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MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

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Registry of Deeds Use Only:

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

NOTICE OF DECISION

Case Number:	#4241			
Request Type:	Variance			
Address:	52 Union Street			
Zoning:	Industrial A Zoned District			
Recorded Owner:	Marder Management Corp.			
Owner's Address:	22 South Water Street New Bedford, MA 02740			
Applicant:	Moby Dick Brewing Company, Inc.			
Applicant's Address:	8 Village Road Lakeville, MA 02347			
Application Submittal Date	Public Hearing Date		Decision Date	
June 24 th , 2016	July 21 st , 2016		July 21 st , 2016	
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
47	37			13245

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 52 Union Street, assessor's map 47 lot 37 in an industrial-A [IA] zoned district. To allow the petitioners to undertake exterior and interior renovation to operate a brew pub and restaurant known as "Moby Dick Brewing Company" 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 undertake exterior and interior renovation to operate a brew pub and restaurant known as "Moby Dick Brewing Company" 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 52 Union Street, assessor's map 47 lot 37 in an industrial-A [IA] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Existing Site Location Plan, drawn by Field Engineering, dated 6/24/16.
- Plan Set, prepared by Caldwell Architectural Associates, date stamped received by City Clerk's Office June 24th, 2016 including:
 - Schematic Plans, dated 6/17/16:
 - SD 1.0 Basement Plan-Proposed
 - SD 1.1 First Floor Plan-Proposed
 - SD 2 Building Section-Proposed and West Side Elevation-Proposed
 - SD 3 South Elevation-Proposed and North Elevation-Proposed
 - Existing Conditions, dated 4/29/16:
 - EX0 Basement Plan-Existing
 - EX1 First Floor Plan – Existing
 - EX2 North Elevation, South Elevation, and West Elevation

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office June 24th, 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.

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 20th, 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: Attorney Christopher Saunders (700 Pleasant Street New Bedford, MA) addressed the board on behalf of Moby Dick Brewing Company. Attorney Saunders noted two members of the corporation were also present at the meeting, Mr. Bob Unger and Ms. Maureen Sylvia Armstrong. The other four individuals could not be at the meeting this evening, but wished that they were, he said. Attorney Saunders introduced the reason the petition was before the board, that being parking. He indicated the petition is similar to another case heard earlier in the evening, the difference being this petition requires less parking. This particular petition requires 47 spaces, he stated.

Attorney Sanders explained the petitioners are proposing to lease the first floor of 52 Union Street, owned by Marder Management. He described it as being located at the corner of South Water Street and Union Street, kitty-cornered to the Sundial building and across from the YMCA. The second floor would remain unchanged in terms of tenancy under the proposal. It's presently occupied by the executive offices of the YMCA and that's going to remain, he informed the board. Currently there is no parking and the vacant first floor which the petitioners intend to lease also has no parking, he stated. In his comments, Attorney Saunders stated that the entire block from Route 18 to South Water Street to Commercial Street to Union Street has zero open space and that as such, everyone on that block has no parking. He explained the lot and building are "L" shaped and the building comprises the entire lot, so the petitioners cannot comply with the parking or loading requirements. The petitioners are looking to do an entire build-out, work with the Historical Commission—in terms of preservation of the building, the type of windows that are going to be there, the type of signage, a certificate of appropriateness – and a total renovation. Attorney Sanders described the project as a unique project and a substantial investment by these investors into the City of New Bedford. It will be the first brew pub [in the city], he noted, akin to Providence's Trinity Brew House, he said. The petitioners will be brewing their own beer on-site, he informed the Board. He mentioned the petitioners will be going before the licensing board next week for a liquor license.

In light of this, Attorney Saunders indicated that because of the shape of the building and the soil conditions as there is ledge there, the petitioner is unable to comply with the parking requirements. If the petitioners were made to comply with zoning they would have to demolish part of the historical structure, which is not consistent with the city's zoning to preserve historic structures in the downtown, he stated. In the alternative, the petitioner would have to build a parking deck which would be extremely costly, Attorney Sanders asserted. There is a financial hardship, the soil conditions -the ledge, he said, and a question as to whether the building of a parking deck could even be done in that area. He further noted he had spoken with Traffic Commissioner Scott Downing, who said there is ample available parking space in both the Elm Street and Zeiterion garages as well as the lot owned by the Redevelopment Authority located at the corner of Union Street and South Water Street. He also emphasized, the City is trying to promote a walkable downtown. He made reference to Joe Jesus' car show happening downtown the same evening of the meeting as an example of people walking around downtown. This proposal is going to enhance that concept, he said, noting it's also going to revitalize a vacant space and going to improve that block.

In discussions between the petitioners, the whole area including Cork, Rose Alley, and new businesses are revitalizing that area; it is anticipated that this substantial investment is going to improve on that. Attorney Sanders concluded his presentation by asking for the board to approve the variance and welcomed any questions from the board.

Ms. McTigue asked where deliveries will be made. Attorney Sanders noted that the petitioners are going to try and utilize Commercial Street. Deliveries are hopefully going to be in the morning, he stated, noting that if one were to come downtown in the morning “you will see the liquor distributors and Sysco’s of this world try to get in and get out in the morning. We don’t have total control of when they are going to show up but what we’re proposing is, to go down South Water Street and back into Commercial Street”. Attorney Saunders stated the petitioners have had conversations with the owner of C.E. Beckman, Carl Beckman, who is in favor of this project. He commented that the deliveries are going to be “tough” on Union Street because now the city has bumped the sidewalk out, so the petitioners are going to try and use Commercial Street to do the deliveries.

Chair Trahan asked if there will be outside tables. Attorney Saunders noted the petitioners are proposing in their liquor license application to have outside tables, the exact location has yet to be determined, he explained.

Chair Trahan wondered aloud as to whether there might be a way for the City to allow parking at the state pier and for the businesses to provide valet services as it’s a perfect place to park cars. Attorney Sanders stated his understanding that the City is in negotiations for a lease of that property with the State but that the State didn’t seem agreeable to give up an asset at this time.

Ms. McTigue asked if the petitioners plan on providing valet services. Attorney Saunders said the petitioners had discussed it and that in the end it will be a business decision if valet will increase the clientele. If so, then they will move forward with valet service he said.

Chair Trahan stated Cork provides valet. Mr. Schilling asked—given the proximity of the YMCA [parking lot] being “right there”—whether later in the evening there could be parking there. Attorney Saunders stated he would hate to say they would utilize a neighbor’s parking lot when we don’t have permission. Mr. Schilling corrected, noting he meant they could ask for permission.

Chair Trahan asked about operational details including how many patrons and employees would be present and what the hours of operation would be. Attorney Saunders responded about fifteen (15) workers, hours roughly 11am to 2am were anticipated, but, clarified, more likely 10pm/11pm for the restaurant. The seating is intended for 94 but in terms of space occupancy it’s in excess of 100 total; roughly they anticipate 100 patrons per day, he said.

Mr. Schick asked how the petitioners would protect the residents at Plumbers Supply. Attorney Saunders said he believes that building is owned by Mr. Beckman. He said Commercial Street is a public street and they may own the very end of that road. Possibly they [Plumbers Supply] have an agreement of some sort with the city, but he was not sure. Attorney Saunders did note that although they couldn’t go out and tow cars, they have talked with the Chief of Police about increasing foot

patrols in the area and the whole downtown. He further expressed he wasn't sure if it was resident sticker parking or regular parking, but it's no different than the YMCA. If people go into the YMCA's parking lot they are going to be towed. Mr. Schick explained the parking lot behind the Plumber Supply building is owned by the building owner and each resident has an assigned number of spaces. In offering this information, Mr. Schick suggested he was just making the petitioners aware that if their customers start parking there they may receive some negative feedback from the residents. Attorney Saunders stated he wasn't sure if it was sticker parking or first come first serve for the residents but if it becomes a problem, then people will be towed.

Following the petitioner's testimony, Chair Trahan invited to the podium anyone wishing to speak in favor of the application. Ms. Maureen Armstrong (131 Elm Street Dartmouth, MA) and Mr. Bob Unger (38 Laurel Street Fairhaven, MA) were recorded in favor. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chair Trahan asked Attorney Saunders if there will be a function room or just the restaurant. He responded his understanding that it would just be the restaurant but that the restaurant could be utilized for functions.

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. 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 in this case the structure occupies the entire lot and the soil conditions are such that ledge would make any changes to the lots subsurface extremely expensive and difficult. In this case creation of on-site parking would require demolition of at least a portion of the existing building resulting in substantial hardship of a financial nature placing the project in jeopardy.

- 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 52 Union Street, assessor's map 47 lot 37 in an industrial-A [IA] zoned district. To allow the petitioners to commence exterior and interior renovation to operate a brew pub and restaurant known as "Moby Dick Brewing Company" 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 to commence exterior and interior renovation to operate a brew pub and restaurant known as "Moby Dick Brewing Company" 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 the applicability thereof), and 3130 (concerning the table of parking and loading requirements, appendix-c); relative to property located at 52 Union Street, assessor's map 47 lot 37 in an industrial-A [IA] zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning sections 3000 (concerning general regulations), 3100 (concerning parking and loading), 3110 (concerning the applicability thereof), and 3130 (concerning the table of parking and loading requirements, Appendix C) the board finds that in respect to these sections the board grants relief from 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 occupies the entire lot and the soil conditions are such that ledge would make any changes to the lots subsurface extremely expensive and difficult. 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 creation of on-site parking would require

demolition of at least a portion of the existing building resulting in substantial hardship of a financial nature placing the project in jeopardy. 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's finding 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:

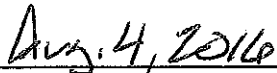
- a. That the project be set forth according to the plans submitted with the application.
- b. That the notice of decision be recorded at the Registry of Deeds and
- c. A building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of the decision.

On a motion by A. Decker, seconded by L. Schick to grant the requested Variance, the vote carried 5-0 with members A. Decker, R. Schilling, S. McTigue, L. Schick, 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