



City of New Bedford Department of City Planning

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MAYOR
JON MITCHELL
PLANNING DIRECTOR
TABITHA HARKIN

PLANNING BOARD

September 5, 2019

Councilor Hugh Dunn, Chairman
Committee on Ordinances
133 William Street
New Bedford, MA 02740

RE: PROPOSED REZONING REQUEST
CASE #19-29 183 Washington Street (Map: 36 Lot: 378)

Dear Chairman Dunn:

This is to advise you of Planning Board action on Wednesday, September 4, 2019 regarding the proposed request for the rezoning of 183 Washington Street (Map: 36 Lot: 378) from the Residential B (RB) zone to Mixed-Use Business (MUB) zone. **The Planning Board sends an unfavorable recommendation for this proposal.**

At the hearing, Mr. David Sousa (150 Woodcock Road Dartmouth, MA) owner of 183 Washington Street presented the proposed rezoning request before the Board. Mr. Sousa explained that he had purchased the property last year, at which time it had an existing third floor apartment. In making improvements to the property he sought a building permit to add a second means of egress from the third-floor unit for fire safety. It was during an inspection for the second egress that he found out the unit was never permitted nor allowed in the Residential B zoning district. Subsequently he hired an attorney to investigate the matter and in speaking with the City he and his attorney were under the impression that a zoning change was the only way to make the third-floor apartment legal. Therefore, he sought to rezone the property to a zone in which three apartments would be allowed. It was recommended to them at the time to request the Mixed-Use Business zone (MUB) be extended from Dartmouth Street to this property.

No one spoke in favor or opposition of the request.

Board members discussed the proposed rezoning request and the comments received during the public hearing. Chair Duff explained that the board saw a few issues with this request: the site is surrounded by residential properties, there is a void between the property and the nearby Mixed-Use Business Zoned district, and the proposed residential unit would not need to be rezoned to be permitted.

Chair Duff highlighted that the City Planning Department Staff Report included a determination by the Commissioner of Inspectional Services, Danny Romanowicz, which explained that the property is an “existing non-conforming” property. This designation allows a property owner to seek a Special Permit through the Zoning Board of Appeals for structural changes to and/or use changes for existing non-conforming properties. Attestation from the Building department went on to explain that if the applicant seeks to create a third residential unit, the following permitting would be required, with or without the zoning change: from the Zoning Board of Appeal 1.) Special Permit – Nonconforming Use & Structures (under ordinance Section 2400) 2.) Variance – Parking requirements (under ordinance Section 3100) and from the Planning Board 3.) Site Plan Review – (under ordinance Section 5400 - New multiple-family residential construction of three (3) or more units or expansion of existing multifamily residential structures resulting in the creation of one or more additional units).

Ms. Tabitha Harkin, Director of City Planning, clarified that various City staff had originally suggested that rezoning the property would be the only option. However, upon further investigation and analysis it was discovered that the property qualified under the existing non-conforming section of the ordinance. Unfortunately, this was discovered after the request to rezone had been submitted.

As it does with all rezoning requests, the Planning Board’s review included consideration of the following specific criteria to ensure its action is consistent with existing case law: **uniformity, consistency, surroundings, fiscal impact** and **discriminating benefit**.

The Board discussed their concern that if adopted as written this would be considered spot zoning due to the small gap between the existing MUB zone and the subject site. Further the board noted the applicant can seek permitting regardless of the zoning change.

After closing the public hearing, a motion was made in the affirmative to recommend that 183 Washington Street (Map: 36 Lot: 378) be rezoned from Residential “B” (RB) to Mixed-Use Business (MUB) in its entirety. **The motion failed on a vote of 0-5**, with no board members recorded in favor; board members A. Kalife, K. Khazan, P. Cruz, A. Glassman and K. Duff recorded in opposition.

As such the **Planning Board sends an unfavorable recommendation for this proposal**. Please find enclosed a copy of the Planning Division Staff Report regarding this matter for the Council’s convenience and reference.

Sincerely,



Tabitha Harkin, LEED AP ND
Director of City Planning

encl. Staff Report

cc. John Mitchell, Mayor

Danny Romanowicz, Building Commissioner

Mickaela McDermott, City Solicitor

Dennis Farias, City Clerk