



*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:	#4260			
Request Type:	Special Permit			
Address:	811 Mount Pleasant Street			
Zoning:	Mixed Use Business Zoned District			
Recorded Owner:	Maria Pereira Costa, Trustee of the 811 Mount Pleasant Street Real Estate Trust;			
Owner's Address:	157 Gammons Road Acushnet, MA 02743			
Applicant:	David Costa and Maria Pereira Costa, Trustee of the 811 Mount Pleasant Street Real Estate Trust;			
Applicant's Address:	157 Gammons Road Acushnet, MA 02743			
Application Submittal Date	Public Hearing Date	Decision Date		
November 17 <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
123A	81	11797	237	

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

Special Permit under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulation), 2210 (general), 2230 (table of use regulations-appendix-A, (C) Commercial #20-Medical offices, Center, or Clinic) and 5300-5330 & 5360-5390 (special permit); relative to property at 811 Mount Pleasant Street assessors map 123A lot 81 in a mixed use business zoned district. To allow the petitioner to use the building for licensed massage therapy, licensed acupuncturist, or a licensed physical therapist to compliment the current chiropractic use 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 Decker  
 Clerk, Zoning Board of Appeals

### **1.) APPLICATION SUMMARY**

The petitioner proposes to use the building for licensed massage therapy, licensed acupuncturist, or a licensed physical therapist to compliment the current chiropractic use as plans filed, which requires a Special Permit under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulation), 2210 (general), 2230 (table of use regulations-appendix-A, (C) Commercial #20- Medical offices, Center, or Clinic) and 5300-5330 & 5360-5390 (special permit); relative to property at 811 Mount Pleasant Street assessors map 123A lot 81 in a mixed use business zoned district.

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

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

- Site Plan, submitted by David Costa, dated November 15<sup>th</sup>, 2016

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

- Completed Petition for a Special Permit, stamped received by City Clerk's Office November 17<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, Sherry McTigue, 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.

Mr. Decker made a motion, seconded by Ms. McTigue to receive and place on file the communication from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 23<sup>rd</sup>, 2016; communication 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.

The petitioner: Mr. David Costa (157 Gammons Road Acushnet, MA) presented that he would like to add a licensed massage therapist to his satellite chiropractic office. He explained they would work on a rotating schedule as he is at his main office is in Wareham 3 days a week. The massage therapist will work the days he is off-site therefore parking would not be impacted, he explained.

Ms. McTigue inquired about the practice having other types of therapists in the future.

Mr. Costa described that he was unaware in his first application to the board (Case #4237) that any changes from that application would have to be a new permit from the Zoning Board. Therefore, he explained that in the current application he is requesting licensed massage therapy, licensed acupuncturist, or a licensed physical therapist so that he does not have to come before the board again in the future should it not work out or changes in the future with the massage therapist.

Mr. Decker inquired that the hours of operation were also changing.

He proposed the more options in hours and in case the schedule had to change in the future such as switching days between himself and the massage therapist or due to a holiday for instance. That way he could save himself having to come back before the board again, he said. Mr. Costa explained that the expected use currently is he will be working three days a week on-site Tuesday, Thursday, and Saturday. The massage therapist will work the days he is not there, which are Monday, Wednesday, and Friday.

Ms. McTigue commented that there are a number of commercial buildings in the area.

Following the petitioner's testimony, Acting Chair Schick invited to the podium anyone wishing to speak in favor of the application. City Councilor At-Large, Linda Morad, spoke in favor of the petition. She reminded the board that she had supported Dr. Costa in his first application as well. She informed the board that since that time he has purchased the property; making an investment in New Bedford. She further commented that the doctor is trying to run a business so hopefully this application can eliminate him having to come back to the board again. She finished by stating the proposal is not a detriment to the neighborhood and there is no structural change to the property. No one else 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 petition. No one in attendance spoke in opposition of the petitions 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. 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 that the proposed use provides services not currently available in the immediate area.
- *Traffic flow and safety, including parking and loading;*

- The Board found that the proposed use will not be inconsistent with the surrounding area.
- *Adequacy of utilities and other public services;*
  - The Board has found that the petition is neutral as to these.
- *Neighborhood character and social structures;*
  - The board found the use is not more detrimental to the neighborhood character.
- *Impacts on the natural environment;*
  - The Board found the use is not more detrimental.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
  - The Board found the proposed use provides additional employment in the City.

## 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 in Section 6.

The Board grants the Applicant's request for relief from chapter 9 comprehensive zoning sections 2200 (use regulation), 2210 (general), 2230 (table of use regulations-appendix-A, (C) Commercial #20- Medical offices, Center, or Clinic) and 5300-5330 & 5360-5390 (special permit); relative to property at 811 Mount Pleasant Street assessors map 123A lot 81 in a mixed use business zoned district. To allow the petitioner to use the building for licensed massage therapy, licensed acupuncturist, or a licensed physical therapist to compliment the current chiropractic use 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 special permit.

A motion was made by Mr. Decker and seconded by Ms. McTigue, as follows, to allow the petitioners to use the building for licensed massage therapy, licensed acupuncturist, or a licensed physical therapist to compliment the current chiropractic use as plans filed, which requires a Special Permit under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulation), 2210 (general), 2230 (table of use regulations-appendix-A, (C) Commercial #20- Medical offices, Center, or Clinic) and 5300-5330 & 5360-5390 (special permit); relative to property at 811 Mount Pleasant Street assessors map 123A lot 81 in a mixed use business zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9, comprehensive zoning sections as cited, the board finds that in respect to these sections the board finds the petition is in compliance.

In addition to the foregoing sections, this petition was also been found to be in accordance with City of New Bedford Code of Ordinances, Chapter 9, sections 5300-5330 and 5360-5390, relative to the

granting of special permits, because the board found that 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.

In consideration of the following sections, the board has found that in connection with the social, economic or community needs served by this proposal that the proposed use provides services not currently available in the immediate area.

Concerning traffic flow and safety, including parking and loading, the board found the proposed use will not be inconsistent with the surrounding area.

Third in regards to the adequacy of utilities and other public services, the board found that the petition is neutral as to these.

Fourth, the neighborhood's character and social structures, the board found the use is not more detrimental to the neighborhood character.

Concerning impacts on the natural environment, the board has found the use is not more detrimental.

Lastly, as to potential fiscal impact, including impact on city services, tax base and employment, the board has found the proposed use provides additional employment in the City.

In light of the review of the specifics noted within the motion, the board finding that the material presented is complete, and after its careful consideration of the petitioner's request, the Zoning Board found 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 S. McTigue to grant the requested Special Permit, the vote carried 5-0 with members A. Decker, R. Schilling, H. Tavares, S. McTigue, and L. Schick 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

