



*City of New Bedford*  
**ZONING BOARD OF APPEALS**

133 William Street, New Bedford  
 Massachusetts 02740  
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**JONATHAN F. MITCHELL**  
 MAYOR

**NOTICE OF DECISION**

Case Number:	#4257			
Request Type:	Variance			
Address:	139 Union Street			
Zoning:	Mixed Use Business Zoned District			
Recorded Owner:	Waterfront Historic Area League of New Bedford, INC.			
Owner's Address:	128 Union Street New Bedford, MA 02740			
Applicant:	Waterfront Historic Area League of New Bedford, INC. c/o Teri Bernert			
Applicant's Address:	128 Union Street New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
November 8 <sup>th</sup> , 2016	December 15 <sup>th</sup> , 2016	December 15 <sup>th</sup> , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
53	144	11623	190	

CITY CLERK  
 2016 DEC 23 A 9:38  
 CITY CLERKS OFFICE  
 NEW BEDFORD, MA

Variance under Chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability), and 3130 (table of parking and loading requirements-appendix-C); relative to property located at 139 Union Street, assessor's map 53 lot 144 in a mixed use business zoned district [MUB]. To allow the petitioner to create spaces for an art center, office and two apartments 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 December 23<sup>rd</sup>, 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.

Dec. 23, 2016  
 Date

Allen D. Decker  
 Clerk, Zoning Board of Appeals

## **1.) APPLICATION SUMMARY**

The petitioners propose to create spaces for an art center, office and two apartments as plans filed, which requires a Variance under Chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability), and 3130 (table of parking and loading requirements-appendix-C); relative to property located at 139 Union Street, assessor's map 53 lot 144 in a mixed use business zoned district [MUB].

## **2.) MATERIALS REVIEWED BY THE BOARD**

### **Plans Considered to be Part of the Application**

- Plan Set, prepared by Studio 2 Sustain Inc., last revision date 10.14.2016 stamped received by City Clerk's Office November 8<sup>th</sup>, 2016, including:
  - Construction documents
    - Sheet IA 1.1 – Floor Plans Bsmt, 1<sup>st</sup>, 2<sup>nd</sup>
    - Sheet IA 1.2 –Third Floor Plans
    - Sheet IA 2.1 –Exterior Elevations
    - Sheet IIA 1.1 –Floor Plans Bsmt, 1<sup>st</sup>, 2<sup>nd</sup>, Attic
    - Sheet IIA 1.2 –Enl. Plans & Baths Residential Units
    - Sheet IIA 2.1 – Exterior Elevations
- Code Review Plan Set, prepared by Studio 2 Sustain Inc., last revision date 11.28.16, received by Zoning Board on December 15<sup>th</sup>, 2016, including:
  - Code Review sheets:
    - Sheet CR 1.1
    - Sheet CR 1.2

### **Other Documents & Supporting Material**

- Completed Petition for a Variance Form, stamped received by City Clerk's Office November 8<sup>th</sup>, 2016
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 23<sup>rd</sup>, 2016
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated December 15<sup>th</sup>, 2016

## **3.) DISCUSSION**

On the evening of the December 15<sup>th</sup>, 2016 meeting, board members: Leo Schick, Robert Schilling, John Walsh, Horacio Tavares, and Allen Decker 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.

In regards to Case #4257 (139 Union Street) Mr. Decker made a motion, seconded by Mr. Walsh to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 23<sup>rd</sup>, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated December 15<sup>th</sup>, 2016; the appeal packet as submitted; 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.

Mr. Walsh suggested the board consolidate the hearings of case #4257 (139 Union Street) & #4258 (141 Union Street) as they both relate to the same overall project. It was confirmed the petitioner intended to present both properties together. On a motion by Mr. Walsh, seconded by Mr. Schilling, to consolidate the case hearings the board agreed to hear both cases concurrently.

In regards to Case #4258 (141 Union Street) Mr. Decker made a motion, seconded by Mr. Walsh to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 23<sup>rd</sup>, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated December 15<sup>th</sup>, 2016; the appeal packet as submitted; 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 Schick then declared the hearing open.

Representative of the petitioner: Ms. Kathryn Duff (412 County Street New Bedford, MA), architect from Studio 2 Sustain, presented the project on behalf of WHALE (Waterfront Historic Area League), the owner of the building. Ms. Duff explained the project is two separate building but one project called the "Co-Creative Center". Both properties require a variance for parking relief she informed the board. Further, she explained the project is required to have 32 parking spaces and submitted "Code Review" documents prepared for the project. She described the properties as two existing in-fill buildings with no site available outside of the footprint of the buildings. She informed the Board the project will restore the properties and is receiving State historic tax credits, as well as, HOME funds.

Mr. Decker made a motion, seconded by Mr. Walsh to receive and place on file the Code Review plan submitted by the petitioner. With all in favor the motion carried.

Ms. Duff used an aerial photograph to describe the location of the buildings at the intersection of Acushnet Avenue and Union Street. Pointing to a recent photograph of the two buildings, she told the board they are currently vacant. She informed the board the project will restore the historic storefronts on the properties. 139 Union Street she described will be the co-creative center. The first floor will be public space with a gallery, conference area, work co-learn area and a maker space. The second floor is co-work space extension of the first floor she said. The third floor is housing—two single bedroom units receiving HOME funds, she detailed.

She described 141 Union Street as retail on the first floor, two-bedroom residential unit one each on the second and third floor. The second floor unit is receiving HOME funds while the third floor unit will be market rate she informed the Board. In regards to the retail she explained they have a noodle bowl going in on the Union Street side and a startup juicing company going in the rear unit. The rear second floor will have some office space.

Ms. Duff then showed and described the proposed interior floor plans.

Mr. Walsh confirmed with Ms. Duff that the project requires a variance because there is no space for parking. Mr. Walsh asked “So, if there is no variance, there is no development?” Ms. Duff answered “Correct.”

Acting Chair Schick commented that the proposal is two blocks from the Zeiterion parking garage as well as the Elm Street garage where there should be adequate available parking. Ms. Duff indicated her agreement.

Ms. Duff then noted that the units receiving HOME funds will necessitate that tenants be income qualified to rent as they are affordable housing units. She said they are marketing them to recent graduates from the University CVPA program, trying to keep them in the area. Therefore they don’t anticipate a lot of traffic needs for those units.

Following the petitioner’s testimony, Acting Chair Schick 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.

Acting Chair Schick invited to the podium anyone wishing to speak in opposition of the petitions. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Acting Chair Schick closed the hearing and opened the floor for discussion amongst board members.

Mr. Schilling commented that he lives in the immediate neighborhood and he sees having to look for a parking space as a sign of a vibrant city. He stated he parks in the garage and it is no problem because there is plenty of parking.

#### **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 that the existing structure takes up the entire lot such that no area is available for parking. The Board found that a literal enforcement would require a new development plan and additional expense making continuation unfeasible.

b.) *That desirable relief may be granted without substantial detriment to the public good;*

The Board found that relief may be granted without substantial detriment 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 desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

## **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 3000 (general regulations), 3100 (parking and loading), 3110 (applicability), and 3130 (table of parking and loading requirements-appendix-C); relative to property located at 139 Union Street, assessor's map 53 lot 144 in a mixed use business zoned district [MUB]. To allow the petitioner to create spaces for an art center, office and two apartments as plans filed.

## **6.) 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.

A motion was made by Mr. Decker and seconded by Mr. Walsh, as follows: to allow the petitioner to create spaces for an art center, office and two apartments as plans filed, which requires a Variance under provisions of Chapter 9 comprehensive zoning sections 3000 (general regulations), 3100 (parking and loading), 3110 (applicability), and 3130 (table of parking and loading requirements-appendix-C); relative to property located at 139 Union Street, assessor's map 53 lot 144 in a mixed use business zoned district [MUB]. Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9, comprehensive zoning sections as cited, the board found that in respect to these sections the board grants the requested relief. In addition to the foregoing section, this petition was also found to be in accordance with M.G.L Chapter 40A, Section 10, relative to the granting of variances, because the board found:

First, 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 generally effect the zoning district in which the land or structure is located. In this case, the existing structure takes up the entire lot such that no area is available for parking.

Second, 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. In this case, a literal enforcement would require a new development plan and additional expense making continuation unfeasible.

The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law.

And, that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics noted within this motion, the board found that the material presented was complete, and after its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. Therefore, this motion was made and included the following conditions:

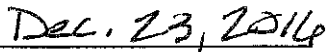
- That the project be set forth according to plans submitted with the application;
- That the Notice of Decision be recorded at the Registry of Deeds; and
- A building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of the decision.

On a motion by A. Decker, seconded by J. Walsh to grant the requested Variance, the vote carried 5-0 with members J. Walsh, A. Decker, R. Schilling, H. Tavares, and L. Schick, and voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:



Allen Decker, Clerk of the Zoning Board of Appeals



Date