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*City of New Bedford*  
**ZONING BOARD OF APPEALS**

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 NEW BEDFORD, MA  
 2016 FEB 29 A 8:30  
 CITY CLERK

**NOTICE OF DECISION**

Case Number:		#4220		
Request Type:		Variance		
Address:		NS Meadow Street (NW corner of Meadow Street & Acushnet Avenue)		
Zoning:		Mixed Use Business Zoned District		
Recorded Owner:		DPM Development Corp.		
Owner's Address:		70 Lambeth Street New Bedford, MA 02740		
Applicant:		DPM Development Corporation		
Applicant's Address:		70 Lambeth Street New Bedford, MA 02740		
Application Submittal Date		Public Hearing Date		Decision Date
January 21 <sup>st</sup> , 2016		February 18 <sup>th</sup> , 2016		February 18 <sup>th</sup> , 2016
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
137	279	7901	120	

Variance under provisions of Chapter 9 Comprehensive Zoning, sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-b, minimum lot size & minimum frontage); relative to property located at NW corner of Meadow Street and Acushnet Avenue (also known as NS Meadow Street), assessor's map 137 lot 279 in a mixed-use-business [MUB] zoned district. To allow the petitioner to erect a 28' foot x 28' foot single family dwelling 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 February 29<sup>th</sup>, 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.

*February 29, 2016*  
Date

*Allen Decker*  
Clerk, Zoning Board of Appeals

## **1.) APPLICATION SUMMARY**

The petitioner proposes to erect a 28' foot x 28' foot single family dwelling as plans filed, which requires a Variance under provisions of Chapter 9 Comprehensive Zoning, sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-b, minimum lot size & minimum frontage); relative to property located at NW corner of Meadow Street and Acushnet Avenue (also known as NS Meadow Street), assessor's map 137 lot 279 in a mixed-use-business [MUB] zoned district.

## **2.) MATERIALS REVIEWED BY THE BOARD**

### **Plans Considered to be Part of the Application**

- Plan Set, date stamped received by City Clerk's Office January 21<sup>st</sup>, 2016 including:
  - Site Plan, drawn by SITEC, Inc. last revision date 1/16/15
  - Sheet A-1.0 – Proposed 3 Bedroom Dwelling, drawn by C.Moniz, last revision date 1/20/12

### **Other Documents & Supporting Material**

- Completed Petition for a Variance Form, stamped received by City Clerk's Office January 21<sup>st</sup>, 2016.
- Memorandum to ZBA from Steven D. Gioiosa, PE, dated January 19<sup>th</sup>, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated January 29<sup>th</sup>, 2016.
- Staff Comments to ZBA from City Planning Division, dated February 12<sup>th</sup>, 2016.
- Letter to ZBA from Clifton Hathaway, date stamped received by Planning Division February 18<sup>th</sup>, 2016.

## **3.) DISCUSSION**

On the evening of the February 18<sup>th</sup>, 2016 meeting board members: James Mathes, Allen Decker, Sherry McTigue, Debra Trahan, 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. Trahan, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated January 29<sup>th</sup>, 2016; the Department of Planning, Housing and Community Development, dated February 12<sup>th</sup>, 2016; the appeal packet; 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.

Chairperson Mathes then declared the hearing open.

Representative of the petitioner: Mr. Steven Gioiosa of SITEC, Inc. (449 Faunce Corner Road Dartmouth, MA) presented the petition to the Board. Mr. Gioiosa mentioned that Mr. Dan Moniz, Principal of DPM Development (70 Lambeth Street New Bedford, MA) was also present. Displaying an aerial photograph exhibit, Mr. Gioiosa described the site location and characteristics. He described the location as bordered by Acushnet Avenue on the east side and Meadow Street on the south side. He indicated the parcel is approximately 5,400 square feet in size, with 60 feet of frontage on Acushnet Avenue and 82 feet of frontage on Meadow Street. Mr. Gioiosa highlighted that the zoning on the site is Mixed Use Business which means the site could be used for a commercial use as of right, as it meets dimensional requirements for a commercial use. He detailed it could support a small commercial use similar to the other small business along Acushnet Avenue in the area. However, to be more compatible with the neighborhood, he explained that the petitioner seeks to develop a single family home on the site. There are many single family homes in the neighborhood; as such the petitioner felt it was the most compatible use for the neighborhood. He noted the dimensional requirements for a residential use are different from a commercial use. For a residential use the required lot size is 8,000 square feet and 75 feet of frontage, which this project does not have, he explained.

Displaying the site plan, Mr. Gioiosa described the proposal. He explained the project is in compliance with all residential setback requirements. He noted the footprint of the building allows for more green space on the lot, therefore the proposal exceeds the requirements for green space and lot coverage. He also commented that a residential proposal allows for more green space to be retained than if it were developed in a commercial fashion. He stated they believe the proposal has compatibility with the neighborhood as a residential use and a low intensity structure. He noted a different proposal was before the Zoning Board of Appeals a few years ago for a larger building footprint with driveway access onto Meadow Street. Based on feedback at that time from neighbors, the petitioner has relocated the proposed driveway access onto Acushnet Avenue.

Mr. Gioiosa then detailed how the petition meets the criteria to grant the variance. He described the uniqueness of the lot as an undeveloped commercial lot in a developed commercial area, the uniqueness being further magnified by the topography of the land. The land was described as sloping westerly from Acushnet Avenue with significant grade change from Acushnet Avenue on the east of the lot to the west border of the property. The significant topography of the lot created a hardship for a commercial development, he explained, because it would require significant land alterations such as land filling, building retaining walls, and greater lot coverage to provide for ADA access to a commercial building. He noted aesthetically the residential development of the site would be a better fit for the neighborhood.

In continuing his presentation and using the site plan for reference, Mr. Gioiosa demonstrated the proposed house is positioned so that less grading changes would be made to the site. He explained it does not take away from the intent of the ordinance as the purpose is to control density of an area and intensity on the site. He noted that while the required green space for an 8,000 square foot lot would be 2,800 square feet, this proposal would have 3,300 square feet of green space maintained. He noted the proposal has less intensity and less activity on the lot than a potential commercial use would.

Lastly, using the aerial image exhibit, Mr. Gioiosa pointed out the building footprint was to scale superimposed on the lot. Comparing it in the image to other structures in the neighborhood, Mr. Gioiosa described the home as modest in size. He expressed it is comparable and smaller than the direct abutters and fitting within the district.

Ms. McTigue noted a communication had been received from an abutter in the Board member packets. Mr. Decker made a motion, seconded by Ms. McTigue, to receive and place on file correspondence from Mr. Clifton Hathaway; date stamped received February 18<sup>th</sup>, 2016. With all in favor the motion carried.

Mr. Schilling asked, about who is going to live in the home. The petitioner indicated the house will be put on the market for sale.

Following the petitioner's testimony, Chairperson Mathes 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.

Chairperson Mathes invited to the podium anyone wishing to speak in opposition of the petition. Mr. Alex Oliveira (4371 Acushnet Avenue New Bedford, MA), north side abutter to the proposal, stated his opposition to the proposal. He noted there is an easement on the west side of the property where there is a concrete driveway and a line of trees. He stated there is a water issue in the area of the easement and the trees there absorb some of the water when it rains. He stated he has had to do a lot of work at his property due to complaints from the abutters in the rear about water in their basements. He noted the land slopes from the north and the east, so water runs from both directions to these properties, and it is a major issue for the neighborhood. Therefore, he expressed concern for increased water runoff once trees were removed from the lot. He also stated a concern the property might not sell, noting properties for sale without any buyers within the surrounding area. He further expressed his concerns for traffic safety as a corner lot with a driveway off Acushnet Avenue. No one else in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Ms. McTigue noted the plans show no planned building in the easement area. Ms. Trahan noted she had concerns about the water issue.

Chairperson Mathes offered an opportunity for rebuttal from the representative of the petitioner. He specifically asked the representative to address the concerns about the water runoff issue. Mr. Gioiosa wished to address the four points raised by the abutter. He confirmed that the easement area on the western edge of the property will remain undisturbed. In regards to the concern about drainage, Mr. Gioiosa explained all the roof drains will be directed into a recharge system. He further explained the Department of Public Infrastructure [DPI] requires such a system for all new construction of single family residential properties in the city. It was noted that this system would prevent overflow drainage onto an abutter's property and instead, channel it into the city overflow system, he explained. The adequacy of the recharge system will have to be demonstrated to DPI for the roof runoff he indicated. In terms of drainage towards the neighbor to the north, Mr. Gioiosa demonstrated, using the displayed

site plan, the grading and retaining wall was designed such that the runoff will be directed with the contouring of the land southwesterly to the recharge system to be located in the rear directly behind the dwelling. In regards to traffic concerns, Mr. Gioiosa stated that the residential use would produce less traffic than a commercial use in the same area.

Chairperson Mathes offered an opportunity for rebuttal for Mr. Oliveira. Mr. Oliveira declined the opportunity for rebuttal.

Ms. McTigue asked if the petitioner planned on retaining any of the existing trees on the site. Mr. Gioiosa pointed out on the site plan the limits of the work, stating they plan to leave approximately 10 feet to the existing driveway in the rear undisturbed.

Chairperson Mathes stated the City Planning Staff Comments suggested a landscape plan be developed in consultation with Planning Staff prior to receiving their building permit. He asked if the petitioner was amenable to such a condition on the approval. Mr. Gioiosa stated he thought that to be a reasonable request. Chairperson Mathes explained to Mr. Oliveira the reason for the condition was to retain as many trees as possible and other plantings to address water runoff concerns. Mr. Oliveira indicated understanding and alerted the Board to a concern for some rotting trees near his property.

With no further questions or concerns, Chairperson Mathes closed the hearing, and opened the floor for discussion amongst board members. The Board 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 topography of the lot would require significant grading to support a commercial use and that the proposed residential use would result in much less of a grading need. The Board found the hardship to be related to the extensive land alteration, significant additional lot coverage by the building that would be necessitated for any commercial use; compounding this would be due to ADA compliance, much less green space would be possible than that which has been proposed by the petitioner.

- b.) *That desirable relief may be granted without substantial detriment to the public good;*

The Board found that sufficient information and testimony had been given to determine that granting the required relief would not result in substantial negative impact 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 the impact of the dimensional relief would be minimal, and would not substantially derogate from the intent of the zoning ordinance.

#### **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 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-b, minimum lot size & minimum frontage); relative to property located at NW corner of Meadow Street and Acushnet Avenue (also known as NS Meadow Street), assessor's map 137 lot 279 in a mixed-use-business [MUB] zoned district. To allow the petitioner to erect a 28' foot x 28' foot single family dwelling as plans filed.

#### **6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY**

- a. That a landscaping plan be developed in consultation with the Planning Division as part of the permitting process;
- b. The project shall be set forth according to plans submitted with the application, with conditions;
- c. The applicant shall ensure that a copy of this decision, bearing the certification of the City of New Bedford Clerk's Office, is recorded in the Registry of Deeds;
- d. The rights authorized by the granted Variances must be exercised, by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date they were granted or they will lapse.

#### **7.) 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.

On a motion by A. Decker, seconded by D. Trahan to grant the requested Variance, the vote carried 5-0 with members D. Trahan, R. Schilling, S. McTigue, A. Decker, and J. Mathes voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

February 29, 2016

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals