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ZONING BOARD OF APPEALS

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CITY CLERK
2016 APR 22 A 8:29
CITY CLERK'S OFFICE
NEW BEDFORD, MA

NOTICE OF DECISION

Case Number: #4222				
Request Type: Variance				
Address: 245 Maxfield Street				
Zoning: Residential B Zoned District				
Recorded Owner: Juan E. Rodriguez and Lourdes A. Rodriguez				
Owner's Address: 369 Cottage Street New Bedford, MA 02740				
Applicant: Juan E. Rodriguez				
Applicant's Address: 369 Cottage Street New Bedford, MA 02740				
Application Submittal Date	Public Hearing Date			
February 10 th , 2016	April 14 th , 2016			
Decision Date				
April 14 th , 2016				
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
58	26	4246	172	

Variance under provisions of Chapter 9 comprehensive zoning sections 3100 (parking and loading), 3110 (applicability) and 3130 (table of parking and loading requirements Appendix-C-business engaged in retail sale of goods and services); relative to property located at 245 Maxfield Street, assessor's map 58, lot 26 in a Residential-B [RB] zoned district. To allow the petitioner to convert the use from a convenience store to a barber shop 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 April 22nd, 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.

April 22, 2016
Date

Allen Parker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner proposes to convert the use from a convenience store to a barber shop as plans filed, which requires a Variance under provisions of Chapter 9 comprehensive zoning sections 3100 (parking and loading), 3110 (applicability) and 3130 (table of parking and loading requirements Appendix-C-business engaged in retail sale of goods and services); relative to property located at 245 Maxfield Street, assessor's map 58, lot 26 in a Residential-B [RB] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan Set, including:
 - Existing Site Plan, drawn by unknown, dated January 2016
 - Interior floor plan showing seven barber stations, drawn by unknown, not dated

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office February 10, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 4th, 2016.
- Staff Comments to ZBA from City Planning Division, dated March 9th, 2016.

3.) DISCUSSION

The case hearing was originally scheduled for March 24th, 2016, considered to be "Holy Thursday", which under City Code §2-8 is prohibited. Therefore, the Zoning Board of Appeals March 24th meeting was rescheduled to April 14th, 2016.

On the evening of the April 14th, 2016 meeting board members Debra Trahan, Allen Decker, Sherry McTigue, Leo Schick, and Horacio 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.

Mr. Decker made a motion, seconded by Ms. McTigue, to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 4th, 2016; Staff Comments from the Department of Planning, Housing and Community Development, dated March 9th, 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.

Acting Chair Trahan then declared the hearing open.

Representative of the petitioner: Mr. Esteban Rodriguez (245 Maxfield Street New Bedford, MA), stated he was presenting on behalf of his father, Mr. Juan E. Rodriguez (369 Cottage Street New Bedford, MA). He indicated his father and brother Moises Rodriguez were also present. Mr. Esteban Rodriguez explained the property had previously been a grocery store for many years, describing how

his father owned the grocery store for 23 years and that even prior to that ownership it had been grocery store. Mr. E. Rodriguez stated the grocery store closed two years ago and then this new opportunity came for a barbershop to fill where the store used to be. Given the long time existence of the grocery store at this location he felt that a barbershop would be acceptable to the neighborhood. He also highlighted that it would be the only barbershop in this area of the city.

Mr. Decker asked Mr. E. Rodriguez to address in particular the off-street parking issue, the reason the petition was before the board. Mr. E. Rodriguez explained how the on-street parking and traffic flow worked when the location was a grocery store and indicated it would be a similar situation with the proposed barbershop. He explained most on-street parking would be "quick short-term parking" around the front and side of the building. In light of this, he suggested it would therefore not be a bother to the neighborhood.

Acting Chair Trahan inquired about the barber who would be operating the shop. Mr. E. Rodriguez explained the barber was unable to attend as he was working that evening but did describe him as being a licensed barber.

Mr. Schick and Ms. McTigue requested more clarity about the business operations, specifically, the number of barbers, barber chairs, and if employee shifts would be staggered. Acting Chair Trahan expressed concern for the number of seven barber chairs as shown on the plan submitted. She noted that if one were to count the barbers, customers in the chairs and those waiting, there could be up to 21 people in the shop at one time and no parking spaces for them. Mr. E. Rodriguez explained the shop would have five barber station chairs, not the seven shown on the plan submitted. The plan originally submitted was an attempt to see how many chairs would physically fit in the space, however, since submittal they reduced the number to five barber station chairs and one sink station.

With respect to the employees, Mr. E. Rodriguez said they would be encouraged to park farther away and walk to the barber shop. Acting Chair Trahan questioned if the business was relocating or if it was a new business to which Mr. E. Rodriguez confirmed that the business was relocating from Brockton to New Bedford. Ms. McTigue asked if the customers were expected to be walking to the barbershop. Mr. E. Rodriguez stated their expectation that customers would be coming from within walking distance. He further clarified that at this time they have confirmed one main barber and three other barbers, for a total of four barbers to start.

Following the petitioner's testimony, Acting Chair Trahan invited to the podium anyone wishing to speak in favor of the application. Mr. Moises Rodriguez (369 Cottage Street New Bedford, MA) stated he was in favor. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Acting Chair Trahan 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, Acting Chair Trahan closed the hearing and opened the floor for discussion amongst board members. Board members expressed concerns about the number of barber chairs. Mr. Schick acknowledged the shop would also need a station with a sink.

Mr. Decker expressed he understood the appeal of having a neighborhood barbershop when there isn't another one within $\frac{3}{4}$ mile radius; this, he noted would make it reasonable to assume that a fair amount of customers could be walking to the shop from within the neighborhood. He noted that although parking is tight in that neighborhood because no one else has off street parking there is transient nature [to on-street parking] with a lot of frequent coming and going. So, with a reduction in the barber chairs Mr. Decker felt comfortable with the expected coming and going of customers at the proposed barber shop. Mr. Decker asked where the residents living in the upper floors park. Mr. Moises Rodriguez said they park on Maxfield Street and Cottage Street, where usually the block is empty.

Board members discussed conditioning the approval with a four (4) chair limit. The petitioner made a request to have five chairs. Board members discussed expected customer turn-over for barbershops. Chair Trahan asked about the hours of operation. Mr. E. Rodriguez stated the proposed hours are from 10am-6pm Tuesday through Saturday, closed Sunday and Monday. Ms. Trahan expressed most barbershops are open until 8pm on Fridays, and suggested if the board condition the hours of operation that Friday be expanded until 8pm.

The discussion ended and board members indicated their readiness to vote.

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 the creation of off-street parking reduces the available green space on the property and only provides up to two parking spaces. The board found the hardship to be the creation of sufficient parking is not possible given the size of the lot and the location of existing structures.

- 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 3100 (parking and loading), 3110 (applicability) and 3130 (table of parking and loading requirements Appendix-C-business engaged in retail sale of goods and services); relative to property located at 245 Maxfield Street, assessor's map 58, lot 26 in a Residential-B [RB] zoned district. To allow the petitioner to convert the use from a convenience store to a barber shop as plans filed.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. That the business be limited to four (4) cutting stations and one (1) wet station;
- b. That the hours of operation be limited to 10am to 6pm Tuesday through Saturday and 10am to 8pm on Fridays;
- c. The project shall be set forth according to plans submitted with the application, with conditions;
- d. 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;
- e. 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 L. Schick to grant the requested Variance, the vote carried 5-0 with members H. Tavares, S. McTigue, L. Schick, A. Decker, and D. Trahan voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

April 22, 2016
Date

Allen Decker
Allen Decker, Clerk of the Zoning Board of Appeals