



City of New Bedford
ZONING BOARD OF APPEALS

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JONATHAN F. MITCHELL
 MAYOR

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

NOTICE OF DECISION

Case-Number: #4259				
Request Type: Special Permit				
Address: 2112 Acushnet Avenue				
Zoning: Mixed Use Business Zoned District				
Recorded Owner: CMAC Realty, LLC				
Owner's Address: 83 Chershire Avenue Acushnet, MA 02743				
Applicant: CMAC Realty, LLC c/o Lance Sylvia				
Applicant's Address: 83 Chershire Avenue Acushnet, MA 02743				
Application Submittal Date	Public Hearing Date	Decision Date		
November 16 th , 2016	December 15 th , 2016	December 15 th , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
119	13	10323	289	

A Special Permit was requested under provisions of Chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430-2432 (nonconforming structures other than single and two family structure), and 5300-5330 & 5360-5390 (special permit); relative to property at 2112 Acushnet Avenue, assessor's map 119 lot 13 in a mixed use business zoned district [MUB] to allow the petitioner to convert the existing three (3) units on the upper level into three (3) residential living units 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 23rd, 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 convert the existing three (3) units on the upper level into three (3) residential living units as plans filed, which requires a Special Permit under provisions of Chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430-2432 (nonconforming structures other than single and two family structure), and 5300-5330 & 5360-5390 (special permit); relative to property at 2112 Acushnet Avenue, assessor's map 119 lot 13 in a mixed use business zoned district [MUB].

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan, drawn by SITEC, dated March 29th, 2012, stamped received by City Clerk's Office November 16th, 2016.
- Proposed Renovations Plan Set, prepared by Comprehensive Design-Build Services, stamped received by City Clerk's Office November 16th, 2016, including:
 - A 0.1 Cover Sheet
 - EX 1.1 Existing Condition Lower Level Plan
 - EX 1.2 Existing Condition Main Level Plan
 - EX 1.3 Existing Condition Upper Level Plan
 - A 1.1 Proposed Renovations Upper Level Plan

Other Documents & Supporting Material

- Completed Petition for a Special Permit, stamped received by City Clerk's Office November 16th, 2016
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 23rd, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated December 15th, 2016.

3.) DISCUSSION

On the evening of the December 15th, 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 23rd, 2016; communication from the Department of Planning, Housing & Community Development, dated December 15th, 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: Mr. Armando Pereira (227 Union Street New Bedford, MA) presented on behalf of Mr. Lance Sylvia, manager of CMAC Realty. Mr. Pereira told the board the building was erected in the late 1970's, had seven units and was previously the AAMCO Transmission building. It is located at the corner of Acushnet Avenue and Harwich Street. He described in the back lower level there are two units consisting of a billiards and barber shop while the upper main level has a laundromat and restaurant kitchen; the third floor has three residential units.

Mr. Pereira explained that the previous owner had converted the third floor into three units however the building department did not have the changes on record. Mr. Pereira shared that in 2007 he previously worked for a company that was a tenant of the building and at that time had submitted a change of use/tenant on one of the spaces. The layout for that unit is the only thing on record for the upper level with the building department; however he said that when he worked in that space there were three units up there.

He then described the petition as being a request to legalize the upper level. He described the third floor interior showing on the plans where there previously was office space that is now residential and the other residential unit in the rear that had been there for a longer timeframe. He said his client is trying to legalize the space. It is adding to the legal housing stock, he said. He explained in order to make it legal they have to install a compartmentalized system. He showed on the floor plan where two fire rated doors are to be installed, egress access points, and stated the petitioner is installing a sprinkler system. He also informed the board this petition requires a Special Permit for parking reduction from the Planning Board.

Acting Chair Schick asked about plans for green space. Mr. Pereira explained that unfortunately even when it was AAMCO Transmission there it was "sea of asphalt". Mr. Pereira further commented that looking at adding green space would take away from parking, which is already restricted. The project requires relief for 10 parking spots, he informed the board. In regards to green space Mr. Pereira detailed that currently there is a planter along the front of the building on the Acushnet Avenue side and there are plantings and trees on the Harwich Street side of the site. He expressed, his concern is that if they cut up the asphalt to create more green space it will reduce parking and create a hardship.

Mr. Decker stated one of the concerns is that it is now a commercial use and now you're proposing to introduce a legal residential use to the property and there is a requirement.

Mr. Pereira again pointed out that the Harwich side entrance is near the green space on the lot and that they would be willing to work on the issue if it wasn't a further reduction in parking.

Acting Chair Schick commented that the area surrounding the lot has lots of trees, and suggested maybe some trees would dress it up a bit as a residential and wouldn't take many parking spaces.

Mr. Pereira shared information about an unrelated plan for a building located to the rear of the site that would address some of those concerns. He further detailed concerns about the site in adding green space. He informed the board that even the corner near the driveway entrance is used for a parking space. He expressed concern that reduction in parking would result in parking on street.

Ms. McTigue confirmed that the petition required Site Plan review for parking and perhaps they could suggest the Planning Board look at the green space. She questioned if the Zoning Board could make a suggestion as to where green space could go citing to the petitioner's agent that "it's not just your [the subject] building it's the whole area there."

Mr. Pereira commented that it is difficult with the three commercial buildings so close to one another in that area. He said it is an issue in a metropolitan area with business that pull people in and out. He offered that the petitioner could add green space by planting shrubbery yet, indicated the parking is currently right on the property line so to pull it back further into the lot would create more issues. Again he reiterated the work was completed by the previous owner and that the petitioner is trying to legitimize what is existing.

Ms. McTigue asked how many units had been there before. Mr. Perreira explained the third floor always had the studio and the two other units. Ms. McTigue asked if the patio seating area shown in a picture was for the business. Mr. Perreira stated it was more for the residents. Ms. McTigue commented that it is unusual for a residential building. Mr. Perreira explained it is split face block, metal roof, and aluminum siding. Further he said that it's happening all over the city and state now that people are willing to put work into a building in foreclosure and these old properties are setup but later they find out the upper levels aren't legal.

Board members briefly discussed the building and how the building was built into the slope of the land. Ms. McTigue noted that the project is required to go for Site Plan Review and Special Permit by the Planning Board so she is sure the green space will be addressed there.

Ms. Gonet asked Commissioner Romanowicz to confirm the proposal required Site Plan Review. Commissioner Romanowicz confirmed the proposal required Site Plan Review.

Following the petitioner's testimony, Acting Chair Schick invited to the podium anyone wishing to speak in favor of the application. Mr. Paul Martins (2112 Acushnet Avenue New Bedford, MA) wished to be recorded in favor of the proposal. 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 discussed that future Site Plan Review [through the Planning Board] would address the green space. Ms. McTigue indicated that the Zoning Board is considering the nonconformity. Further she commented that considering the site and those around it the "sea of asphalt" isn't fully their property. 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 legal housing stock in the City of New Bedford.
- *Traffic flow and safety, including parking and loading;*
 - The Board found that the proposed use is neutral to these issues.
- *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 inconsistent with the neighborhood's 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 is neutral as to these issues.

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 2400 (nonconforming use and structures), 2410 (applicability), 2430-2432 (nonconforming structures other than single and two family structure), and 5300-5330 & 5360-5390 (special permit); relative to property at 2112 Acushnet Avenue, assessor's map 119 lot 13 in a mixed use business zoned district [MUB]. To allow the petitioner to convert the existing three (3) units on the upper level into three (3) residential living units 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 petitioner to convert the existing three (3) units on the upper level into three (3) residential living units as plans filed which requires a Special Permit under the provisions of Chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430-2432 (nonconforming structures other than single and two family structure), and 5300-5330 & 5360-5390 (special permit); relative to property at 2112 Acushnet Avenue, assessor's map 119 lot 13 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 finds that in respect to these sections 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 regards to the social, economic or community needs served by this proposal that the proposed use provides legal housing stock in the City of New Bedford.

Concerning traffic flow and safety, including parking and loading, the board found the proposed use is neutral to these issues.

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 the use is not inconsistent with the neighborhood's character.

Fifth, 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 is neutral as to these issues.

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 S. McTigue, H. Tavares, R. Schilling, A. Decker, 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

