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MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

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Registry of Deeds Use Only:

CITY CLERK
 2016 AUG - 4 A 9:35
 CITY CLERKS OFFICE
 NEW BEDFORD, MA

NOTICE OF DECISION

Case Number: #4240				
Request Type: Special Permit				
Address: 2883 Acushnet Avenue				
Zoning: Mixed Use Business Zoning District				
Recorded Owner: Evelyn F. Carvalho Realty Trust Evelyn F. Carvalho, Trustee				
Owner's Address: 232 Lawrence Street New Bedford, MA 02745				
Applicant(s): Candice Rego and Steven Costa				
Applicant's Address: 140 Sherman Street So. Dartmouth, MA 02748 and 44 Wing Road Acushnet, MA 02743				
Application Submittal Date	Public Hearing Date(s)			
June 23 rd , 2016	July 21 st , 2016			
Decision Date	July 21 st , 2016			
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
130B	244	3079	0150	

Special Permit under chapter 9 comprehensive zoning sections 4200-4267 (Body Art), and 5300-5326 & 5360-5390 (special permit); relative to property located at 2883 Acushnet Avenue, assessor's map 130B, lot 244 in a mixed-use-business [MUB] zoned district. To allow the petitioners to add permanent make-up and body art to the hair and nail salon 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 add permanent make-up and body art to the hair and nail salon as plans filed, which requires a Special Permit under chapter 9 comprehensive zoning sections 4200-4267 (Body Art), and 5300-5326 & 5360-5390 (special permit); relative to property located at 2883 Acushnet Avenue, assessor's map 130B, lot 244 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 Danson Surveying & Engineering, dated May 22, 1993
- Interior floor plan, drawn by unknown, dated May 6, 2016

Other Documents & Supporting Material

- Completed Petition for a Special Permit 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 & Community Development 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 petitioners: Mr. Steven Costa (44 Wing Road Acushnet, MA 02743), body art professional, and Ms. Candice Rego (140 Sherman Street So. Dartmouth, MA 02748), owner of Candi's Corner Salon, presented the proposal to the board. Mr. Costa explained that Ms. Rego was looking to add permanent makeup as a service at her salon. He further explained that currently in Massachusetts permanent makeup falls under body art licensing and that as such, the two were joining forces to make that happen.

Mr. Decker asked if the petitioner was aware of a recently passed ordinance in regards to Body Art, particularly related to screening. Mr. Costa noted that the body art would be located in a back room

and not visible through the front windows of the building. The Board members indicated he met the requirements.

Chair Trahan asked for clarification on what types of services were being proposed, questioning whether they were proposing space for tattoos or makeup. Mr. Costa stated the business would offer permanent makeup as well as tattooing. Ms. Rego confirmed and stated it "includes everything." Mr. Costa explained in order to do permanent makeup you have to obtain a tattoo license.

Mr. Decker asked to confirm that the use is an expansion of services within an existing business, that being a nail salon. After Ms. Rego's confirmation, Mr. Decker explained there is a one hour time differential between what they are currently doing at the salon and the time when body art is allowed to be done. He asked if they were aware of the one hour difference and if the petitioners were ok with a condition about that. Mr. Costa confirmed and stated the rule is not before 10am or after 10pm.

Mr. Costa did ask for clarification as to whether it would be allowed if he started someone at 8pm and they were struggling, continue and finish [after 10pm] as long as the sign is turned and door locked. Being unsure as to the answer to the question, the Board deferred the question to Commissioner Romanowicz who, as Zoning Enforcement Officer, bears responsibility for enforcement and interpretation. Commissioner Romanowicz stated "10pm is 10pm, it does not stretch to 11:30pm. 10pm is 10pm." So, Mr. Decker expressed the petitioner may want to make sure his later clients are veterans to the process to ensure he is done by 10pm. Mr. Costa agreed and stated he just wanted to be sure.

Ms. Trahan asked, what time the existing business closes at present. Ms. Rego stated the salon closes at 9pm or 10pm and that "it depends." Ms. Trahan opined that [the addition of the body art establishment] wouldn't be any different to the neighborhood. Ms. Rego agreed and noted the salon is next door to a restaurant that is open even later, remaining open until about 11pm. Mr. Decker observed that the existing business were on either side of the salon so the parking is in front. Ms. Rego explained that the nature of the business is that one is a dry cleaner that opens up early at 6 in the morning and depending on the day they close at 2pm or they are there until 5pm. Then we go all day, she said, and the restaurant clientele is later in the day. So, it works out really well. Mr. Decker inquired, so you don't expect a dramatic increase in parking need or load with your additional activity? Mr. Costa answered, no, because for the most part it'll just be one client at a time that will be getting worked on.

Mr. Schilling inquired, how much does a sleeve like that [referring to the artwork on the petitioners arm] cost? Laughter was heard in the room. Mr. Costa explained it depends on the number of hours that it takes to complete the work. Mr. Schilling asked for a range of price then. Mr. Costa stated anywhere from \$1,200-\$5,000. Mr. Schilling further inquired, "from wrist to elbow that's the cost?" Mr. Costa explained it really depends on the hours that go into it. He further explained he also does oil paintings and some take five hours others take thirty hours, its priced depending. Mr. Schilling thanked the petitioner for the explanation as he was curious.

Ms. McTigue confirmed with the petitioners that the business was setup already to be able to do this. They confirmed. She then asked about the disposal and delivery of the needles. Mr. Costa explained in tattooing there is a third party vendor with whom you contract to pick-up the dirty needle container. He further explained deliveries go to his house now as he's had an issue with deliveries at his location in Acushnet now. The delivery service has been showing up four hours before the business opens and then he doesn't get his supplies he explained. So, deliveries go to my house, he said. Ms. McTigue asked about the needle pickup. Mr. Costa explained that is done at the shop usually once a year. It depends on how quickly the container fills up. Ms. McTigue asked if the containers are in a locked state. Mr. Costa confirmed yes.

Following the petitioner's testimony, Chair Trahan invited to the podium anyone wishing to speak in favor of the application.

Ms. Kara Burba (44 Wing Road Acushnet, MA) read a letter from a client at the salon unable to attend. It read: "To Whom It May Concern, I'm writing this letter in full support of the pending decision of opening up a tattoo shop/body art industry inside of Candi's Corner Salon. I'm a client of Candi's corner salon. Last November I found out that I have breast cancer and there might be a slight chance that I would have my breast removed. I was talking with Steve Costa about nipple reconfiguration if I had to have one of my breasts removed. Fortunately, I did not have to have my breast removed and am now cancer free. The nipple reconfiguration takes a lot of time and talent and helps women who have lost a breast to cancer. It makes them feel like a woman again. That is why I am in full support and trust of the tattoo shop opening up inside of Candi's Corner. Please do consider their request for a license."

Ms. Pamela DeMello (4228 Acushnet Avenue New Bedford, MA) stated she is definitely in favor of Steve Costa coming aboard to do body art and permanent makeup for us [Candi's Corner]. She stated she has known Steve for a long time and knows his body art will enhance the business greatly.

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.

Mr. Decker asked the petitioners if they were ok with a condition being included regarding the limitation of the hour. Mr. Costa said yes, adding, he usually doesn't like going to work before twelve anyway. Laughter was heard in the room.

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 that the proposed use meets a need not currently served in the immediate community.
- *Traffic flow and safety, including parking and loading;*
 - The board has found the proposed use does not change or impact the existing traffic flow.
- *Adequacy of utilities and other public services;*
 - The Board has found that the proposal is neutral as to those issues.
- *Neighborhood character and social structures;*
 - The board found the proposed use does not negatively affect the character of the neighborhood.
- *Impacts on the natural environment;*
 - The Board has found that this proposal is neutral as to that issue.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board has found the use expands a small business in the City 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 below in Section 6.

The Board grants the Applicant's request for relief from chapter 9 comprehensive zoning sections 4200-4267 (Body Art), and 5300-5326 & 5360-5390 (special permit); relative to property located at 2883 Acushnet Avenue, assessor's map 130B, lot 244 in a mixed-use-business [MUB] zoned district. To allow the petitioners to add permanent make-up and body art to the hair and nail salon 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 Ms. McTigue, as follows, to approve the Special Permit to allow the petitioner to add permanent make-up and body art to an existing hair and nail salon as plans filed, requiring a Special Permit under chapter 9 comprehensive zoning sections 4200-4267 (concerning Body Art), and 5300-5326 & 5360-5390 (concerning special permit); relative to property located at

2883 Acushnet Avenue, assessor's map 130B, lot 244 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 sections 4200-4267, 5300-5326, and 5360-5390, particularly as it relates to the following conditions: the board has found that the petition is in compliance with sections 4210, 4212, 4220, 4230, 4250, and 4260. And, 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 that concerning section 5321 social, economic, or community needs which served by this proposal; the board found that the proposed use meets a need not currently served in the immediate community. Concerning 5322 on traffic flow and safety, including parking and loading; the board has found the proposed use does not change or impact the existing traffic flow. Concerning 5323 the adequacy of utilities and other public services; the Board has found that the proposal is neutral as to those issues. 5324 concerning neighborhood character and social structures; the board found the proposed use does not negatively affect the character of the neighborhood. 5325 concerning the impacts on the natural environment; the Board has found that this proposal is neutral as to that issue. 5326 concerning the potential fiscal impact, including impact on City services, tax base, and employment; the Board has found the use expands a small business 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.
- d. The permanent make-up and body art services shall not be performed before 10AM or after 10PM.

On a motion by A. Decker seconded by S. McTigue 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