



ZONING BOARD OF APPEALS

City Hall, Room 303
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New Bedford, MA 02740
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Registry of Deeds Use Only:

CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION


Case Number:		#4204		
Request Type:		Special Permit		
Address:		269 Maryland Street/904 Ashley Boulevard		
Zoning:		Mixed Use Business Zoned District		
Applicant:		Heather Brito		
Owner:		Felisbina Coelho		
Applicant Address:		47 Charlotte Street New Bedford, MA 02745		
Owner Address:		269 Maryland Street New Bedford, MA 02745		
Application Submittal Date		Public Hearing Date		Decision Date
August 17 th , 2015		September 17 th , 2015		September 17 th , 2015
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
127C	81	9413	48	

Special Permit under Chapter 9, Comprehensive Zoning Sections 2200 (Use Regulations), 2210 (General), 2230 (Table of Use Regulations-Appendix-A, #20-Medical Offices, Center, or Clinic), and 5300-5330 and 5360-5390 (Special Permit); relative to property located at 269 Maryland Street / 904 Ashley Boulevard, Assessor's Map 127C, Lot 81 in a Mixed Use Business zoned district. To allow the petitioner to relocate her outpatient therapy practice to this location as plans filed.

Action: Denied, for the reasons set forth 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 30th, 2015. 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.

9-30-2015
Date


Acting Clerk, Zoning Board of Appeals

CITY CLERK
2015 SEP 30 P 12:08
CITY CLERK'S OFFICE
NEW BEDFORD, MA
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1.) APPLICATION SUMMARY

The petitioner is proposing to relocate her outpatient therapy practice to this location as plans filed, which requires a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200 (Use Regulations), 2210 (General), 2230 (Table of Use Regulations-Appendix-A, #20-Medical Offices, Center, or Clinic), and 5300-5330 and 5360-5390 (Special Permit). The petition is relative to property located at 269 Maryland Street/904 Ashley Boulevard, Assessor's Map 127C, Lot 81 in a Mixed Use Business Zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan, drawn by Civil Tech Inc., Stamped Received by City Clerk's Office August 17th, 2015

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, Stamped Received by City Clerk's Office August 17th, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated August 28th, 2015.
- Staff Comments to ZBA from City Planning Division, dated September 14th, 2015.
- Letters in support, submitted by the petitioner, date stamped received by City Planning Division September 16th, 2015.
- Petition in opposition, submitted by Mr. Peter Gomes, received by the Board September 17th, 2015
- Photo submitted by Mr. Peter Gomes, received by the Board September 17th, 2015.

3.) DISCUSSION

Board Members: L. Schick, J. Walsh, R. Schilling, and H. Tavares were present on the evening of the public hearing. City of New Bedford Staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services), Kreg Espinola (City Solicitors Office), and Jennifer Gonet (Assistant Project Manager Planning) were present during proceedings for the subject case review.

Mr. Walsh, acting Clerk, motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated August 28th, 2015; the Communication from the Office of City Planner dated September 14th, 2015; 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. Motion seconded by Mr. Schilling. With all in favor, the motion carried.

Acting Chairperson Schick then declared the hearing open.

Representative of the Petitioner: Mr. Stuart Clarke (124 Paddleford Street Berkley, MA), of Civil Tech Engineering, presented the petition to Board. Mr. Stuart explained the property currently is a ranch style house with a hair salon and residential unit, and prior to that it was an insurance office. Addressing the criteria for a special permit Mr. Clarke expressed, the proposal is to make it an

outpatient therapy practice, which is in the character of the neighborhood. The service Ms. Brito provides serves a community need, utilities will not be impacted by the minor improvements at the property, no environmental impacts, and the use as commercial will increase the tax base. There is one parking space on site. The concerns about parking, raised at a recent Planning Board meeting, are being addressed as the petitioner has sought a memorandum of understanding (MOU) with New York Buffet restaurant to lease parking spaces in the restaurant parking lot directly across Maryland Street.

The petitioner: Ms. Brito (47 Charlotte Street New Bedford, MA) read a statement she had prepared. In her remarks Ms. Britto addressed the type of individuals and the type of therapy she provides in her private practice and clarified her previous employment with other entities. Ms. Britto stated her private practice does not see high risk or dangerous clients, only high functioning low risk clients as an outpatient practice. In her previous employment, Ms. Brito worked with high risk individuals at an in-patient facility. The proposed practice is outpatient, not in-patient treatment. Ms. Britto also expressed she is willing to remove Sunday from her hours of operation. Her current practice is in New Bedford. In order to expand the practice with one additional therapist she seeks to purchase the subject property. Ms. Britto cited statistics related to mental health as an indication of the need for her services in the city. She expressed she has a unique specialty as the only sand play therapist in Massachusetts. The practice will see between six to ten clients per day.

The Board asked for clarification of the proposed hours of operation, number of therapists employed at the site, the parking, if any medicines will be prescribed at the property, and the uses at the directly abutting properties. The hours of operation were stated to be: Monday through Thursday 9am-9pm, Friday 8am-5pm, and Saturday 8am-2pm. The practice would see six to ten clients per day, have two therapists, and neither Ms. Brito nor the other therapist is a prescriber. A memorandum of understanding to lease four (4) parking spaces with the restaurant across the street was being drafted by a lawyer at the time of the hearing. It was noted by the Board that the direct abutters to the subject property are residential in use.

Following the petitioner's testimony, Acting Chairperson Schick invited to the podium anyone wishing to speak in favor of the application: Mr. Walter Viotti (56 Washington Street Fairhaven, MA), Ms. Alice Tatro (2 Granite Post Lane, N. Dartmouth, MA), Mr. Charlie Lemieux (235 Middle Street Middleboro, MA), Ms. Tammy Williams (190 Hathaway Street Wareham, MA), Ms. Katie Brown (242 Hathaway Road Acushnet, MA), Mr. Mark Brown (242 Hathaway Road Acushnet, MA), and Ms. Jen Rose (53 Railroad Avenue Taunton, MA) spoke in support of the petition. Those recorded in favor spoke about the type of therapy Ms. Britto provides, the types of individuals whom she treats, and the need for the service in the area. Those in favor spoke specifically about the post trauma therapy service provided to individuals such as first responders, nurses, police, and other individuals with personal trauma. Those in favor also spoke about a minimal impact of the business at the site. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Mr. Walsh made a motion to receive and place on file the packet of letters in support date stamped received by City Planning September 16th, 2015, motion seconded by Mr. Schilling. With all in favor motion passed.

Acting Chairperson Schick invited to the podium anyone wishing to speak in opposition of the petition: Mr. Peter Gomes (245 Maryland Street New Bedford, MA), Ward One City Councilor James Oliveira (39 Briarwood Drive New Bedford, MA), Ms. Dolores Couto (261 Maryland Street New Bedford, MA), Mr. Wayne Kilanowich (220 Appleton Street New Bedford, MA), Ms. Carol Cesolini (912 Ashley Boulevard New Bedford, MA), Mr. Mark Rossi (211 Maryland Street New Bedford, MA), Mr. Robert Rossi (209 Adelaide Street New Bedford, MA), Mr. Idalecio DeSousa (281 Raymond Street New Bedford, MA), Ms. Beth Kilanowich (220 Appleton Street New Bedford, MA), Constance Yates (201 Maryland Street New Bedford, MA), Ray Yates (1007 Monmouth Street New Bedford, MA), At Large City Councilor Linda Morad (4162 Acushnet Avenue New Bedford, MA), Ms. Margaret Ryan (132 Worcester Street New Bedford, MA), and Mr. Robert Bourgeois (162 Appleton Street New Bedford, MA) spoke in opposition of the petition. Those in opposition expressed concerns for parking, increased traffic, safety, hours of operation, and the expansion of the commercial use at the site from mixed residential/commercial to a completely commercial use at the property. Specifically, in regards to parking, those in opposition expressed concerns that the one parking space onsite is too small for vehicles and described on-street parking near the corner as dangerous. Those in opposition described the character of the neighborhood as residential and had concerns for commercial activity extending into the residential area. No one else in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Mr. Gomes submitted a petition in opposition from individuals of the neighborhood. Mr. Walsh made a motion to receive and place on file the petition signed by thirty-one individuals received by Board at the meeting, motion seconded by Mr. Schilling. With all in favor motion passed.

Mr. Gomes submitted a photo of the parking space on the site. Mr. Walsh made a motion to receive and place on file the photo received by Board at the meeting, motion seconded by Mr. Tavares. With all in favor motion passed.

Acting Chairman Schick offered an opportunity for rebuttal to the petitioner. Ms. Brito addressed the board expressing that the property is currently a business, it previously was an insurance company, and this proposal it will remain a business with herself and one other therapist.

Acting Chairman Schick offered an opportunity for rebuttal to a representative of those in opposition: Mr. Gomes addressed the Board and expressed the proposed use as a medical facility does not fit in with the residential character of the neighborhood.

With no further stated questions or concerns, Acting Chairperson Schick declared the hearing closed.

The Board Members discussed the criteria necessary to grant amongst themselves.

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 does not outweigh 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 the proposal serves the community need for mental health services.
- *Traffic flow and safety, including parking and loading;*
 - The Board found the proposal to be insufficient in off-street parking and granting the petition would have a negative impact on traffic flow and safety.
- *Adequacy of utilities and other public services;*
 - The Board found that the adequacy of utilities and other public service were neutral as proposed.
- *Neighborhood character and social structures;*
 - The Board found that proposal was not in conformance with the character of the neighborhood and existing social structures.
- *Impacts on the natural environment;*
 - The Board found the impacts from the proposal on the natural environment as neutral.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board found that the proposal was neutral in regards to fiscal impact.

5.) RELIEF

With respect to the relief requested by the Applicant, the Board has not been presented with sufficient information at the hearing to justify the relief described below,

The Board denies the Applicant's request for a Special Permit under Chapter 9, Comprehensive Zoning Sections 2200 (Use Regulations), 2210 (General), 2230 (Table of Use Regulations-Appendix-A, #20-Medical Offices, Center, or Clinic), and 5300-5330 and 5360-5390 (Special Permit); relative to property located at 269 Maryland Street/904 Ashley Boulevard, Assessor's Map 127C, Lot 81 in a Mixed Use Business Zoned district; to allow the petitioner to relocate her outpatient therapy practice to this location as plans filed.

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 **Denies**, the requested Special Permit.

On a motion by J. Walsh, seconded by R. Schilling to grant the requested Special Permit, the vote failed 1-3 with members R. Schilling voting in the affirmative, members H. Tavares, J. Walsh, and L. Schick voting in the negative. (Tally 1-3)

Filed with the City Clerk on:

9.30-2015

Date



John Walsh, Acting Clerk of the Zoning Board of Appeals