

1.) APPLICATION SUMMARY

The petitioners propose to change the use from an office/garage to a single family dwelling as plans filed, which requires a Special Permit under Chapter 9 comprehensive zoning sections 2400 (nonconforming uses 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 located at 87 Lawrence Street, assessor's map 127A lot 179 in a residential A [RA] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan drawn onto *Subdivision of Land Plan*, not dated
- Elevation drawings, including:
 - Front view
 - Rear view
 - Left side view
 - Right side view
- Interior layout plans, including:
 - First floor
 - Second floor

Other Documents & Supporting Material

- Completed Petition for a Special Permit, stamped received by City Clerk's Office October 17th, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated October 28th, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated November 17th, 2016.
- Letter to ZBA from Maria F. Quann, date stamped received November 15th, 2016.
- Letter to ZBA from Cassandra Courtney, date stamped received November 16th, 2016.

3.) DISCUSSION

On the evening of the November 17th, 2016 meeting, board members: Leo Schick, John Walsh, 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 Mr. Walsh to receive and place on file the communication from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated October 28th, 2016; communication from the Department of Planning, Housing & Community Development, dated November 17th, 2016; communication from Cassandra Courtney, date stamped received November 16th, 2016; communication from Maria F. Quann, date stamped received November 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, Attorney Christopher Saunders (700 Pleasant Street New Bedford, MA) presented the petition on behalf of Mr. Joseph Swift who he indicated was also present at the meeting. Attorney Saunders informed the Board that Mr. Swift had entered into a purchase and sales agreement for the property that was subject to him obtaining the special permit. Attorney Saunders explained the property is located in a residential A zoning district but is currently used for commercial purposes. He described it as single story structure approximately 1,000 sq. ft. with a two stall garage on a corner lot of Lawrence Street and Tarkiln Hill Road. The petitioner proposes to take the nonconforming structure and use and change it to a conforming use as a single family home to be consistent with the neighborhood, he explained. It is a residential A zoned district with mostly single family homes, and a few two-family homes that are existing nonconforming uses in the neighborhood, he noted. He further informed the board the petitioner proposes to add a second story onto the existing structure; therefore not expanding the nonconformity in regards to setback.

Attorney Saunders described the lot as unique due to the topography, explaining that by building the second story in the rear the second floor one could actually walk out to grade level. He described to the board the site was unique as the existing structure was actually built into the grade. Attorney Saunders called attention to the Staff Comments from the Planning division that noted there was ample landscaping on the property now and on the west there were mature trees. He indicated they felt the recommended fence on the north boundary was unnecessary as there is a fence there now and people know where their property lines are. Further, there was a comment that there is a double driveway for the two car garage. The southernmost stall would be converted into livable space and be the front door, therefore, he stated there is no need for additional landscaping there. Also, he noted the petitioner is proposing to make it a single stall driveway as the property has ample off-street parking. Attorney Saunders reiterated that this proposal takes a commercial use out of a residential district and that's in harmony with the by-law.

Attorney Saunders then went over the criteria necessary for the special permit. In regards to 5321, it's in harmony with the social, economic and community needs because he said they are taking a residence A property and putting it into a residence A use; therefore less traffic for the neighborhood and the neighbors.

In meeting the criteria for 5322, he stated the petitioner had the required off-street parking so it will be a safe parking plan with safer traffic patterns for that side street in the residential district. They would be taking commercial traffic out of the residential neighborhood, he explained.

Under 5323, concerning additional burdens on public services, Attorney Saunders indicated that the petition would likely not require any new additional services as it is already served by public sewer and utilities.

Under 5324, Attorney Saunders affirmed the proposal was in harmony with the zoning district because it is converting a nonconforming use and making it a conforming use.

Under 5325, he stated there are no adverse effects on the natural environment.

And lastly, he explained, under 5326 the investment in the property would double the value of the property substantially increasing the tax base.

In conclusion he stated it will be an overall betterment and improvement to the neighborhood, zoning district as a whole, and the City of New Bedford.

Acting Chair Schick asked why three sides of the first floor won't have any windows. Attorney Saunders explained because the rear first floor is below grade or totally underground. Further explaining the property slopes down from the rear to the front.

Ms. McTigue raised concerns the plans show bedrooms without the required windows. Attorney Saunders indicated windows cannot be installed as it's built into the land. Commissioner Romanowicz confirmed windows are required for bedrooms in response to a question from Ms. McTigue. Attorney Saunders stated then that would be a family room. The board briefly discussed that concern is not under their purview and would be reviewed in the building permit.

Ms. McTigue commented that this property at one time was likely an accessory structure to the abutting property and therefore it is understandable why it is so close to the property line. She expressed concern for loss of sunlight for the windows of the abutter to the north.

Attorney Saunders stated he did not run a title search on the property but did notice it mentioned in staff comments. He pointed out that the side setbacks are eleven feet (11') on the north and seven feet (7') on the south, though really the south side was skewed. He described it is a corner lot where the property line goes from the rear east then south— so in the front there is about 40' from Tarkiln Hill Road to the structure. Whereas, in the rear of the structure to the nearest point of the property line is seven feet (7'), he explained. He further pointed out that on the north the property has 11 feet where 12 is required, therefore he pointed out the abutter to the north must be a greater nonconformity as they are closer to the property line on their side. Using the site plan, Atty. Saunders showed what he described to the board and stated there is a huge side yard on the south side.

Ms. McTigue asked if the north side abutters were one of the letters submitted in opposition. It was confirmed they had not submitted a letter in opposition.

Attorney Saunders interjected that the rear abutter was also more nonconforming than the petition.

Board members briefly discussed that the footprint was exactly the same as the existing footprint.

Mr. Decker informed the petitioner of the abutting property owners in opposition.

Following the petitioner's testimony, Acting Chair Schick invited to the podium anyone wishing to speak in favor of the applications. No one in attendance spoke in support of the petitions or wished to be recorded in favor of the petitions.

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 petitions or wished to be recorded in opposition of the petitions.

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

Mr. Tavares stated he would rather see a house there than a business use. Mr. Decker agreed he liked the removal of a nonconforming use to a conforming use as it is positive for the district. Ms. McTigue stated it's not adding height compared to the other properties in the neighborhood. Mr. Walsh stated he thought it was a change for the better and he thought that Exhibit A submitted by the petitioner hit all the points in regards to the criteria.

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 a nonconforming use is being removed in the conversion from a commercial use to a residential use.
- *Traffic flow and safety, including parking and loading;*
 - The board found that that the required parking is available and the new use will result in less traffic and less general coming and going.
- *Adequacy of utilities and other public services;*
 - The Board has found that the petition is neutral as to these. It is adequately served by utilities and no new utilities are necessary.
- *Neighborhood character and social structures;*
 - The board found removal of a commercial use in a residentially zoned district is positive for the neighborhoods character.
- *Impacts on the natural environment;*
 - The Board has found this petition neutral as to those. There are no changes to the built environment affecting the lot.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board has found that a substantial financial investment in the conversion and use of this property will potentially raise the property's value thereby increasing the 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 in Section 6.

The Board grants the Applicant's request for relief from chapter 9 comprehensive zoning sections 2400 (nonconforming uses 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 located at 87 Lawrence Street, assessor's map 127A lot 179 in a residential A [RA] zoned district. To allow the petitioners to change the use from an office/garage to a single family dwelling 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 Mr. Walsh, as follows, to allow the petitioners to change the use from an office/garage to a single family dwelling as plans filed, which requires a Special Permit under provisions of chapter 9 comprehensive zoning sections 2400 (nonconforming uses 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 located at 87 Lawrence Street, assessor's map 127A lot 179 in a residential A [RA] 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 a nonconforming use is being removed in the conversion from a commercial use to a residential use.

Concerning traffic flow and safety, including parking and loading, the board found the required parking is available and the new use will result in less traffic and less general coming and going.

Third in regards to the adequacy of utilities and other public services, the board found the petition is neutral as to these. It is adequately served by utilities and no new utilities are necessary.

Fourth, the neighborhood's character and social structures, the board found removal of a commercial use in a residentially zoned district is positive for the neighborhoods character.

Concerning impacts on the natural environment, the board has found this petition neutral as to those. There are no changes to the built environment affecting the lot.

Lastly, as to potential fiscal impact, including impact on city services, tax base and employment, the board has found that a substantial financial investment in the conversion and use of this property will potentially raise the property's value thereby increasing the tax base.

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:

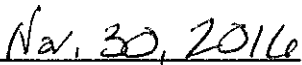
- That the project be set forth according to plans submitted with the application;
- That the Notice of Decision be recorded at the Registry of Deeds; and
- A building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of the decision.

On a motion by A. Decker, seconded by J. Walsh to grant the requested Special Permit, the vote carried 5-0 with members S. McTigue, A. Decker, J. Walsh, 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