



City of New Bedford Department of City Planning

133 William Street · Room 303 · New Bedford, Massachusetts 02740
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MAYOR
JON MITCHELL
PLANNING DIRECTOR
TABITHA HARKIN

PLANNING BOARD

September 5, 2019

Councilor Hugh Dunn, Chairman
Committee on Ordinances
133 William Street
New Bedford, MA 02740

RE: PROPOSED REZONING REQUEST
CASE #19-29 183 Washington Street (Map: 36 Lot: 378)

Dear Chairman Dunn:

This is to advise you of Planning Board action on Wednesday, September 4, 2019 regarding the proposed request for the rezoning of 183 Washington Street (Map: 36 Lot: 378) from the Residential B (RB) zone to Mixed-Use Business (MUB) zone. **The Planning Board sends an unfavorable recommendation for this proposal.**

At the hearing, Mr. David Sousa (150 Woodcock Road Dartmouth, MA) owner of 183 Washington Street presented the proposed rezoning request before the Board. Mr. Sousa explained that he had purchased the property last year, at which time it had an existing third floor apartment. In making improvements to the property he sought a building permit to add a second means of egress from the third-floor unit for fire safety. It was during an inspection for the second egress that he found out the unit was never permitted nor allowed in the Residential B zoning district. Subsequently he hired an attorney to investigate the matter and in speaking with the City he and his attorney were under the impression that a zoning change was the only way to make the third-floor apartment legal. Therefore, he sought to rezone the property to a zone in which three apartments would be allowed. It was recommended to them at the time to request the Mixed-Use Business zone (MUB) be extended from Dartmouth Street to this property.

No one spoke in favor or opposition of the request.

Board members discussed the proposed rezoning request and the comments received during the public hearing. Chair Duff explained that the board saw a few issues with this request: the site is surrounded by residential properties, there is a void between the property and the nearby Mixed-Use Business Zoned district, and the proposed residential unit would not need to be rezoned to be permitted.

Chair Duff highlighted that the City Planning Department Staff Report included a determination by the Commissioner of Inspectional Services, Danny Romanowicz, which explained that the property is an "existing non-conforming" property. This designation allows a property owner to seek a Special Permit through the Zoning Board of Appeals for structural changes to and/or use changes for existing non-conforming properties. Attestation from the Building department went on to explain that if the applicant seeks to create a third residential unit, the following permitting would be required, with or without the zoning change: from the Zoning Board of Appeal 1.) Special Permit – Nonconforming Use & Structures (under ordinance Section 2400) 2.) Variance – Parking requirements (under ordinance Section 3100) and from the Planning Board 3.) Site Plan Review – (under ordinance Section 5400 - New multiple-family residential construction of three (3) or more units or expansion of existing multifamily residential structures resulting in the creation of one or more additional units).

Ms. Tabitha Harkin, Director of City Planning, clarified that various City staff had originally suggested that rezoning the property would be the only option. However, upon further investigation and analysis it was discovered that the property qualified under the existing non-conforming section of the ordinance. Unfortunately, this was discovered after the request to rezone had been submitted.

As it does with all rezoning requests, the Planning Board's review included consideration of the following specific criteria to ensure its action is consistent with existing case law: **uniformity, consistency, surroundings, fiscal impact and discriminating benefit.**

The Board discussed their concern that if adopted as written this would be considered spot zoning due to the small gap between the existing MUB zone and the subject site. Further the board noted the applicant can seek permitting regardless of the zoning change.

After closing the public hearing, a motion was made in the affirmative to recommend that 183 Washington Street (Map: 36 Lot: 378) be rezoned from Residential "B" (RB) to Mixed-Use Business (MUB) in its entirety. **The motion failed on a vote of 0-5**, with no board members recorded in favor; board members A. Kalife, K. Khazan, P. Cruz, A. Glassman and K. Duff recorded in opposition.

As such the **Planning Board sends an unfavorable recommendation for this proposal.** Please find enclosed a copy of the Planning Division Staff Report regarding this matter for the Council's convenience and reference.

Sincerely,



Tabitha Harkin, LEED AP ND
Director of City Planning

encl. Staff Report

cc. John Mitchell, Mayor
Danny Romanowicz, Building Commissioner

Mickaela McDermott, City Solicitor
Dennis Farias, City Clerk



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MAYOR
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PLANNING DIRECTOR
TABITHA HARKIN

PLANNING BOARD

STAFF REPORT

REPORT DATE
August 22, 2019

PLANNING BOARD MEETING
September 4, 2019

Case # 19-29: REZONING
183 Washington Street
Map: 36 Lot: 378

Petitioner: City Councilor
Scott J. Lima, Ward 5
133 William Street, Rm 215
New Bedford, MA

Overview of Request:

The Planning Board reviews rezoning petitions as standard practice and provides a recommendation based on their findings to the City Council Committee on Ordinances.

This case requests the rezoning of **183 Washington Street** (Map: 36 Lot: 378) from Residential "B" [RB] to Mixed-Use Business [MUB] in its entirety.

Background:

New Bedford City Councilor Scott J. Lima, Ward 5 has put the rezoning request forward on behalf of the property owner Mr. David Sousa.

Planning staff has been informed the current owner acquired the property in November 2018. The rezoning proposal is requested as the property owner seeks to add a second means of egress for a third floor residential unit. However, the property is in a Residential B zoned district which allows for a maximum of two residential units. The requested Mixed Use Business District allows for the desired three residential units.

Existing Conditions:

The 183 Washington Street property, like other houses in the neighborhood, are primarily 2 family 2 story houses with some backyard green space. However, this property also includes a third-floor attic residential unit. Washington Street and the surrounding neighborhood just south and east of Dartmouth Street is a residential area with low traffic. The Dartmouth Street corridor begins at the intersection with Allen Street and extends to South Dartmouth. It is primarily zoned Mixed Use Business along both sides of the street (usually a lot or two deep) and is surrounded by Residential A, B,

183 Washington Street



and C zones. Most businesses in the area are located solely on Dartmouth Street. Currently 183 Washington Street is zoned as Residential B. A portion of the lot abutting the property to the west is zoned Mixed Use Business, the remaining portion is zoned Residential B. The building on the lot adjacent to this one faces Dartmouth Street and exists entirely within a Mixed Use Business zone.

Input from Other City Departments:

The rezoning request was distributed to City Clerk, City Solicitor, Health Department, Inspectional Services, Engineering, Public Infrastructure, Conservation Commission, Fire Department and School Department.

The Commissioner of Inspectional Services, Danny Romanowicz, has confirmed that the proposed project –to create a third residential unit – would not require a rezoning classification; however, would require multiple permit applications.

The Commissioner has confirmed this property qualifies as an existing nonconforming property under City Zoning Ordinance Chapter 9 Section 2400. This section of the ordinance allows the Zoning Board of Appeals to consider Special Permit Applications for structural changes to and/or use changes for existing nonconforming properties.

If the applicant seeks to create a third residential unit the following permitting would be required, (with or without the zoning change):

- 1. Zoning Board of Appeal**
 - a. Special Permit – Nonconforming Use & Structures (Section 2400)**
 - b. Variance – Parking requirements (Section 3100)**

- 2. Planning Board**
 - a. Site Plan Review – (Section 5400 - New multiple-family residential construction of three (3) or more units or expansion of existing multifamily residential structures resulting in the creation of one or more additional units.)**

It is important to note regardless of whether the zoning of the property changes the permitting would remain the same.

Any additional comments subsequently received from City Departments will be provided at the public hearing.

For Board Member Consideration:

A table comparing the uses permitted in the existing RB zone and proposed MUIB zone is available as an attachment (Attachment #1) to these comments.

MERITS

If the rezoning was to be adopted, twenty-six (26) new uses would be allowed. These uses include: multi-family townhouse (3 stories), multi-family mixed use (6 stories), Boarding House, nonexempt educational use, animal clinic or hospital, adult entertainment establishment, motel/hotel/inn, retail stores, grocery stores, big box retail, health clubs, mixed-use, live/work, motor vehicle sales and rental, motor vehicle light service, restaurant, restaurant-fast food, business or professional office, medical office/center/clinic, bank/financial institution, indoor commercial recreational, wireless communication facility, theater & auditorium, convention centers, and research and development testing laboratories.

If adopted no existing uses of the RB zone would be prohibited, only additional uses would become available.

The Dartmouth Street corridor, west of the site, is zoned mixed use business and has historically been a mixed commercial and residential corridor.

CONCERNS

The property is located mid-block within an established residential section of Washington Street. While, there are mixed use zoned properties used for business purposes within close proximity to this site, the site is directly surrounded by residential properties.

Further, the request would need to be amended slightly as the existing MUB district does not correlate exactly with the property boundaries but rather splits the lot of the adjacent property to the west. The adoption of this request would leave a small gap of RB zoning between the properties.

The some of the additional uses that would be allowed under the MUB district would not be compatible with a dense residential neighborhood.



Washington Street near site (white house on right) looking toward Dartmouth Street

Standards for Evaluating Rezoning Requests

The Planning Board has previously relied on the following criteria in its evaluation of other rezoning requests to ensure its action is consistent with case law:

- **Uniformity:** the extent to which the zoning change would resemble the surrounding zoning;
- **Consistency:** whether or not the parcel is being singled out for a zoning change;
- **Surroundings:** how the proposal would change the neighborhood;
- **Fiscal Impact:** what impact on local/city economic development the rezoning would have; an
- **Discriminating Benefit:** an assessment of whether the reclassification of a single parcel that allows a use beneficial to the property owner is made to the detriment of the neighbors or community-at-large.

Attachments:

1. Use Table Comparison
2. Written Motion by City Councilors: Scott J. Lima, Ward 5
3. Zoning Maps & Aerials

ATTACHMENT 1: USE TABLE

Provided below is an abridged version of the City of New Bedford Ch. 9 Appendix A – Table of Uses showing only the two zoning districts relevant to the subject request.

- Highlighted (green) uses would be newly permitted if the proposed rezoning were to be adopted.
- Items not highlighted remain unchanged
- Prohibited uses in either zoning district have been removed from the use table for clarity purposes

Table Key:

- Y** Yes, a permitted as of right use
- N** No, a not permitted use
- BA** Use allowed only through a Special Permit granted by the Zoning Board of Appeals
- CC** Use allowed only through a Special Permit granted by the City Council
- PB** Use allowed only through a Special Permit granted by the Planning Board

EXISTING:	
RESIDENTIAL B DISTRICT	
A. Residential Uses	
1. Single-family dwelling	Y
2. Two-family dwelling	Y
3. Multi-family townhouse (3 stories)	N
5. Multi-family mixed use (6 stories)	N
8. Boarding house	N
9. Group residence	BA
10. Assisted or Independent living facility	BA
11. Nursing or Convalescent home	BA
14. Animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of net area of the lot. Net area shall be determined by subtracting the gross ground floor area of all buildings and structures on the lots from the gross area of the lot plus any contiguous lots owned by the same party.	Y
B. Exempt and Institutional Uses	
1. Use of land or structures for religious purposes	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y
3. Child care facility (in existing building)	Y
4. Child care facility (not in existing building)	Y
5. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y
6. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y
7. Municipal facilities	Y
8. Essential services	BA
9. Cemeteries	Y
10. Hospital	Y

PROPOSED:	
MIXED-USE BUSINESS DISTRICT	
A. Residential Uses	
1. Single-family dwelling	Y
2. Two-family dwelling	Y
3. Multi-family townhouse (3 stories)	Y
5. Multi-family mixed use (6 stories)	PB
8. Boarding house	BA
9. Group residence	BA
10. Assisted or Independent living facility	BA
11. Nursing or Convalescent home	BA
14. Animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of net area of the lot. Net area shall be determined by subtracting the gross ground floor area of all buildings and structures on the lots from the gross area of the lot plus any contiguous lots owned by the same party.	Y
B. Exempt and Institutional Uses	
1. Use of land or structures for religious purposes	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y
3. Child care facility (in existing building)	Y
4. Child care facility (not in existing building)	Y
5. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y
6. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y
7. Municipal facilities	Y
8. Essential services	BA
9. Cemeteries	Y
10. Hospital	Y

Table continues on next page.

EXISTING:	
RESIDENTIAL B DISTRICT	
C. Commercial	
1. Nonexempt agricultural use	BA
2. Nonexempt educational use	N
3. Animal clinic or hospital; with ancillary animal boarding	N
4. Adult day care	BA
5. Family day care	BA
6. Large family day care	BA
7. Club or lodge, nonprofit	CC
8. Funeral home	BA
9. Adult entertainment establishment	N
10. Bed & Breakfast	BA
11. Motel, hotel or inn	N
12. Retail stores and services not elsewhere set forth	N
13. Grocery stores	N
14. Big Box Retail (60,000 Sq. ft. or greater)	N
15. Health clubs	N
16. Mixed use	N
17. Live /work	N
18. Motor vehicle sales and rental	N
19. Motor vehicle general repairs	N
21. Motor vehicle light service	N
22. Restaurant	N
23. Restaurant, fast-food	N
24. Business or professional office	N
25. Medical offices, center, or clinic	N
26. Bank, financial agency	N
27. Indoor commercial recreation	N
28. Outdoor commercial recreation	N
29. Wireless Communications Facilities	PB
30. Theatres and auditoriums	N
31. Convention Centers	N
32. Marijuana Retailer	N
D. Industrial Uses	
4. Research, development or testing laboratories and facilities	N

PROPOSED:	
MIXED-USE BUSINESS DISTRICT	
C. Commercial	
1. Nonexempt agricultural use	BA
2. Nonexempt educational use	Y
3. Animal clinic or hospital; with ancillary animal boarding	BA
4. Adult day care	BA
5. Family day care	BA
6. Large family day care	BA
7. Club or lodge, nonprofit	CC
8. Funeral home	BA
9. Adult entertainment establishment	CC
10. Bed & Breakfast	BA
11. Motel, hotel or inn	Y
12. Retail stores and services not elsewhere set forth	Y
13. Grocery stores	Y
14. Big Box Retail (60,000 Sq. ft. or greater)	BA
15. Health clubs	Y
16. Mixed use	Y
17. Live /work	BA
18. Motor vehicle sales and rental	CC
19. Motor vehicle general repairs	CC
21. Motor vehicle light service	CC
22. Restaurant	Y
23. Restaurant, fast-food	BA
24. Business or professional office	Y
25. Medical offices, center, or clinic	BA
26. Bank, financial agency	Y
27. Indoor commercial recreation	Y
28. Outdoor commercial recreation	BA
29. Wireless Communications Facilities	PB
30. Theatres and auditoriums	PB
31. Convention Centers	PB
32. Marijuana Retailer	N
D. Industrial Uses	
4. Research, development or testing laboratories and facilities	Y

ATTACHMENT # 2: WRITTEN MOTION FOR CITY COUNCIL

Planning Board



CITY OF NEW BEDFORD

CITY COUNCIL

August 15, 2019

WRITTEN MOTION

Requesting that 183 Washington Street (Plot 36/Lot 378) be rezoned from Residential "B" to MIXED-USE BUSINESS in its entirety. (To be Referred to the Committee on Ordinances and the Planning Board.)

Scott J. Lima, Councillor Ward Five

IN CITY COUNCIL, August 15, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

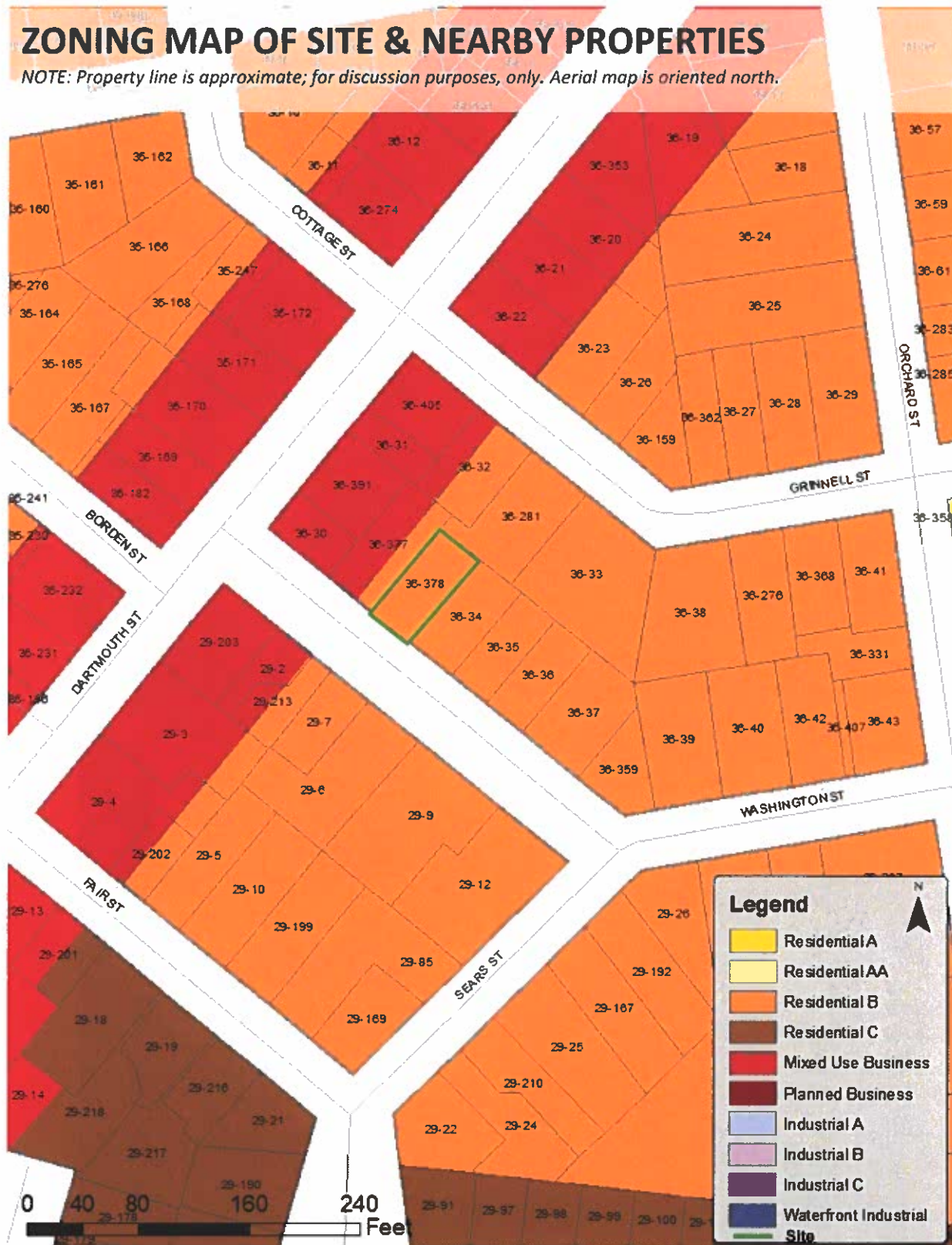
a true copy, attested:

Dennis W. Farias

City Clerk

ZONING MAP OF SITE & NEARBY PROPERTIES

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.



183 Washington Street Map: 36 Lots: 378

NOTE: Property line is approximate, for discussion purposes, only. Aerial map is oriented north.

