with CS Kelly Land Surveyors, presented the petition to the board. Mr. Denis explained the existing conditions on the property are to remain the same except the added wheelchair ramp off the rear deck. The petitioner, Ms. Heather Brito (47 Charlotte Street New Bedford, MA), explained she is seeking to relocate and expand her existing single practitioner therapy practice to this location; expanding to add two full time therapists and one part-time therapist. Right away it will be herself and a part-time therapist, she explained, though she hopes to bring in two other full time therapists. Ms. Brito noted that she receives a report from Psychology Today in which last year there were 18,030 searches for therapists in New Bedford, and she had taken 343 calls from the website and only able to

accommodate three of those inquiries. Therefore, she stated, the need is great in our area. Ms. Brito explained her practice would not be a detriment but an asset to the neighborhood citing that the surrounding neighborhood includes a counseling practice, an insurance company, a chiropractor, a reiki master, and a pizza restaurant. Ms. Brito stated she is the only sand play therapist certified in the state of Massachusetts to treat trauma non-verbally. This is her second time before the board and she expressed she hoped the board could see the great need in the community. She stated she understand neighborhood concerns and stated she has run a quiet practice for two years with no issues or concerns.

Ms. McTigue asked for clarification on the number of clients per day and the hours of operation as the application stated 100 clients per day and 12-13 hours per day on Monday -Friday. Ms. Brito stated she currently does not see 100 clients per day but that would be if she has the three full time and one part time therapist. She explained she calculated that number based on the average number of clients a therapist can see in a day. She also stated she hopes the hours of operation will go down in the future but due to the nature of the business and the level of demand she is currently working some days into the later evening hours.

Ms. McTigue asked about the proposed parking at the location. Ms. Brito explained there are nine spaces, which meets the required amount of parking spaces. She and the other therapist would park in the garage. She explained the traffic flow at her current practice. She expects it will be similar at the new location. She is an individual practitioner and does not treat couples or families. The sessions are scheduled 45 minutes or one hour, which are actually fifty-three minutes, she said. Therefore, the next patient will arrive at the hour, when the previous patient has already left. She further explained that her current practice does not have a waiting room and neither will the proposed practice. Clients are very understanding to arriving when their appointment is scheduled. Also, youth patients are dropped off by their parents and picked up after, for the patient's privacy. Ms. McTigue indicated she understood the expected pattern as proposed but had concerns that with five or more parking spaces the vehicles should not be backing into the street. They should have enough room to turn and exit facing forward, especially on Acushnet Avenue. Ms. Brito stated there is a u-shaped driveway in the front of the house so cars may be able to exit facing forward. Ms. McTigue asked if cars will be allowed to park in the u-shaped area. Ms. Brito said they could park there. She explained she has tested whether another car can get out that way when cars are parked in the u-shaped area and it can.

Ms. Trahan asked the hours of operation. Ms. Brito replied Monday-Thursday 8am-9pm, Fridays 8am-7pm, and Saturdays 8am-4pm, closed on Sundays. Ms. Trahan asked about the proposed gravel area. Ms. Brito stated she did not need to do that. She thought she needed more parking when she had the engineer do the drawing but later found out she did not need it. She stated she does not need to add it.

Following the petitioner's testimony, Chairperson Mathes invited to the podium anyone wishing to speak in favor of the application. Ms. Megan Pereira (99 McCabe Street Dartmouth, MA), a nurse practitioner in New Bedford explained she refers many individuals experiencing anxiety and depression to Ms. Brito. She explained there is a shortage of therapists in the area and long waiting periods before patients see someone. She further expressed that while medicine is an option some patients prefer

therapy. Also, she expressed given the opiate problem in the area and tendency for self-medication, if there were more opportunities for therapy, there may be less of that.

Ms. Jessica Lima (310 Hersom Street New Bedford, MA), a nurse with the New Bedford School department and the Emergency Room at Saint Luke's Hospital explained she is a patient and refers individuals to Ms. Brito. She explained in her work she sees many individuals experiencing mental health issues and there is a lack of services for treatment in this area, therefore, she sees this expanded practice as a benefit.

Ward 1 City Councilor James Oliveira (39 Briarwood Avenue New Bedford) explained he was familiar with the proposal and noted Ms. Brito has been renting at her current office for some time. He explained the circumstances around her previous petition to the board and how the location in that instance was not a good fit for that proposal. He indicated he was very familiar with the current proposed property and this proposal is a good fit for the property. He expressed it fits with the surrounding businesses in the neighborhood, and it was zoned appropriately for the use. He also acknowledged the need for therapists in the area.

At-Large City Councilor Linda Morad (4162 Acushnet Avenue New Bedford, MA) expressed she knew the property well as she lives less than a quarter mile away. She indicated she previously stood in opposition for the previous petition. She explained she previously was in opposition due not to the use proposed but that location and off-street parking concerns. She expressed in this current proposal she felt the petitioner had listened to the concerns expressed. Councilor Morad stated this is a nice property in an area that has a similar business in the neighborhood. Councilor Morad stated she was in support of this petition.

Mr. Kevin Brito (47 Charlotte Street New Bedford, MA), stated husband of the petitioner, spoke in support of the petition. Mr. Brito explained he is biased, yet this is his wife's dream and he knows that she needs to expand her practice due to the need at this time. Her current location on Ashley Boulevard is too small for her to be able to see the amount of clients she'd like to help, he said. He explained they had spoken with the surrounding businesses in the area of the proposed location and they were fine with the proposal.

No one else 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. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

With no further questions or concerns, Chairperson Mathes closed the hearing, and opened the floor for discussion amongst board members. Ms. McTigue expressed she wanted to make sure the parking egress remained clear to ensure vehicles were not backing into Acushnet Avenue in order to exit. Chairperson Mathes asked if she thought it should be a condition of approval. Ms. McTigue stated yes and further explained even if cars are allowed to park along the turn around, there should still be an

aisle so that other cars can exit facing onto Acushnet Avenue. Ms. Trahan suggested the petitioner could place a sign directing cars to exit that way. Chairperson Mathes confirmed with the petitioner that she understood the issue and was agreeable to a condition being placed on it. Ms. Brito indicated she understood and would agree to the condition. The board members briefly discussed the language of the condition. The Board asked about the pool in the rear. Ms. Brito stated the pool has been removed. 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 proposal offers therapy services to an underserved population, meeting great demand.
- *Traffic flow and safety, including parking and loading;*
 - The Board found the proposal meets parking needs for the property and ingress and egress will be addressed with a special condition.
- *Adequacy of utilities and other public services;*
 - The Board found the petition to be neutral in regards to utilities and other public services.
- *Neighborhood character and social structures;*
 - The Board found the proposed use fits within the character of the neighborhood.
- *Impacts on the natural environment;*
 - The Board found the proposal neutral in regards to impacts on the natural environment.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board found the proposed use contributes to the City's tax base.

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 2200 (use regulations), 2210 (general), 2230 (table of use regulations-appendix-A, #20-medical offices, center or clinic), and 5300-53330 & 5360-5390 (special permits); relative to property located at 4334 Acushnet Avenue, assessor's map 137B,

Lot 76 in a mixed use business [MUB] zoned district. To allow the petitioner to move her counseling practice to the proposed location as plans filed, with conditions.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. The property parking spaces shall be laid out so the vehicles entering a street may do so facing the street.
- b. The project shall be set forth according to plans, submitted with the application, with conditions;
- c. 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. 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 D. Trahan, L. Schick, A. Decker, S. McTigue, 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