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City of New Bedford
ZONING BOARD OF APPEALS

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Registry of Deeds Use Only:

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

NOTICE OF DECISION

Case Number:	#4239			
Request Type:	Variance			
Address:	791-797 Purchase Street			
Zoning:	Mixed Use Business Zoned District			
Recorded Owner:	Miller Holding, LLC			
Owner's Address:	171 Mendell Road Rochester, MA 02770			
Applicant:	791 Purchase Street, LLC			
Applicant's Address:	401 County Street New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
June 23 rd , 2016	July 21 st , 2016	July 21 st , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
52	292	11647	350	

Variance under 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 791-797 Purchase Street, assessor's map 52 lot 292 in a mixed-use-business [MUB] zoned district. To allow the petitioners to operate a restaurant and bar establishment 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

Allen Decker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioners propose to operate a restaurant and bar establishment as plans filed, which requires a variance under 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 791-797 Purchase Street, assessor's map 52 lot 292 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 Farland Corp., dated June 22, 2016, stamped received by City Clerk's Office June 23rd, 2016.

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office June 23rd, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated June 30th, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated July 20th, 2016.
- Letter to ZBA from City Councilor Ward 4 Dana Rebeiro, City Councilor At Large Ian Abreu, and City Councilor At Large Debora Coelho, dated July 21st, 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 Ms. McTigue, 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 20th, 2016; Letter to ZBA from City Councilor Ward 4 Dana Rebeiro, City Councilor At Large Ian Abreu, and City Councilor At Large Debora Coelho, dated July 21st, 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.

Representative of the petitioner: Mr. Christian Farland (401 County Street New Bedford, MA), Principal Engineer and President of Farland Corp., presented the petition to the board on behalf of 791 Purchase Street, LLC. He described the property is located at 791 Purchase Street on the westerly side of the street, noting that it abuts the Salt Marsh property where Family Dollar is located on the south, Crush

Wine and No Problemo to the north and the Chamber of Commerce directly across the street to the east. Further, he stated it's important to note the Elm Street and Zeiterion parking garages are within a five minute walking distance of the site. The property is located in a mixed-use-business zoned district so the proposed use, he explained, is allowed by right. Mr. Farland continued, the site contains 9,281 sq. ft. and the building occupies the entire lot; which, he said, is why they were before the board for relief from parking standards. The applicant is looking to operate an 8,800 sq. ft. restaurant and music venue on the first floor and six residential apartments on the second floor. That use requires 68 parking spaces based on the City of New Bedford parking table. He reiterated, as previously mentioned the building takes up the entire lot, thus we have no parking and seek the entire 68 parking spaces for the relief. Mr. Farland made reference to other projects in the downtown area that also required parking relief recently and were granted relief. He described these projects as being a benefit to the city and as helping to revitalize the downtown area. This project he stated will be another great example if granted relief tonight.

In regards to the criteria necessary to grant relief Mr. Farland described first addressed the criteria regarding soil conditions, shape or topography which especially affect the land or structure in question. He stated that the shape of the building takes up the entire lot which plays into a part of that argument. Mr. Farland also discussed the soil conditions and noted that the only way to add parking to serve the use would be to drive underneath the building which, he noted was not far from ledge. If the variance was not granted this would pretty much make the lot valueless, Mr. Farland noted, which would create a hardship for the petitioners.

Mr. Farland expressed parking has been an issue for many years and is for any city. He stated he believes there is plenty of parking spaces downtown and people are starting to learning to park in the parking garages which still have ample parking. So, until those parking spaces in the parking garage are full, he noted he wouldn't understand why the Board wouldn't grant a variance for such parking relief.

He continued his presentation noting the presented project could be granted without a detriment to the public good or from the intent of the New Bedford zoning by-law. Mr. Farland concluded his presentation by asking if the board had any questions. He also noted the final interior plans were not finalized but without the relief the applicant doesn't want to spend any additional funds on complete construction drawings. The rough drawing, he indicated, could be provided to the board though the reason they are before the board is for the 68 parking spaces which maximizes the first floor for the restaurant and 6 residential units above, he explained. He explained to the Board that his goal was to be back before the Board again for this project to take off and suggesting the possible need for more of the basement space for development.

Ms. McTigue asked to clarify if the petition was for the first floor only. Mr. Farland said it is for the first floor and six residential units above. Ms. McTigue indicated the materials had it only as the first floor, so that would have to be a separate appearance before the board. Mr. Schilling asked if the petitioner could move forward without the six residential units included above. Mr. Farland explained they had included the income from the residential units on the pro forma. He called the Boards attention to the plans submitted which had the parking calculated for the 8,800 sq. ft and the 6 residential units and

that the application also states that. Chair Trahan asked if the petitioner needed to, would they be willing to come back before the board. Mr. Farland said, absolutely, if we had to.

Ms. McTigue asked if the petitioner planned on having valet parking. Mr. Farland said they are considering valet parking as the unique situation of having Sears Court, a 10 foot public way, to use for valet. Which, he explained they would need to get additional approvals with the traffic commission to utilize that. He further stated they are seeking additional funding to beautify that area if they can, to get some streetscape to it. Safety is also an issue there so we would want some more lighting there. He described it shoots right up to the Webster Bank building parking lot, which we will be using to provide valet. Ms. McTigue asked if they had an arrangement. Mr. Farland said they do. Ms. McTigue asked if deliveries will only be between 7am-8am. Mr. Farland stated most will be between those hours like the other businesses in the area.

Following the petitioner's testimony, Chair Trahan invited to the podium anyone wishing to speak in favor of the application. City Councilor Ward 4 Dana Rebeiro (260 Union Street New Bedford, MA) stated she is a resident of the downtown. She expressed she is excited about this project as the building has been vacant for some time and deserves a vibrant business in there. She further expressed the shows will bring not only people from New Bedford but from the outside as well; which is what the city wants, she said. She described as a downtown resident she has problems with parking all the time, but at night there is the Z parking and Elm Street garage. She stated she had spoken with Scott Downing, Traffic Commissioner, about whether or not the parking garages could absorb parking at night. She reported he said there is not a great deal of parking going on there at night. She then continued her comments noting that "these gentlemen are contributors to the city not only in their businesses but through their charity work; therefore, when someone supports our city," she said, she "likes to support them."

Mr. Chris Saunders (411 County Street New Bedford, MA) stated he thought it was a great revitalization of a vacant storefront. He noted that Mr. Farland's primary office is two properties over from his residence. He explained Mr. Farland has been professional to the neighborhood. He further expressed, even prior to his current location, Mr. Farland's business was across the street at Barrister Hall. Mr. Saunders noted he has always been respectful of the neighbors and neighborhood, and was sure he would be a great addition to this neighborhood. The following individuals were also recorded in favor: City Councilor Ward 2 Steve Martins (273 Shaw Street New Bedford, MA), Ms. Maureen Sylvia Armstrong (131 Elm Street Dartmouth, MA), and Mr. Robert Unger (38 Laurel Street Fairhaven, MA). No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

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, and opened the floor for discussion amongst board members.

Mr. Decker expressed he was confused about the interaction about what exactly the board was being asked to vary. He said the application states its proposed use is a restaurant business and has references to a residential use. He said, I don't think there's any real reason to make them come back. They'd be back if in fact the second floor became residentially used, they'd need parking at that time too, he said. He expressed it was confusing based on what the application said and what was presented at the meeting.

Chair Trahan asked Commissioner Romanowicz to explain to the board. Commissioner Romanowicz explained that the present time they are going for parking on the first floor. There is no parking there, he said. If they go for the second floor, there will still be no parking there, which is why he put the amount of spaces he does have there, he explained. So, if he does want to do the second floor he will need to come back before the board for a Special Permit under the Downtown Business Overlay district. Mr. Decker asked, so, we're not saving him a visit back for parking. Commissioner Romanowicz responded, no.

Mr. Decker asked Mr. Farland if he understood what was happening. Mr. Farland questioned if there was residential above, whether the project wouldn't need to come for a special permit? Commissioner Romanowicz replied if there is residential use above, you will have to come in for a Special Permit because it is in the Downtown Business Overlay district.

Mr. Schilling asked if there was a way to amend the application before us to include that. As that seems to say that there is no development in Downtown New Bedford and we might as well just shut it all off. He referenced there is another case just like this one coming before the board. He further commented that there are two big parking garages, and living downtown, he has never seen the top floors of the parking garages full. During the day they are pretty busy but it's like let's shut down New Bedford, he said. He asked, if there was a way to amend the application and cut the red tape.

Chair Trahan stated she would like to do that also, but as it was not advertised that way we're not allowed to.

Mr. Decker stated, the request this evening is for a variance and what we are hearing from Mr. Romanowicz is that for the residential use it's a special permit. Mr. Schilling indicated he understood and stated well, that's a separate thing.

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 in this case the structure completely fills the subject property. The board also found in this case the creation of on-site parking in order to meet the ordinance would be excessively expensive making it a substantial financial hardship.

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 791-797 Purchase Street, assessor's map 52 lot 292 in a mixed-use-business [MUB] zoned district. To allow the petitioners to operate a restaurant and bar establishment 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.

Mr. Decker made a motion, seconded by Mr. Schick, as follows, to approve the variance to allow the petitioner's to operate a restaurant and bar establishment as per the plans filed, requiring a Variance under chapter 9 comprehensive zoning sections 3000 (concerning general regulations), 3100 (concerning parking and loading), 3110 (concerning applicability), and 3130 (concerning the table of parking and loading requirements, Appendix C); relative to property located at 791-797 Purchase Street. Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning sections the board finds that in respect to these sections we're willing to grant relief from sections 3110 and 3130. In addition to the foregoing sections, this petition has also been found to be in accordance with Massachusetts General Law Chapter 40A section 10 relative to the granting of variances because the board has found: First, there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not generally affect the zoning district in which the land or structure is located. In this case the

structure completely fills the subject property. Second and that 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. In this case the creation of on-site parking in order to meet the ordinance would be excessively expensive making it a substantial financial hardship. Third that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. And that 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 with its careful consideration of the petitioner's request, the Zoning Board of Appeal finds that the petition satisfactorily meets the basis of the requested relief.

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

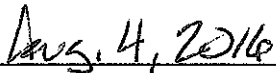
- a. That the project be set forth according to the plans submitted with the application.
- b. That the notice of decision be recorded at the Registry of Deeds and
- c. A building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of the decision.

On a motion by A. Decker, seconded by L. Schick to grant the requested Variance, 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:



Allen Decker, Clerk of the Zoning Board of Appeals



Date