

4241

CITY OFFICE  
NEW BEDFORD, MA  
JUN 21 2016

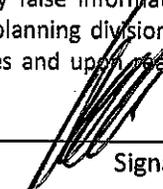
## 2. VARIANCE SPECIFICS

The undersigned petitions the New Bedford Zoning Board of Appeals [ZBA] to grant a VARIANCE in the manner and for the reasons set forth here under the provisions of the city's zoning ordinance to the following described premises:

### APPLICATION SUMMARY (PLEASE PRINT)

SUBJECT PROPERTY			
ASSESSOR'S MAP PLOT#	47	LOT(S)#	37
REGISTRY OF DEEDS BOOK:		PAGE #	Certificate of Title #13245
PROPERTY ADDRESS: 52 Union Street, New Bedford, MA 02740			
ZONING DISTRICT: 1A			
OWNER INFORMATION			
NAME: Marder Management Corp.			
MAILING ADDRESS: 22 So. Water Street, New Bedford, MA 02740			
APPLICANT/CONTACT PERSON INFORMATION			
NAME (IF DIFFERENT): Moby Dick Brewing Company, Inc.			
APPLICANT'S RELATIONSHIP TO THE PROPERTY: Check one:	OWNER <input type="checkbox"/>	CONTRACT VENDEE <input type="checkbox"/>	OTHER Describe <input checked="" type="checkbox"/> Lessee
MAILING ADDRESS (IF DIFFERENT): 8 Village Road, Lakeville, MA 02347			
TELEPHONE #	508-999-0600		
EMAIL ADDRESS:	csaunders@saunderslawllp.com		

By signing below, I/we acknowledge that all information presented herein is true to the best of my/our knowledge. I/we further understand that any false information intentionally provided or omitted is grounds for the revocation of the approval(s). I/we also give planning division staff and ZBA members the right to access the premises (both interior and exterior) at reasonable times and upon reasonable notice for the purpose of taking photographs and conducting other visual inspections.

 \_\_\_\_\_ Date 6/21/16  
 Signature of Applicant/s

### If the applicant differs from the owner, this section must be completed/signed by the property owner/s:

I hereby authorize the applicant represented above and throughout this application to apply and to represent my/our interests on my/our behalf for the relief requested herein for the premises I/we own noted as "property address" above and presented throughout this application. Furthermore, by signing this application I/we acknowledge having read and understood this application and the accompanying instructions and information. If petition is granted, I/we understand the approvals are specific to the plans submitted, unless the Board states otherwise and that if granted, that the variance must be recorded and acted upon within one year.

 \_\_\_\_\_ Date 6-22-16  
 Signature of Owner/s

**APPLICATION SPECIFICS**

<b>DIMENSIONS OF LOT/S:</b>	<b>FRONTAGE</b> 66.5	<b>DEPTH</b> 93.2	<b>AREA in SQ FT</b> 4820		
<b>EXISTING BUILDING/S</b>	<b># OF BLDGS</b> 1	<b>EXISTING SIZE</b> 9488	<b>TOTAL SQ FT BY FLOOR</b> 4744	<b>NUMBER OF FLOORS</b> 2	<b>TOTAL SQ. FT ENTIRE STRUCTURE</b> 9488
	<b># OF DWELLING UNITS</b> 0		<b># OF BEDROOMS</b> 0		
<b>PROPOSED BUILDING/S</b>	<b># OF BLDGS</b> 1	<b>PROPOSED SIZE</b> 9488	<b>TOTAL SQ FT BY FLOOR</b> 4744	<b>NUMBER OF FLOORS</b> 2	<b>TOTAL SQ. FT ENTIRE STRUCTURE</b> 9488
	<b># OF DWELLING UNITS</b> 0		<b># OF BEDROOMS</b> 0		<b>EXTENT OF PROPOSED ALTERATIONS</b> Restaurant Build Out
<b>EXISTING USE OF PREMISES:</b>	Vacant				
<b>PROPOSED USE OF PREMISES:</b>	Brew House & Restaurant				
<b>EXPLAIN WHAT MODIFICATIONS YOU ARE PROPOSING THAT NECESSITATE THE REQUESTED VARIANCE:</b>	<u>See Exhibit "A" attached.</u> <hr/> <hr/> <hr/>				

*If there's a commercial use existing and/or proposed, please complete the following:*

	<b>EXISTING</b>		<b>PROPOSED</b>	
<b>NUMBER OF CUSTOMERS PER DAY</b>	0		100	
<b>NUMBER OF EMPLOYEES</b>	0		15	
<b>HOURS OF OPERATION</b>	n/a		11:00 am - 2:00 am	
<b>DAYS OF OPERATION</b>	n/a		Sunday - Saturday	
<b>HOURS OF DELIVERIES</b>	n/a		9:00 am - 5:00 pm	
<b>FREQUENCY OF DELIVERIES</b> <i>(Check frequency)</i>	<input type="checkbox"/> DAILY	<input type="checkbox"/> WEEKLY	<input checked="" type="checkbox"/> DAILY	<input type="checkbox"/> WEEKLY
	<input type="checkbox"/> MONTHLY	<input checked="" type="checkbox"/> OTHER	<input type="checkbox"/> MONTHLY	<input type="checkbox"/> OTHER

*If you are also requesting site plan review and special permit/s from the planning board, please specify here:*

N/A

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Complete each item that is relevant to your variance request:

	Existing	Allowed/ Required	Proposed
Lot Area (sq ft)	4820	0	4820
Lot Width (ft)	66.5		66.5
Number of Dwelling Units	0		0
Total Gross Floor Area (sq ft)	4744		4744
Residential Gross Floor Area (sq ft)	0		0
Non-Residential Gross Floor Area (sq ft)	4744		4744
Building Height (ft)			
Front Setback (ft)	0	0	0
Side Setback (ft)	0		0
Side Setback (ft)	0		0
Rear Setback (ft)	0		0
Lot Coverage by Buildings (% of Lot Area)	100%		100%
Permeable Open Space (% of Lot Area)	0		0
Green Space (% of Lot Area)	0		0
Off-Street Parking Spaces	0		0
Loading Bays	0		0
Number of Ground Signs	0		0
Height of Ground Sign	n/a	n/a	n/a
Proximity of Ground Sign to Property Line	n/a	n/a	n/a
Area of Wall Sign (sq ft)			
Number of Wall Signs			

### 3. PARCEL LEGAL DOCUMENTATION

Title Reference to Property Certificate of Title No 13245  
 (Attach copy of Deed, Certificate of Title & most recent Recorded Plans showing affected lot or lots)

Is the applicant also the owner?  Yes  No

If no, please attach the following three items to your application and indicate they are attached:

- A notarized authorization letter on letterhead from the owner to tenant/buyer for application of this permit.

If the Applicant is Not the Owner, Provide:

- A copy of the Purchase & Sale Agreement or lease, where applicable.
- A copy of the deed or deeds of abutting parcels if said parcels have been held in common ownership with the subject property at any time since January 1, 1976.

# 4. REQUIRED FINDINGS FOR GRANTING A VARIANCE

Massachusetts General Law Chapter 40A Section 10 requires the "permit granting authority" (which, in this instance is the Zoning Board of Appeals) to make ALL the following findings before a variance can be granted:

**A**

That there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located.

**B**

That due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the Zoning Ordinance or By Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant.

**C**

That desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance or Bylaw.

**D**

That desirable relief may be granted without substantial detriment to the public good.

The full text of M.G.L. Chapter 40A, Section 10 can be viewed at: <http://www.mass.gov/legis/laws/mgl/>

Because the ZBA must be able to articulate each of these four findings in order to grant a variance, you must make your case as to WHY your application meets each of these four points. **This is an extremely important question and it is recommended that you answer this VERY carefully.** You may use an additional sheet if needed.

**A** Describe any circumstances relating to soil conditions, shape or topography which especially affect the land or structure in question but that doesn't generally affect the zoning district in which your premises is located:  
See Exhibit "A" attached.

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**B** Describe how circumstances unique to your land or structure would mean a substantial hardship to you if the city were to literally enforce the zoning ordinance:  
See Exhibit "A" attached.

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**C** Describe how granting you relief would not take away from the purpose of the city's zoning ordinance:  
See Exhibit "A" attached.

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**D** Describe why nobody else would be hurt if the city granted your requested zoning relief:  
See Exhibit "A" attached.

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## EXHIBIT A

Moby Dick Brewing Company, Inc., (hereinafter referred to as "Applicant"), has entered into a Lease Agreement with Marder Management Corp. to lease the first floor of property located at 52 Union Street, New Bedford, Massachusetts, and more particularly described in the City of New Bedford Assessor's Map 47, Lot 37, (hereinafter referred to as "Leased Premises"). The site contains approximately 4820 square feet of land and is located in an Industrial A Zoning District. The Leased Premises is presently vacant. The Applicant intends to commence exterior and interior renovations to the existing 9,488 square foot structure and use the Leased Premises to operate a Brew Pub & Restaurant known as "Moby Dick Brewing Company". The Applicant seeks a variance from the City of New Bedford parking and loading requirements as set forth in Chapter 9, Sections 3000 through 3130 of the Zoning By-Law to reduce the parking and loading requirements to zero (0). The Leased Premises and present commercial office on the second floor have zero (0) parking and loading spaces as the footprint of the existing structure occupies the entire parcel. A variance is required due to the change in commercial/office use to a restaurant use.

## ARGUMENT

In accordance with Massachusetts General Law Chapter 40A, Section 10, the Applicant seeks a variance from the City of New Bedford Zoning By-law. The Applicant seeks a variance from the requirement that parking and loading spaces be required for the change in use of an existing structure from commercial/office to restaurant use. In order to be granted the variance, the Applicant must prove the following:

1. That they are required due to the existence of circumstances on account of soil conditions, shape, or topography especially affecting the land or structure, but not affecting generally the zoning district.
2. That literal enforcement of the provision of the By-Law would involve substantial hardship to the Petitioner.
3. That the variance may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-Law.

The Applicant requires this variance because of the unique character of the land, especially the shape of the land. The existing structure is utilized for commercial office uses. As with many structures in the City of New Bedford downtown district, the structure contains zero existing parking and loading spaces as the footprint of the existing structure occupies the entire parcel. The Applicant intends to convert the first floor of the existing structure from its commercial use to restaurant use that will house "Moby Dick Brewing Company". Due to the unique shape of the lot and the fact that no open space exists for the creation of any off street parking and loading spaces, a hardship exists and the Petitioner is unable to comply with the Zoning By-Law.

Literal enforcement of the provisions of the By-Law would involve substantial hardship to the Applicant as the parcel contains no available open space for any parking and loading spots. The existing historical structure would need to be demolished and a structure would need to be rebuilt with a parking deck that included sub-surface spaces with a structure built on top of the parking deck. This not only would be adverse to maintaining historical structures in downtown New Bedford, but would also be a financial burden on the Applicant. The variance can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-Law. The variance would actually preserve an existing historical structure and allow for its re-use and rehabilitation. The variance would also promote a walkable downtown New Bedford that has been envisioned by city officials.

The Applicant intends to work with the City of New Bedford in mitigating the effects of the lack of parking and loading on site. There exists available municipal off-street parking that the Applicant intends to utilize. The Applicant is willing to encourage the use of the Elm Street Garage and Zeiterion Garage for the parking of vehicles for patrons, employees and staff of the Moby Dick Brewing Company. Additionally, directly across the street from the Leased Premises is a parking lot owned by the City of New Bedford that is available to patrons as they become available. The Applicant has had discussions with the manager of the Elm Street Garage and there is space available for staff to park off street. The Applicant seeks to rehabilitate an existing historic structure to complement the recent improvements and additions in downtown New Bedford despite the lack of available off-street parking. In fact, most of the businesses downtown do not have off street parking and off street loading zones as the structures were

created prior to the implementation of the Zoning By-Laws. The rehabilitation of the site will be coordinated with city officials to minimize adverse impacts to neighbors and area businesses.

### CONCLUSION

The Applicant respectfully request the Zoning Board of Appeals grant their Application for a variance. The Applicant seeks the variance due to the unique shape of the parcel and existing structure. The purpose behind the Zoning By-Law will not be thwarted. In fact, the Applicant seeks to uphold the spirit of the By-Law by preserving and rehabilitating an existing historic structure in historic downtown New Bedford. It will also promote a walkable downtown as promoted by city officials. Allowing the variance will not have a detrimental impact on the Applicant's neighbors or the City of New Bedford and will further expand the tax base for the City of New Bedford and create a positive atmosphere in the City of New Bedford



*City of New Bedford*  
**REQUEST for a CERTIFIED ABUTTERS LIST**

This information is needed so that an official abutters list as required by MA General Law may be created and used in notifying abutters. You, as applicant, are responsible for picking up and paying for the certified abutters list from the assessor's office (city hall, room #109).

SUBJECT PROPERTY	
MAP #	47
LOT(S)#	37
ADDRESS: 52 Union Street, New Bedford, MA 02740	
OWNER INFORMATION	
NAME: Marder Management Corp.	
MAILING ADDRESS: 22 So. Water Street, New Bedford, MA 02740	
APPLICANT/CONTACT PERSON INFORMATION	
NAME (IF DIFFERENT): Christopher T. Saunders, Esq.	
MAILING ADDRESS (IF DIFFERENT): 700 Pleasant Street, New Bedford, MA 02740	
TELEPHONE #	508-999-0600
EMAIL ADDRESS:	csaunders@saunderslawllp.com
REASON FOR THIS REQUEST: <i>Check appropriate</i>	
<input checked="" type="checkbox"/>	ZONING BOARD OF APPEALS APPLICATION
<input type="checkbox"/>	PLANNING BOARD APPLICATION
<input type="checkbox"/>	CONSERVATION COMMISSION APPLICATION
<input checked="" type="checkbox"/>	LICENSING BOARD APPLICATION
<input type="checkbox"/>	OTHER (Please explain):

2016 JUN 24 PM 2:40  
 CITY OF NEW BEDFORD  
 PLANNING DIVISION

Once obtained, the Certified List of Abutters must be attached to this Certification Letter.

Submit this form to the Planning Division Room 303 in City Hall, 133 William Street. You, as applicant, are responsible for picking up and paying for the certified abutters list from the assessor's office (city hall, room #109).

**Official Use Only:**

Administrative Assistant to the City of New Bedford's Board of Assessors. I do hereby certify that the names and addresses as identified on the attached "abutters list" are duly recorded and appear on the most recent tax map.

Carlos Amado  
 Printed Name

Signature

6/21/2016  
 Date

**PLANNING**  
 JUN 17 2016  
**DEPARTMENT**

53-100 53-101

53-246

WILLIAM ST

53-175

53-177 53-229

53-120

HAMILTON ST

53-147 53-148 53-149 53-151

53-179 53-180 53-182 53-183 53-184 53-185 53-187 53-226 53-227

53-25

JOHNNYCAKE HL

53-161

CENTRE ST

53-153 53-263 53-154 53-222

53-223 53-188 53-28 53-191 53-192 53-189 53-194 53-190 53-195

FRONT ST

JOHN F KENNEDY MEMORIAL HWY

53-217

ROSE ALY

53-230 53-231 53-232 53-196 53-197 53-198 53-200

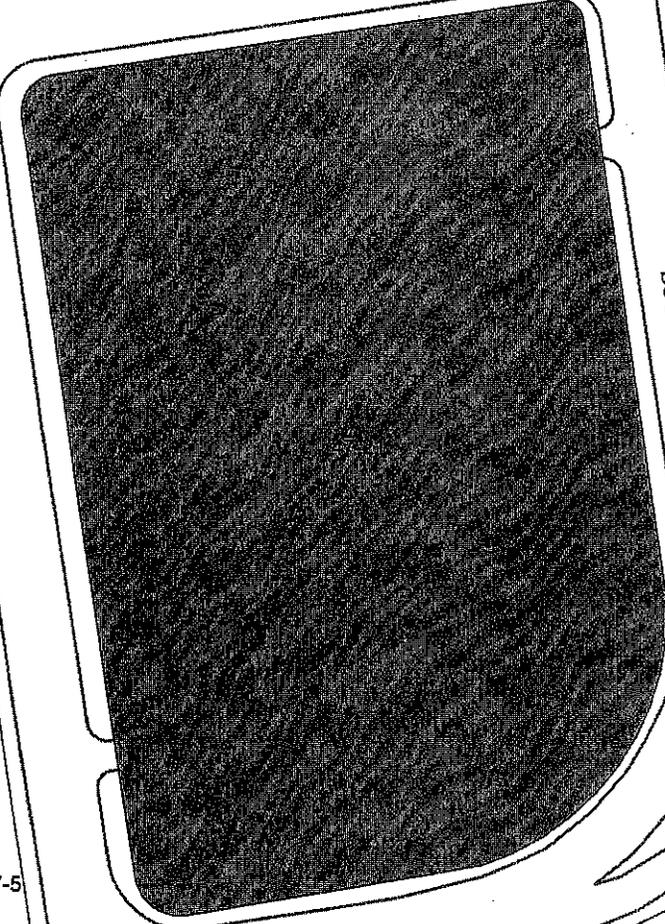
UNION ST

UNION ST

47-40 47-41 47-42 47-43 47-44 47-45 47-46 47-47 47-48 47-49

47-203

COMMERCIAL ST



SOUTH WATER ST

47-127

MACARTHUR DR

47-225

SCHOOL ST

47-5

47-129

47-179

47-204

47-100



47-21

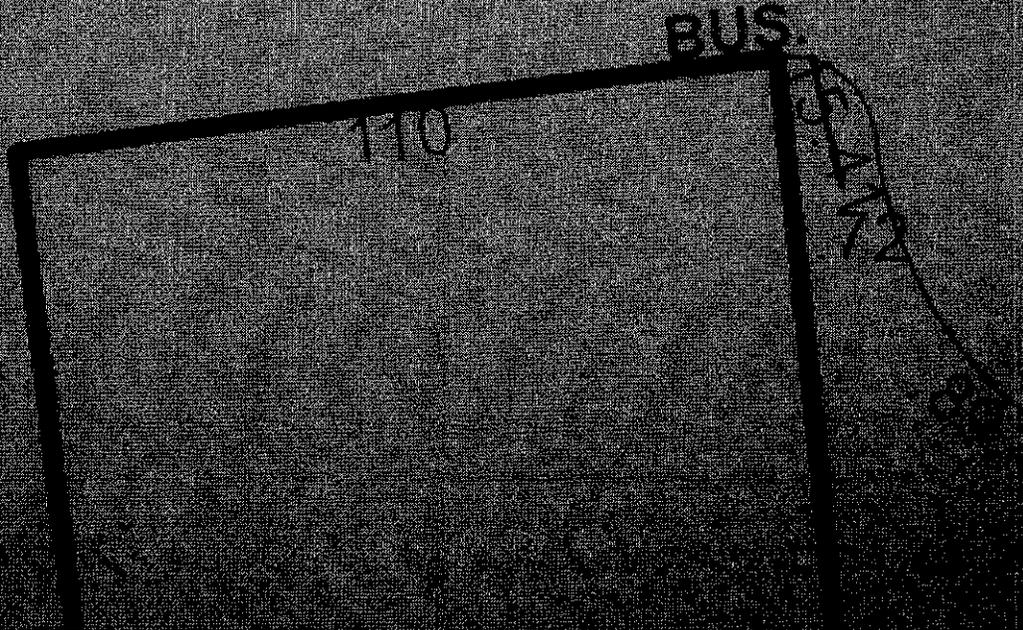
47-89

47-180

47-220

			IND. A	
	66.5	29.82	26.42	36.81
		240 <sup>sq ft</sup>	38 <sup>sq ft</sup>	39 <sup>sq ft</sup>
	37	156 <sup>sq ft</sup>	293 <sup>sq ft</sup>	1907
IND. A	932	4820	3383	2982
				2685
				3654
			119.5	
			44	
			4906	
			119.5	
	41.19			
	40.69			
	32.67			

IND. A  
**COMMERCIAL**



Marder Management Corporation  
22 South Water Street  
New Bedford, MA 02740  
Phone: (508)992-1722 Fax: (508)991-3245

June 21, 2016

City of New Bedford  
Zoning Board of Appeals  
133 William Street  
New Bedford, MA 02740

**Re: Variance Application - 52 Union Street, New Bedford, MA**

To whom it may concern:

Marder Management Corp. is the owner of property located at 52 Union Street, New Bedford, MA 02740. As President of Marder Management Corp., I hereby give Moby Dick Brewing Company, Inc. authorization to submit a variance application to your Board for property located at 52 Union Street, New Bedford, MA 02740.

Thank you for your time and attention to this matter. If you should have any questions or comments, please don't hesitate to contact me.

Marder Management Corp.

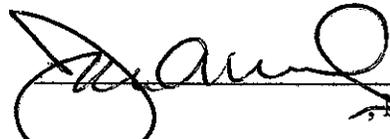
  
\_\_\_\_\_  
BRIAN I. MARDER, PRESIDENT

BM\cp

## Commonwealth of Massachusetts

**Bristol, ss.**

On this 22<sup>nd</sup> day of June, 2016, personally appeared before me Brian Marder, as President on behalf of Marder Management Corp., who proved to me through satisfactory evidence of identification, to wit, through personal knowledge, to be the signer of the foregoing document, and acknowledged to me that the same was signed voluntarily for its stated purpose.

  
\_\_\_\_\_  
Notary Public  
My Commission expires: 1/19/18



39898

26th and 25th Street, January 24, 1930

*Walter J. Varley*  
Walter J. Varley

RECEIVED  
DEEDS & RECORDS  
JAN 24 1930

The Commonwealth of Massachusetts

Walter J. Varley, of the County of Suffolk, State of Massachusetts, do hereby certify that the within and foregoing instrument is a true and correct copy of the original instrument filed for record in my office on the 24th day of January, 1930.

*Walter J. Varley*  
Walter J. Varley, Notary Public  
Notary Public, State of Massachusetts  
My Commission Expires January 16, 1931

THE COMMONWEALTH OF MASSACHUSETTS

Walter J. Varley, of the County of Suffolk, State of Massachusetts, do hereby certify that the within and foregoing instrument is a true and correct copy of the original instrument filed for record in my office on the 24th day of January, 1930.

This person will, upon the above named Brian J. Varley, do hereby certify that the within and foregoing instrument is a true and correct copy of the original instrument filed for record in my office on the 24th day of January, 1930.

*Walter J. Varley*  
Walter J. Varley, Notary Public  
Notary Public, State of Massachusetts  
My Commission Expires January 16, 1931

UNITED STATES DEPARTMENT OF JUSTICE

Attorney General  
Catherine B. Borch

Department of Justice  
Washington, D.C. 20530

Director, Investigations

Mr. [Name] [Address] [City] [State] [Zip]

Mr. [Name] [Address] [City] [State] [Zip]

Mr. [Name] [Address] [City] [State] [Zip]

RECEIVED  
U.S. DEPARTMENT OF JUSTICE  
DIVISION OF INVESTIGATION  
WASHINGTON, D.C. 20530  
MAY 15 1964

U.S. DEPARTMENT OF JUSTICE  
DIVISION OF INVESTIGATION  
WASHINGTON, D.C. 20530

The Commercial (United States) [Name]  
at 1240 A, with of 406, 299, 369

(Please print or type)

U.S. DEPARTMENT OF JUSTICE  
DIVISION OF INVESTIGATION  
WASHINGTON, D.C. 20530  
MAY 15 1964