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STAFF COMMENTS

ZONING BOARD OF APPEALS MEETING

December 15, 2016

Case # 4260:

SPECIAL PERMIT

811 Mount Pleasant Street

Map: 123A, Lot: 81

Owner:

Maria Pereira Costa, Trustee
The 811 Mount Pleasant Street
Real Estate Trust
157 Gammons Road
Acushnet, MA 02743

Applicant:

David Costa
157 Gammons Road
Acushnet, MA 02743



Overview of Request: The petitioner has submitted an application for a **Special Permit** relative to the subject property located within a Mixed Use Business [MUB] zoning district. The petitioner proposes to operate a chiropractic office with a massage therapy, licensed acupuncturist, or licensed physical therapist at the property listed above. The petitioner received approval from the Zoning Board of Appeals on July 21st, 2016 for the Chiropractic Office use under Case #4237. The petitioner is required to reapply before the board for another special permit as he seeks to add the additional services at the location. The additional services are considered a change to the previous application. The proposed uses are considered a medical office, center, or clinic under the zoning code and therefore require a Special Permit.

As with all Special Permits, the ZBA must determine that the benefit to the City and the neighborhood outweighs the adverse effects of the proposed use. To this end the board shall consider each of the following in its determination:

- a) social, economic, or community needs which are served by the proposal;
- b) traffic flow and safety, including parking and loading;
- c) adequacy of utilities and other public services;
- d) neighborhood character and social structures;
- e) impacts on the natural environment; and potential fiscal impact, including impact on city services, tax base, and employment.

Existing Conditions: The 3,397± sq. ft. corner lot is located in the north end of the city along a mixed commercial and residential corridor on Mt. Pleasant Street, between King's Highway and Sacred Heart Cemetery. It has 42.45' frontage on Mt. Pleasant Street and 80' depth along Haskell Street. The property has a 34' x 29' office building, with attached wheelchair ramp, and five (5) parking spaces located in the rear. In The existing office is currently operating as a chiropractic office as granted with a Special Permit (Case #4237) earlier this year. In that application the office is described as a satellite chiropractic office (the main office located in Wareham, MA), open three days a week (Tuesday 10am-3pm, Thursday 1pm-6pm, and Saturday 9am-12pm) with two employees. Prior to the chiropractic office use the property was used as an insurance agency.



The surrounding neighborhood has commercial, industrial, and residential uses present. Directly abutting on the south side and in the rear are residential properties, a daycare facility is located to the north and there are commercial warehouse businesses to the east across Mount Pleasant Street.

Proposal: The petitioner proposes to add another complementary service provider to the existing chiropractic office. The petitioner informed Planning Staff that he seeks to add one licensed massage therapist to the office at this time. However, in order to not have to reapply again in the future, should the massage therapist leave and he is unable to replace this particular service. The petitioner's application also includes the option for a replacement complementary service provider in the future that may provide a different service than massage therapy. Therefore, the application adds one more additional employed person on site, that person being a licensed massage therapist, acupuncturist, or physical therapist.

The application also changes the hours and days of operation from the previously-granted Special Permit which permitted the business to operate three days a week: Tuesday 10am-3pm, Thursday 1pm-6pm, and Saturday 9am-12pm. The petitioner now proposes to operate six days a week: Monday through Friday 9am to 6pm, Saturday 9am to 4pm, and to be closed Sundays. The petitioner estimates serving 15-20 customers per day, an increase from the previously described 10 customers per day in Case #4237, with 1-2 employees at any given time.

In regards to the criteria necessary to grant the special permit, staff offers the following:

- a.) **Social, economic or community needs which are served by the proposal.** The applicant states in the application, "Our office will provide chiropractic/massage services to the surrounding area as there are no other such offices in the area." The nearest chiropractic office and massage services are about a mile away from this location ("as the crow flies").
- b.) **Traffic flow and safety including parking/unloading.** The petitioner explains traffic flow and safety will not be affected because there are five off-street parking spaces and the practitioners will work on alternating schedules, meaning the complementary service provider (licensed massage therapist, acupuncturist, or physical therapist) will work only on the days the chiropractor is off-site.

- c.) **Adequacy of utilities and other public services.** The property is serviced by all required utilities both private and public including water and sewer.
- d.) **Neighborhood character.** The petitioner writes in the application that “Mt. Pleasant Street is lined with numerous small and larger businesses and I believe our office and its services will fit right in while also addressing a need there.” Planning Staff notes that commercial businesses are present along Mt. Pleasant Street.
- e.) **Impacts on the natural environment/potential fiscal impact, etc.** The petitioner has indicated “There will be no impact on the natural environments as there will be no changes to the exterior or its surroundings. There will be no negative impact on city services and such as I have relocated a chiropractic business that over 8 years, never had any of these issue at prior location” within the application.

For Board Member Consideration: The board may wish to consider that the proposed use as a satellite chiropractic office with massage services provides a service to the community and maintains a commercial use and tax value on the property. This petition has the five parking spaces required for a medical office of this scale at this property. As a satellite office with two employees alternating days on-site, the expected traffic intensity at the site will likely be similar than the previous use in this regard.

Previously issued Notice of Decision of the original special permit is included as an attachment to this report.



811 Mount Pleasant Street Map: 123A, Lot: 81

NOTE: Property line is approximate; for discussion purposes, only.

Imagery Date: 5/6/2015, 41°40'21.16" N 70°56'42.38" W elev 92 ft eye alt 1273 ft

Google earth



JONATHAN F. MITCHELL
MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

133 William Street, New Bedford
Massachusetts 02740
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Registry of Deeds Use Only:

NOTICE OF DECISION

Case Number:		#4237		
Request Type:		Special Permit		
Address:		811 Mount Pleasant Street		
Zoning:		Mixed Use Business Zoning District		
Recorded Owner:		Arthur J. Hardy, Jr. and Norma M. Hardy, Trustees of the Hardy Family Nominee Trust u/d/t		
Owner's Address:		74 Apple Tree Lane New Bedford, MA 02740		
Applicant:		David Costa		
Applicant's Address:		157 Gammons Road Acushnet, MA 02743		
Application Submittal Date		Public Hearing Date(s)		Decision Date
June 16 th , 2016		July 21 st , 2016		July 21 st , 2016
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
123A	81	5417	306	

CITY CLERK
 2016 AUG -14 A 9:35
 CITY CLERKS OFFICE
 NEW BEDFORD MA

Special Permit under chapter 9 comprehensive zoning sections 2220 (use regulations), 2210 (general), 2230 (table of use regulations-appendix-A (C) commercial #20-medical offices, center, or clinic) and 5300-5330 & 5360-5390 (special permits); relative to property located at 811 Mount Pleasant Street assessor's map 123A lot 81 in a mixed-use-business [MUB] zoned district. To allow the petitioner to operate a chiropractic office 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 August 4th, 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.

Aug 4, 2016
Date

William Decker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioners propose to operate a chiropractic office as plans filed, which requires a Special Permit under chapter 9 comprehensive zoning sections 2220 (use regulations), 2210 (general), 2230 (table of use regulations-appendix-A (C) commercial #20-medical offices, center, or clinic) and 5300-5330 & 5360-5390 (special permits); relative to property located at 811 Mount Pleasant Street assessor's map 123A lot 81 in a mixed-use-business [MUB] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan, drawn on top of a Plan of Land previously prepared by Allen D. Quintin, not dated

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, stamped received by City Clerk's Office June 16th, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated June 30th, 2016.
- Staff Comments to ZBA from City Planning Division dated July 15th, 2016.

3.) DISCUSSION

On the evening of the July 21st, 2016 meeting, board members: Deb Trahan, Allen Decker, Sherry McTigue, Leo Schick, and Robert Schilling 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 Mr. Schick, to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated June 30th, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated July 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 it hereby is ratified. With all in favor, the motion carried.

Chair Trahan then declared the hearing open.

The petitioner: Dr. David Costa (157 Gammons Road Acushnet, MA 02743) explained he proposed changing the current use to a chiropractic office. He explained the property will be used three days a week as a satellite office. His primary office is in Wareham, MA. He described there are five off-street parking spaces as well as available on-street parking. Also, no other chiropractic offices are located in the general area.

Chair Trahan asked about the proposed hours of operation. Dr. Costa responded, in New Bedford the hours will be Tuesday, Thursdays, and Saturday mornings. Mr. Decker confirmed with Dr. Costa that there are five parking spaces in the rear, which are adequate for the demand; and available on street parking on Mount Pleasant Street if needed.

Following the petitioner's testimony, Chair Trahan 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.

NOTE: The Board received the following verbal statement from City Council President Linda Morad (133 William Street New Bedford, MA 02740) during the July 21st, 2016 meeting but prior to the subject case hearing. Chair Trahan allowed Councilor Morad to make her statement at that time, as due to the City Council meeting which she was chairing, she would not be able to come back to speak for this case.

In her comments, City Council President Linda Morad explained that Dr. David Costa currently operates a business out of leased space in the city, and he is making an investment by purchasing a building that is currently vacant in the north end of the city – where he plans to move his chiropractic office. He employs people in the City of New Bedford and is purchasing a piece of commercial property in the city which “will be fine within the neighborhood.” The gentleman does not operate on extended business hours, only within normal business hours, she said. Councilor Morad noted that Dr. Costa also owns property in Wareham for his business which is “immaculate,” and she suggested not seeing any reason why his property here in the city wouldn't be the same. Councilor Morad asked for the board's favorable consideration as the city tries to build a business base here in New Bedford with people like Dr. David Costa willing to invest in the city.

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

With no further questions or concerns, Chair Trahan closed the hearing.

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 the proposed use will serve a need in the immediate community, not currently being served.
- *Traffic flow and safety, including parking and loading;*
 - The Board found this use is neutral to this issue as it is adequately addressed by the use.
- *Adequacy of utilities and other public services;*
 - The Board found the proposal is neutral to this issue as no change is needed.

- *Neighborhood character and social structures;*
 - The Board found the use fits the character of the neighborhood.
- *Impacts on the natural environment;*
 - The Board found the proposal to be neutral to this issue as no change is needed.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board found the use will have a small business operating in the city thereby increasing the city's tax base.

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 2220 (use regulations), 2210 (general), 2230 (table of use regulations-appendix-A (C) commercial #20-medical offices, center, or clinic) and 5300-5330 & 5360-5390 (special permits); relative to property located at 811 Mount Pleasant Street assessor's map 123A lot 81 in a mixed-use-business [MUB] zoned district. To allow the petitioners to operate a chiropractic office 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.

Mr. Decker made a motion, seconded by Mr. Schick, as follows, to approve the Special Permit to allow the petitioner to operate a chiropractic office as per plans filed, requiring a Special Permit under chapter 9 comprehensive zoning sections 2200 (concerning use regulations), 2210 (concerning general), 2230 (concerning table of use regulations-appendix-A (C) commercial #25-medical offices, center, or clinic) and 5300-5330 & 5360-5390 (concerning special permits); relative to property located at 811 Mount Pleasant Street which is assessor's map 123A lot 81 in a mixed-use-business [MUB] zoned district. This petition has been found to be in accordance with City of New Bedford Code of Ordinances Chapter 9 Section sections 2200, 2210, 2230, and 5300-5330 & 5360-5390, particularly as it relates to the following conditions. The board has found the petition is in compliance with the following sections 2210 and 2230. In addition to the foregoing sections, this petition has 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 found in connection with section 5321 social, economic, or community needs which are served by this proposal; the proposed use will serve a need in the immediate community, not currently being served. Concerning 5322 on traffic flow and safety, including parking and loading; this use is neutral to this issue as it is adequately addressed by the use. In regards to 5323

concerning adequacy of utilities and other public services; the Board has found the proposal is neutral to this issue as no change is needed. Concerning 5324, concerning neighborhood character and social structures; the board found the use fits the character of the neighborhood. 5325 concerning the impacts on the natural environment; the Board found the petition to be neutral to this issue as no change is needed. 5326 concerning the potential fiscal impact, including impact on City services, tax base, and employment; the Board has found the use will have a small business operating in the city thereby increasing the city's tax base. In light of its review of the specifics noted within this motion, the board's finding that the material presented is complete and 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, with the following conditions:

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

On a motion by A. Decker seconded by L. Schick to grant the requested Special Permit, the vote carried 5-0 with members L. Schick, S. McTigue, R. Schilling, A. Decker and D. Trahan voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

Aug. 4, 2016
Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals