



City of New Bedford

ZONING BOARD OF APPEALS

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JONATHAN F. MITCHELL
MAYOR

Registry of Deeds Use Only:

CITY CLERKS OFFICE
NEW BEDFORD, MA
2016 SEP - 8 P 2:36
CITY CLERK

NOTICE OF DECISION

| | | | | |
|------------------------------|--|--------------------------------|-------------|--------------------|
| Case Number: | #4243 | | | |
| Request Type: | Variance | | | |
| Address: | 401 Ashley Boulevard | | | |
| Zoning: | Mixed Use Business Zoned District | | | |
| Recorded Owner: | Santo P. Rodriguez | | | |
| Owner's Address: | 332 Belair Street New Bedford, MA 02745 | | | |
| Applicant: | Pedro Rodriguez | | | |
| Applicant's Address: | 401 Ashley Boulevard Apt. 1N New Bedford, MA 02745 | | | |
| Application Submittal Date | Public Hearing Date | Decision Date | | |
| July 22 nd , 2016 | August 25 th , 2016 | August 25 th , 2016 | | |
| Assessor's Plot Number | Lot Number(s) | Book Number | Page Number | Certificate Number |
| 108 | 314 | 11465 | 187 | |

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 401 Ashley Boulevard, assessor's map 108, lot 314 in a mixed-use-business [MUB] zoned district. To allow the petitioners to operate a barber shop 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 September 8, 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.

9/8/2016
Date

Acting Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioners propose to operate a barber shop as plans filed, which requires 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 401 Ashley Boulevard, assessor's map 108, lot 314 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 by Gary K. Langevin, dated 7/21/16
- Interior Plans, drawn by unknown, undated

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office July 22nd, 2016
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated July 29th, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated August 17th, 2016.

3.) DISCUSSION

On the evening of the August 25th, 2016 meeting, board members: Leo Schick, John Walsh, Horacio Tavares 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. Walsh made a motion, seconded by Mr. Tavares to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated July 29th, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated August 17th, 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. Gary Langevin (229 Nyes Lane Acushnet, MA 02743) presented the petition on behalf of Mr. Pedro Rodriguez (401 Ashley Boulevard Apt. 1N New Bedford, MA 02745), also present at the meeting. Mr. Langevin began by explaining they are before the board for an additional parking spot for a barber shop. He explained a barbershop previously existed at the location since the 1960's. He indicated that they propose to add an additional chair in order to have two barbers working at the location and therefore need an additional parking spot. Mr. Langevin spoke about parking on the east and west sides of Ashley Boulevard.

Mr. Walsh asked the location of the existing designated parking spot. Mr. Langevin explained the parking spot is on Ashley Boulevard. Mr. Walsh clarified and confirmed with Mr. Langevin that there

are no existing parking spaces related to the building and they are seeking a variance for two parking spaces. Mr. Langevin stated there is one designated parking space and they are required to have two. He further continued by stating, there is no off-street parking spaces for the residents or the business. There was some confusion about the location of the "designated parking spot" to which Mr. Langevin was referring. He indicated it was "on the street with a sign that says one-hour parking," and explained he assumed it was put there for the previous barbershop.

Mr. Walsh stated in his understanding then that there is no designated parking spot. Mr. Tavares informed the petitioner that the board cannot designate any parking spaces for the business. He explained that the board can let the business operate without parking spaces. Board members briefly discussed what the petitioner was requesting of the board. Mr. Walsh stated he understood the petition is for relief from the parking requirements as they cannot designate parking spots. Board members indicated agreement with Mr. Walsh's statement.

Mr. Schilling asked, when had the location last been used as a barbershop and what is it now? It was determined by Mr. Langevin and a member of the audience that it was approximately five years ago. Mr. Langevin described the storefront as vacant but informed the board they have been paying rent there since June.

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 then invited to the podium anyone wishing to speak in opposition of the petition. Mr. Jose Torres (401 Ashley Boulevard New Bedford, MA 02745), stated he has been a resident in the building for four years. Mr. Torres explained next door to the proposed business is Nuno's Auto Sales. He explained that he and the owner of Nuno's Auto Sales got into a physical altercation over parking in front of the house. He expressed that at 6pm the business next door is supposed to be closed but there are cars parked all over the street and that therefore there is no parking when he comes home from work. Mr. Torres went on to state that the previous hair salon business in the house did not have the appropriate permissions from city hall based on his own investigation. Mr. Torres noted that a car has been parked in front of the house for 6-7 months and that the abutting business parks cars all over the street, leaving no places for the residents to park. Mr. Torres acknowledged it is fine to open a business but he does not agree with a designated parking spot. Mr. Torres asked the board about the fairness of designating a spot for customers when there are tenants who live in the building who need to park when they come home from work.

Mr. Walsh again stated that the board would not designate [on-street] parking. Mr. Schilling asked if Mr. Torres concern was that the spot out front would be designated for the barbershop? Mr. Torres confirmed by saying yes. Mr. Schilling reiterated that the board cannot designate the parking space out in front.

Mr. Torres stated he had not gotten any notice in the mail and would not have known about it. He explained that Mr. Rodriguez told him about the meeting. He stated that he has nothing against Mr.

Rodriguez opening a business, but when he arrives home from work he wants a parking spot. He stated that a judge had told Nuno not to have his customers park in front of Mr. Torres' building.

Mr. Walsh again reassured Mr. Torres that the board would not designate any parking spots for the barber shop. He inquired as to whether Mr. Torres would be more comfortable if the proposed barber shop only operated for certain hours. Mr. Torres stated sure, like Nuno's auto shop is supposed to operate from 8:00 – 6:00 Monday thru Friday, and Saturday 8:00 – 4:00, and he knows because he used to work there. He stated cars were parked on the side walk and music blares until 2:00am. He was concerned that the barber shop will do the same thing. He stated he lives on the second floor and he sees everything, and when he complains he is "the snitch, the rat, and the bad guy." He stated he is tired, but if he does something against them he will lose everything, because he is Section 8. He expressed he can't do anything but take them to court like he's been doing with Nuno's Auto Sales. Mr. Walsh indicated the discussion is about parking. Mr. Torres expressed that is what he is talking about, as he stated he had come to city hall seven times and was told they can't do anything. He suggested that's how the altercation with the gentleman named Nuno happened, that "it was over the parking."

Mr. Torres stated it was unfair to both himself and to the other five tenants of the building who were not notified of the meeting. He stated he doesn't care if Pedro has his business but when he comes home at a certain time or a certain day he better not catch nobody outside, because he's got kids and can't take them outside to ride a bike. He stated that the gentleman named Nuno has all his cars, all his friends, and all whatever you call it, all outside hanging around and that's next to the business this guy wants to open up.

Mr. Schilling asked, is your problem really with Nuno's business next door? In response to Mr. Schilling, Mr. Torres stated his concern is with the parking and any more problems from the barber shop. Mr. Torres stated that it isn't even a barbershop yet and he sees the in and out nonsense. He further expressed, that he knows what goes on in society and the board members don't. He explained that before Mr. Rodriguez, there was prostitution downstairs, which is when he came to city hall to stop it. He stated there were "dudes knocking at his door". Mr. Walsh asked Mr. Torres to contain his comments to the topic of parking. Mr. Torres asserted his comments are in regards to parking and that's why he's here.

Mr. Schilling had questions about the one-hour parking sign. Mr. Torres stated that from the pole to the bus stop is no parking, and Nuno took out the sign and it's behind his shed. He stated he does not care about Mr. Rodriguez business, but pays rent and does not want designated parking.

The board members stated that does not mean designated parking and reiterated that they cannot designate parking.

Ms. Gonet explained that the street sign is issued by a different city board. Mr. Torres stated he had already spoken to the traffic commission. When reminded that was not this board, Mr. Torres stated that everything leads to something and no one will tell him where he is going to park.

Mr. Walsh stated the board understands Mr. Torres position that he does not want any designated parking spots. Acting Chair Schick further stated that the ZBA does not have that power and noted that the board will only determine whether Mr. Rodriguez can operate a business without having the requirement for parking. Or in other words, said Acting Chair Schick, as a business he normally would need to provide parking for his customers but he is asking, can I open my business without having to have specific places for parking? That's the reason the petitioner is seeking relief before the board; it is not to request a sign to say "this is my parking area" he explained.

Mr. Torres stated he has no problem with that but expressed concern about the closing time of the business and number of employees. In response to Mr. Torres, Mr. Walsh stated the board may be able to address the hours of operation.

In response to Acting Chairperson Schick's further invitation to speak or be recorded in opposition, Ms. Tammy Cummings (401 Ashley Boulevard New Bedford, MA 02745) stated she lives on the third floor and she does not want any sign that says they can't park there. She explained they had issues with the one hour parking sign and the massage parlor previously located at the property calling the cops about her parking there when she had just gotten out of work. She stated Mr. Rodriguez can use the large area in front of Nuno's for parking for his business.

Mr. Schilling asked the petitioner about the anticipated hours. In a brief discussion with the board Mr. Langevin and Mr. Rodriguez confirmed operating hours of 8:00am – 5:00pm, closed Monday and Sunday, open Tuesday-Saturday.

Mr. Langevin apologized for his use of the wrong terminology and advised the board that he and Mr. Rodriguez wished to open the business without the available parking at this time. The board members agreed they all understood there is no parking spot designation. In response to a question posed by Acting Chair Schick, Mr. Langevin stated that the petitioner was expecting mostly walk-in business.

Mr. Torres stated Mr. Rodriguez is his neighbor, he has nothing against him and he wants him to succeed in life, but he does not want customers parked in front of his house when he gets out of work.

No one else in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

With no further questions or concerns, Acting Chair Schick closed the public hearing and opened the floor for discussion amongst board members.

Board members briefly discussed conditions of the approval to the days and hours of operation. The board confirmed with the petitioner that Tuesday-Saturday 8am-5pm was agreeable to him. Mr. Schick stated there will be no customers after 5pm. Board members indicated their readiness to vote.

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 the circumstances are that the building takes up the entire lot, leaving no room for additional parking space. The Board found the hardship is that literal enforcement of the ordinance would effectively prevent any new business from operating a business out of that property.

- 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 401 Ashley Boulevard, assessor's map 108, lot 314 in a mixed-use-business [MUB] zoned district. To allow the petitioners to operate a barber shop 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. Walsh and seconded by Mr. Tavares, as follows, to approve the variance to allow the petitioner, Santo P. Rodriguez and Pedro Rodriguez, to operate a barber shop as plans filed, requiring a variance under provisions of Chapter 9 comprehensive zoning sections 3000, 3100, 3110

and 3130 relative to property located at 401 Ashley Boulevard assessor's map 108, lot 314 in a mixed use business zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9, sections 3000, 3100, 3110 and 3130, the board finds that in respect to these sections, the criteria for relief has been met.

In addition to the foregoing sections, the petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10 relative to the granting of variances, because the board found 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 effect generally the zoning district in which the land or structure is located. These circumstances are that the building takes up the entire lot, and there is no room for additional parking on the lot. Additionally, 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; the ZBA noted literal enforcement would effectively prevent the petitioner from operating a business out of that location. The board found that 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 finds that the material presented is complete, and after its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the criteria on the basis of the requested relief.

Therefore, this motion is made and includes the following conditions:

- That the hours of operation be limited to Tuesday through Saturday, 8:00 a.m. to 5:00 p.m.,
- That the project be set forth according to plans submitted with the application, and
- 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.

After input from Mr. Romanowicz, Mr. Walsh stated he was making the motion with the understanding that this is a two chair barbershop. Mr. Langevin stated that is correct. Mr. Walsh and the board members decided to amend the motion. Mr. Walsh made a motion seconded by Mr. Schilling to include the condition:

- That the business operation is limited to a two chair barber shop.

On a motion by J. Walsh, seconded by H. Tavares to grant the requested Variance, the vote carried 4-0 with members H. Tavares, R. Schilling, J. Walsh, and L. Schick voting in the affirmative, no member voting in the negative. (Tally 4-0)

Filed with the City Clerk on:



John Walsh, Acting Clerk of the Zoning Board of Appeals

9/8/2016
Date