



**ZONING BOARD OF APPEALS**

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CITY OF NEW BEDFORD  
 JONATHAN F. MITCHELL, MAYOR

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 2015 SEP 10 A 9:15  
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 NEW BEDFORD, MA

**NOTICE OF DECISION**

<b>Case Number:</b>		#4193		
<b>Request Type:</b>		Administrative Appeal		
<b>Address:</b>		105 Rockdale Avenue		
<b>Zoning:</b>		Industrial B Zoned District		
<b>Recorded Owner:</b>		Amerco Real Estate Company		
<b>Owner Address:</b>		2727 North Central Avenue Phoenix, AZ 85004		
<b>Applicant:</b>		James J. Long and Ramon Mojica		
<b>Applicant Address:</b>		519 American Legion Highway Westport, MA 02790		
<b>Application Submittal Date</b>		<b>Public Hearing Date</b>		<b>Decision Date</b>
June 30 <sup>th</sup> , 2015		August 27 <sup>th</sup> , 2015		August 27 <sup>th</sup> , 2015
<b>Assessor's Plot Number</b>	<b>Lot Number(s)</b>	<b>Book Number</b>	<b>Page Number</b>	<b>Certificate Number</b>
18	69	10824	243-247	

Administrative Appeal under provisions of Chapter 9 Comprehensive Zoning relative to property located at 105 Rockdale Avenue, Assessor's Map 18, Lot 69 in an Industrial-B Zoned district. The petitioner is appealing a rejected building permit application.

**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 September 10<sup>th</sup>, 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.

Sept. 10, 2015  
 Date

*Allen Dukes*  
 Clerk, Zoning Board of Appeals

### 1.) APPLICATION SUMMARY

The petitioners filed an Administrative Appeal under Chapter 9, Comprehensive Zoning Section 5223 (to hear and decide appeals taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from any administrative officer under provisions of M.G.L. 40A subsection 7, 8, & 15. The petitioners are appealing a rejected building permit application on the belief that the installed signage on the building does not fall under the prohibited sign category; relative to property located at 105 Rockdale Avenue, Assessor's Map 18, Lot 69 in an Industrial-B Zoned district.

### 2.) MATERIALS REVIEWED BY THE BOARD

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

- Site Plan-ALTA/ACSM Land Title Survey, Surveyed by Brian J. Murphy, printed date 3/20/14
- UHALL Facility Imaging packet dated 7/8/14, including:
  - Page 17 – South Elevations
  - Page 18-South East Elevations
  - Page 15 – West Elevations
  - Page 16 – South West Elevations
  - Page 11-West Elevations

#### Other Documents & Supporting Material

- Completed Petition for an Administrative Appeal Form, Stamped Received by City Clerk's Office June 30<sup>th</sup>, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated July 10<sup>th</sup>, 2015.
- Staff Comments to ZBA from City Planner, Jill Maclean, dated August 21<sup>st</sup>, 2015
- Photos taken by City Planning Staff, dated August 21<sup>st</sup>, 2015
- Collection of photographs submitted by the Department of Inspectional Services, received by the Board August 27<sup>th</sup>, 2015
- Photos submitted by the petitioner, received by the Board August 27<sup>th</sup>, 2015.

### 3.) DISCUSSION

Board Members J. Mathes, A. Decker, R. Schilling, L. Schick, and J. Walsh were present on the evening of the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager) were present during proceedings for the subject case review.

A .Decker motioned to receive and place on file the following: communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated July 10th, 2015; communication from the Office of the City Planner dated August 21<sup>st</sup>, 2015; the appeal packet as submitted; the plan as submitted; 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, as well as a collection of photographs submitted by the Department of Inspectional

Services be received and placed on file by the Board August 27<sup>th</sup>, 2015. Motion seconded by J. Walsh. With all in favor, the motion carried.

Acting Chair Mathes then declared the hearing open.

Petitioners: Mr. Ramon Mojica (39 Tabor Street Quincy, MA), and Mr. James J. Long (519 American Legion Highway Westport, MA) presented their appeal to the Board. It was stated Mr. Mojica is the President of this UHaul facility and Mr. Long is a project manager for UHaul locations in the area in regards to construction.

Mr. Long explained the reason the petitioners were here is that the items installed on the building were deemed billboards. Mr. Long further explained they are appealing this determination on their belief that the signs installed are banners and not billboards. Mr. Long expressed that he has seen many banner signs throughout New Bedford which he characterized as enhancing the environment and landscape of the neighborhoods where they are. Mr. Long stated UHaul is friendly to the neighborhood and explained the signs face Rockdale Avenue and westerly. Mr. Long stated the western side of the building has soccer players because there are soccer fields in the area, which was taken into account for the design in order to enhance the neighborhood. The front of the building he explained is an image of a young lady. He reiterated again that they are banners. Mr. Long stated he understood that the code is up to interpretation and therefore he and Mr. Mojica are before the Board this evening as they feel the interpretation is incorrect, they feel they are banners not billboards.

Mr. Long submitted three photos to the board stating the photos were of banners on the Zeiterion theater, on poles at the bottom of Union Street, and some banners as seen in many places in the city. Mr. Decker made a motion to receive and place on file the photographs submitted by the petitioner, motion Seconded by Mr. Walsh, with all in favor the motion passed.

Mr. Long stated that banners are used for enhancement and to attract. Mr. Long explained various work completed at the property since the current owners purchased the building such as a new roof, repaired brick work, some of which still needs to be repaired. Mr. Long stated the only concerns expressed by the neighbors, whom they reached out to, was at the back of the building facing the neighborhood. [Mr. Mojica clarified that these concerns came from neighbors facing the Hemlock Street side]. Mr. Long stated they kept the character of the building on that side of the building, the structure has been fixed and they did not put anything up, as that was a concern of the neighborhood. Mr. Long stated there was no one in opposition this evening, which indicated the "banners" are not a problem to the neighborhood. Mr. Long reiterated he believed they are banners and not billboards. He said they are tastefully done and beautify the neighborhood.

Acting Chair Mathes asked the Board if there were any questions for the petitioners. Mr. Walsh confirmed with the applicant that the property is used as a storage facility. This was confirmed. Mr. Walsh asked the petitioner if the "banners" were related to the storage facility. Mr. Long stated the banners have soccer a player on one side, the other side says "you store" but doesn't say UHaul or anything like that on the front of it. He characterized this as being "tasteful" and that it "dresses up

the brick because some of the brick is beat-up.” Mr. Walsh stated on one side it does say something about “your storage”. Mr. Long said yes on front side it says “you store” but on the side it’s just kids kicking soccer balls. He reiterated that it was “tasteful” and didn’t include things like flashing lights, for example.

Mr. Decker asked the applicant if the intention is to cover up the bricks in disrepair then why not use a beige or solid color fabric? Mr. Long explained that UHaul has over the past few years, at all of their buildings, are to have incorporated the same type of branding. UHaul’s branding includes enhancing the building and each having a similar look. They try to bring some of the neighborhood into the design such as the blue wave painted at the base of the building. Mr. Mojica mentioned that building used to be Kaplan painting supply, and behind the banners is a paint image from that business. He explained they tried not to get rid of the painted image that was behind there. He further explained at all their other buildings they typically will prime and paint over the existing brick, but at this one they wanted to leave that existing building sign and show that this is what it was previously.

Mr. Decker questioned whether UHaul wasn’t also trying to attract the eye of a passerby. Mr. Long stated yes, absolutely. He explained that’s exactly why he submitted the pictures to the board, he asked the Board to look at the photo of the Zeiterion Theater. He stated they have four banners on that building to catch your eye to know what’s coming. So, he said yes the banners are to catch your eye. It’s a bit of everything, he stated, it’s reimagining, enhancing the neighborhood, and it looks nice. He indicated the photo submitted showing banners waiving in front of the neighboring business, Dominos, which is also to attract the eye and to attract business. Mr. Long stated he’s been a small business owner for thirty years, and they are the back bone of America. He explained UHaul started way back when as a small operation and now is a big operation. So, they come before the board to ask for a balance to ask if they believe these are billboard or banners.

Mr. Walsh stated he agreed the objects are banners and not billboards. He further indicated it was his understanding the applicant would still have to get a building permit for the banners. Mr. Long expressed the applicants are willing to work with the board in what is required. He expressed again the locations where banners are also seen in the city and that these are not billboards.

Mr. Schilling asked the board members whether billboards advertise something not on the premises. Mr. Walsh agreed saying yes, billboard advertising is generally advertising for something off site but he doesn’t see any advertising on these at the premises. Mr. Walsh stated he doesn’t think this is a billboard. Mr. Schilling concurred; he also believed these weren’t billboards. Mr. Mathes explained he drives by this property often. He stated he’s seen these types of banners in other cities and thought they are pretty cool. Mr. Mathes further explained he thought these banners were attractive and did make this particular part of the city look good. He stated on the technical aspects he felt they are banners. Mr. Schilling referenced the City Planning comments which indicated the Board is to determine in this case if the objects are billboards and therefore a prohibited sign type. Mr. Walsh said if that’s the issue then “we don’t have a billboard.”

Acting Chair Mathes suggested the board was a bit ahead of themselves and if they didn't have any more questions for the petitioner there were procedures that needed to be followed.

Acting Chair Mathes then 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.

Then Acting Chair Mathes 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 stated questions or concerns, Acting Chair Mathes declared the hearing closed.

Acting Chair Mathes asked for a reading of the motion and if need be the board can have further discussion before the vote is taken.

Mr. Decker made a motion to grant the administrative appeal, the motion was seconded by Mr. Schilling.

The Board discussed whether or not the applicant needed to apply for a building permit for the banners. Commissioner Mr. Romanowicz clarified that yes, the applicant would need to apply for a building permit. Mr. Walsh wanted to confirm the Board was not waiving any requirements for the building permit process. Acting Chairperson Mathes stated the Board is making a finding this evening on whether or not the signs in question are a billboard. There was a brief discussion to clarify the Board's understanding about the building permit process for sign types with Commissioner Romanowicz. There was a discussion for clarification purposes with Commissioner Romanowicz about the definition of a billboard under city code. Mr. Long interjected that the discussion was interesting but he respectfully asked the Board to vote on the petition as presented this evening. He requested the Board vote on whether or not the Board thought the banners were billboards. Chair Mathes stated that while he understood the petitioners' request when relevant information is brought to the Board's attention, such as the pictures submitted by the petitioner this evening, the Board should discuss it during the meeting. Chair Mathes stated that he thought it was a banner and indicated the material was not permanent in nature. Mr. Walsh confirmed that the applicant would still need to pull a building permit.

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#### **4.) FINDINGS**

The Board found that the items installed on the premises do not constitute a billboard or billboards.

#### **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.

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The Board grants the Applicant's request for an administrative appeal.

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

- a. The project shall be set forth according to plans submitted with the application;
- b. That 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; and
- c. That the rights authorized by the granted Administrative Appeal 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 Administrative Appeal.

On a motion by A. Decker, seconded by R. Schilling to grant the requested Administrative Appeal, the vote carried 5-0 with members J. Walsh, A. Decker, R. Schilling, L. Schick and J. Mathes, voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

Sept. 10, 2015

Date

Allen Decker

Allen Decker, Clerk

New Bedford Zoning Board of Appeals