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ZONING BOARD OF APPEALS

STAFF REPORT

ZONING BOARD OF APPEALS MEETING

MEETING DATE: January 16, 2020

STAFF REPORT: January 3, 2020

Case #4405: Variance

Case #4406: Special Permit

Property: 115,117,121 Union Street
127-129 Union Street
7N Second Street
Map: 53, Lot: 40, 41, 215
216 & 146

Zoning: Mixed Use Business (MUB)
Waterfront Historic District
Overlay District (DBOD)

Owner: 117 Union Street, LLC
/Applicant 128 Union Street, Suite 400
New Bedford, MA 02740



Overview of Request: The petitioner has submitted applications for both a **Variance** and **Special Permit** relative to the subject property located within a Mixed Use Business [MUB], Waterfront Historic District & Downtown Business Overlay District [DBOD] zoned district. Notice is given of a public hearing on the petition of: **117 Union Street, LLC** (128 Union Street, Suite 400, New Bedford, MA 02740) for a **Variance** under Chapter 9, Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, minimum lot size SF, lot coverage by building %, side yard-Ft. & rear yard-Ft.), 2750 (yards in residence district), 2753 (rear yard), 2755 (side yard), 3100 (parking & loading), 3110 (applicability), 3130 (table of parking & loading requirements-Appendix C, multifamily (3) or more per structure & places of assembly); and for a **Special Permit** under Chapter 9, Comprehensive Zoning Sections 4500-4572 (Downtown Business Overlay District - DBOD) and 5300-5330 & 5360-5390 (special permit); relative to property located at **115, 117, 121, 127-129 Union Street & 7 North Second Street**, Assessors' map 53 lot 40, 41, 215, 216, 146 in a Mixed Use Business [MUB], Waterfront Historic District & Downtown Business Overlay District [DBOD] zoned district. The petitioner is proposing to subdivide the lot into two nonconforming lots, which requires parking and dimensional variances. Additionally, the petitioner is proposing to raze the five existing one-story buildings at the corners of Union Street, N. Second Street and Barkers Lane to construct a five-story commercial/residential building; and to renovate the three-story

Moby Dick Building at 127-129 Union Street for a combined total of 51 residential units and 2 commercial units (retail/restaurant) per plans filed.

As with all **Variances**, the board must find:

- a) There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located.
- b) If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner.
- c) The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good.

As with all **Special Permits**, the ZBA must determine that the benefit to the City and the neighborhood outweighs the adverse effects of the proposed use. To this end the board shall consider each of the following in its determination:

- a.) social, economic, or community needs which are served by the proposal;
- b.) traffic flow and safety, including parking and loading;
- c.) adequacy of utilities and other public services;
- d.) neighborhood character and social structures;
- e.) impacts on the natural environment; and potential fiscal impact, including impact on city services, tax base, and employment.

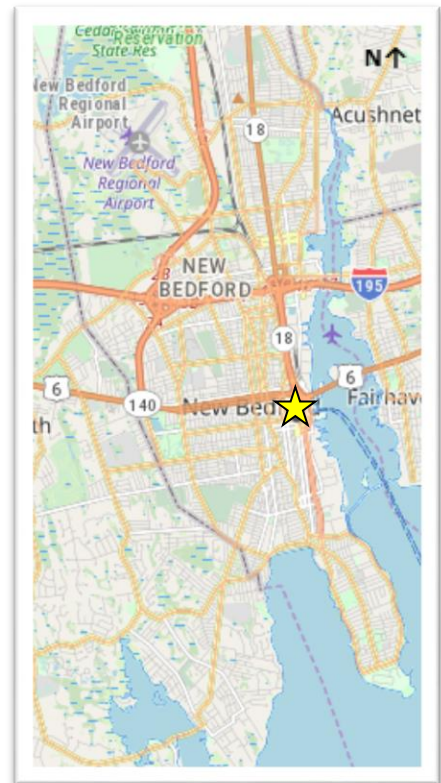
Permit Reviews Required

Historic Commission	Planning Board	Zoning Board	City Council	Inspectional Services
<ul style="list-style-type: none"> • Certificate of Appropriateness • Demolition Review • Outdoor Café Permit 	<ul style="list-style-type: none"> • Modification of previous Site Plan Review 	<ul style="list-style-type: none"> • Special Permit for project in Downtown Business Overlay District • Variance for dimensional requirements - to subdivide the lot via an ANR plan • Variance for parking requirements 	<ul style="list-style-type: none"> • Demolition Review 	<ul style="list-style-type: none"> • Outdoor Café Permit
January 8, 2020 Hearing		January 16, 2020	TBD	TBD

NOTE: The prior proposal to raze five existing attached buildings located on lots 40, 41, 215 & 216, as well as the rear, one story addition located on lot 146 and construct a (5) story commercial/residential building on lots 40, 41, 215 & 216, and a one-story building in the rear of lot 146 per plans filed, was granted by the Zoning Board of Appeals on April 25, 2019 (Case #4372). The applicant intends to combine and subdivide the existing lots into two lots through the Approval Not Required (ANR) process. The subdivision of the lot into two non-conforming lots requires parking and dimensional variances from the Zoning Board of Appeals. Additionally, unrelated to the lot division, the applicant is required to seek a new Special Permit under the Downtown Business Overlay District.

Existing Conditions: The project site is comprised of five lots with five buildings and a parking lot; all under the same ownership. In total the site is 12,479± SF with frontage on three streets. The site has 105'± of frontage on Union Street, 117'± on N. Second Street, and 106'± on Barkers Lane. The buildings at 117, 115, and 121 Union Street and 7 N Second Street, each are brick, flat roof, single story buildings varying in size from 873 SF-2,074 SF. The brick building at 127-129 Union Street, known as the “Moby Dick Chandler Building” is three stories high, fronting on Union Street, and a single story high, in the rear, fronting on Barkers Lane. The building is 8,652 SF. The lot is predominately impervious with buildings and the parking lot covering the land.

The existing parking lot area, located in the northeast corner of the site, has five (5) parking spaces. Metered on-street parking is available on Union Street and on the west side of N. Second Street. No parking is allowed on Barkers Lane. The board should note N. Second Street is one-way northbound. The entrance to the Elm Street parking garage is directly two blocks north at the terminus of N. Second Street at Elm Street. A SRTA Route 5 bus stop is located on the same block as the property at the intersection of Union Street & Acushnet Avenue. The SRTA bus terminal is a 4± minute walk from the site.



Located in the heart of the historic downtown, the surrounding neighborhood is a mixture of commercial retail, office, and mixed-use buildings with residential units on the upper floors. Directly abutting the property to the west is the Garden Bar. Also, on the same block on the north side of Union Street are two recently restored buildings which include residential space, a co-working space known as the Co-Creative Center, a juice bar café known as People’s Pressed and hair salon known as Beauty Union. Directly south across Union Street is a professional office building with multiple tenants, known as the DeMello International Building. East across N. Second Street is St. Anne Credit Union. North across Barkers Lane is Custom House Square park and the historic, still active, United States Custom House. The Custom House is a national historic landmark on the National Register of Historic Places. Diagonally southwest across Union Street is the New Bedford YMCA.

EXISTING BUILDING DESCRIPTION

127-129 Union Street, the **Abram Herman Building (Moby Dick Building)** is a three-story, brick, commercial building

constructed in 1916 and acquired by Abram Herman in 1921 when he had the three adjacent buildings constructed. The Classical Revival building spans the entire depth of the block from the north side of Union Street to Barkers Lane and has a concrete foundation. The first-story storefront, modernized in 1929 and 1948, is composed of a slightly off-center, recessed entry filled with a glass and aluminum door and large

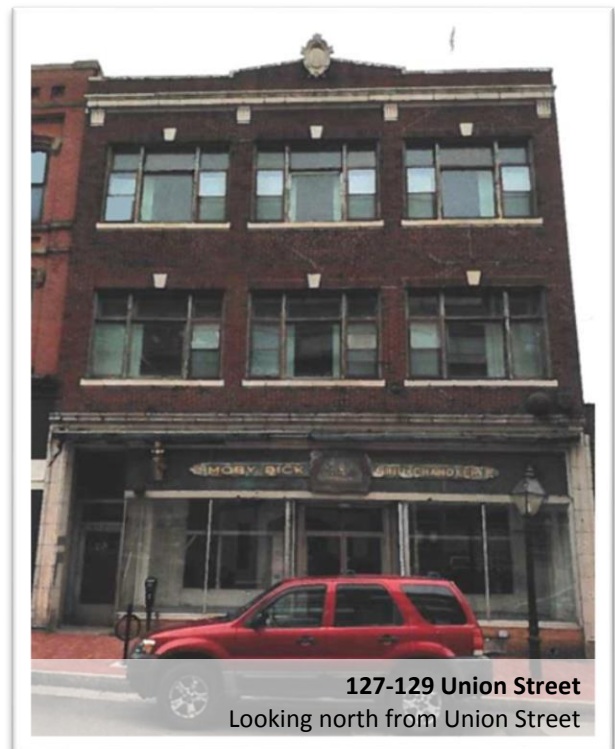


plate-glass windows surrounded by yellow brick on the bottom, white terra cotta tiles on the east and west, and a large wooden signboard across the top. A secondary entrance, also filled with a glass and aluminum door, is at the far west end of the south elevation. The upper two stories, constructed of red brick, are surmounted by a projecting cornice of white terra cotta supported by white terra cotta brackets and topped by a tripartite parapet wall capped with white terra cotta tiles. A white terra cotta heraldic shield with a capital H in the middle is attached to the center of the parapet. Fenestration in the upper stories consists of six sets of large plate-glass windows flanked by one-over-one double-hung sash and topped by a three-light transom. The window openings have white terra cotta sills and splayed brick lintels with white terra cotta keystones.

Proposal: The petitioner is proposing to subdivide the lot into two nonconforming lots, which requires parking and dimensional variances. Additionally, the petitioner is proposing to raze the five existing one-story buildings at the corners of Union Street, N. Second Street and Barkers Lane to construct a five-story commercial/residential building; and to renovate the three-story Moby Dick Building at 127-129 Union Street for a combined total of 51 residential units and 2 commercial units (retail/restaurant) per plans filed.

The existing buildings except for the three-story portion of the Moby Dick Building will be demolished in order to develop the site. A mixed-use development called “117 Union & Moby Dick” is proposed to create in total 51 residential units and 2 commercial units. For the purposes of this report, the new 5-story building will be referred to as “117 Union Street Building” and the three-story Moby Dick building at 127-129 Union Street as the “Moby Dick Building” to simplify descriptions. The table below details the residential unit breakdown. The proposal consists of the new construction a five (5) story building on the east side of the site, the rehabilitation and conversion of the three-story portion of the Moby Dick Building, and the new construction of a single story building with a shared party wall with and behind the Moby Dick Building. A shared entry vestibule off Barkers Lane connects all three building. On-site parking is not provided except for one handicapped parking space proposed in the northwest corner of the site off Barker’s Lane.

The proposed 117 Union Street Building will have a café and lobby areas on the first floor and forty-two (42) residential apartment units on the upper floors. A full basement is proposed with mechanicals, storage, and tenant common space areas. A connection is proposed from this basement into the basement of the adjacent proposed single-story building.

Apartment type	Total	Size range
One-bedroom units	12	428 SF - 466 SF
Two-bedroom units	7	661 SF – 752 SF
Studio units	31	346 SF – 472 SF
Live/Work	1	440 ± SF

The Moby Dick Building will have a retail/restaurant on the first floor and eight (8) residential studio apartment units on the two upper floors. A full basement will remain under the building.

The proposed new single-story building will have one (1) live/workspace and provide bicycle and trash storage areas intended to serve the whole development. A full basement is proposed as a storage area.

The site is located in the Downtown Business Overlay District (DBOD), therefore requiring a Special Permit. The DBOD allows residential uses on the upper floors, variation from dimensional requirements, and increased density by granting a Special Permit. The applicant seeks relief to allow for the rehabilitation of an existing dwelling for residential use. Additionally, the applicant seeks a Variance to subdivide the lot into two nonconforming lots, which requires parking and dimensional variances.

Due to the revised uses and proposed separation for the Moby Dick Building the parking calculations have changed. The parking requirements are calculated based on proposed uses for a site, therefore the additional uses proposed have resulted in a slightly different total required for the overall project.

Parking Calculations for 117 Union Street:

USE	PARKING REQUIREMENTS	LOADING REQUIREMENTS
Multi-family (3) or more per structure	Two (2) spaces per dwelling unit	One (1) loading space for each multifamily dwelling containing more than ten (10) dwelling units
Restaurant / Assembly Space	One (1) space per five (5) seats for which the building is designed or one (1) spaces for each 200 sq. ft. of gross floor area whichever results in the greatest number	One (1) loading space for each building containing 10,000 sq. ft. or more of gross floor area. Two (2) loading spaces for buildings containing 100,000 sq. ft. or more of gross floor area
<u>Parking Calculations</u> <div> <div> 102 parking spaces (2 per dwelling unit x 51) 30 parking spaces (1 per 200 SF) </div> <div> 132 Total parking spaces required </div> </div> <div> 0 Loading space(s) 3 Loading spaces(S) 3 Loading space(s) required </div>		

Parking Calculations for “Moby Dick Building”

USE	PARKING REQUIREMENTS	LOADING REQUIREMENTS
Multi-family (3) or more per structure	Two (2) spaces per dwelling unit	One (1) loading space for each multifamily dwelling containing more than ten (10) dwelling units
Restaurant / Assembly Space	One (1) space per five (5) seats for which the building is designed or one (1) spaces for each 200 sq. ft. of gross floor area whichever results in the greatest number	One (1) loading space for each building containing 10,000 sq. ft. or more of gross floor area. Two (2) loading spaces for buildings containing 100,000 sq. ft. or more of gross floor area
<u>Parking Calculations</u> <div> <div> 16 parking spaces (2 per dwelling unit x 51) 10 parking spaces (1 per 200 SF) </div> <div> 26 Total parking spaces required </div> </div> <div> 0 Loading space(s) 1 Loading spaces(S) 1 Loading space(s) required </div>		

117 Union Street

	Required	Existing	Proposed
Lot Area	15,000 SF	12,479 SF	10,173 SF
Density Dwelling	1.0/1000 SF	0	5.01/1,000 SF
Side yard Setback	0'	0	0'
Lot Coverage	40%	95.2%	92.3%
Green Space	35%	0%	0%
# Parking Spaces	106	5	1
# Loading Spaces	2	0	0

Moby Dick Building

	Required	Existing	Proposed
Lot Area	15,000 SF	12,479 SF	2,306 SF
Density Dwelling	1.0/1000 SF	0	3.47/1,000 SF
Side yard Setback	10-12'	0	0'
Lot Coverage	30%	95.2%	100%
Green Space	30%	0%	0%
# Parking Spaces	26	5	0
# Loading Spaces	1	0	0

Note on Proposed Subdivision of Land & Required Zoning Board Approvals

The applicant intends to combine and subdivide the existing lots into two lots through the Approval Not Required (ANR) process. The ANR process is a defined process in Massachusetts General Law that allows for property lines to be adjusted/subdivided without a full subdivision review, if the lots meet certain criteria, namely adequate frontage on a roadway. There is a 21-day window to grant ANR approval.

As proposed the lots will be divided such that one lot will have just the three-story Moby Dick Building and the second will be a "L-Shaped" lot comprised of the land area intended for the 117 Union project with parking space. The proposed lots are shown as Lot 1 and Lot 2 on Sheet C-1 of the plan set.

Due to several complex zoning code issues that arise from the proposed subdivision of the land, the applicant has agreed to extend the time limits for ANR approval in order to seek the appropriate permits and required relief.

Notably, the applicant will seek multiple variances from the Zoning Board of Appeals for dimensional requirements. They will also be required to receive a variance for parking on the Moby Dick lot.

Additionally, unrelated to the lot division, the applicant is required to seek a new Special Permit under the Downtown Business Overlay District.

For this review by the Zoning Board of Appeals, board members should note, since the ANR plan has yet to be finalized the project is considered one development project, on one site. Any subsequent ANR subdivision may require the applicant to return for additional permits. (See: diagrams at end of report).

For consideration: In considering each of the criteria necessary to grant the **Variance** appeal, staff offers the following for the board's consideration:

- There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located. The petitioner states due to the unique topography of the site; comprised of a historically significant three-story building known as the "Moby Dick Building" and four dilapidated four one-story buildings. The proposal to construct a new five story building adjacent to the three-story "Moby Dick Building" would provide much needed housing in the downtown area. The application indicates the \$18 million-dollar venture will require numerous complex funding sources including different types of grants for the Moby Dick rehabilitation versus constructing a new five-story building; creating the necessity to separate the lots in order to obtain collateral from separate funding sources for each development. Staff acknowledges 127-129 Union Street, the **Abram Herman Building (Moby Dick Building)** is a classical revival three-story, brick commercial building constructed in 1916 and acquired by Abram Herman in 1921.
- If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner. The petitioner states the literal enforcement of the Zoning Ordinance would cause a substantial hardship for the rehabilitation and redevelopment of the property. The application notes the necessity for separate funding sources for the new construction and rehabilitation of the Moby Dick building. The petitioner states that if the relief is not granted to allow for the subdivision of the lot and the dimensional variances necessary it would thwart the project from proceeding and would result in the dilapidated buildings being an eyesore in the heart of downtown New Bedford. Staff acknowledges the project site is located in a Mixed Use Business [MUB], Waterfront Historic District & Downtown Business Overlay District [DBOD] zoned district. The site is currently vacant with no activity on site.
- The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good. The petitioner states that granting relief will not substantially derogate or nullify the intent of the zoning by-law or pose a detriment to the public good. The petitioner notes demolishing unsightly dilapidated buildings and providing high quality housing in the downtown would be beneficial to the public good and would stimulate further improvements to the surrounding neighborhood. Additionally, the application indicates that the requested relief may be granted without substantial detriment to the public good due to the proximity of Union Park Square to the project site. The petitioner notes the one acre park provides open space, therefore, providing smaller lots for the proposed development would not derogate from the intent of the bylaw with regards to yard setbacks, open space, lot size and density. Staff acknowledges the surrounding area is a mixture of commercial retail, office, and mixed-use buildings with residential units on the upper floors. Staff notes north across Barkers Lane is Custom House Square park and the historic, still active, United States Custom House.

For Consideration: In considering each of the criteria necessary to grant the **Special Permit** appeal, staff offers the following for the board's consideration:

- a) **Social, economic or community needs which are served by the proposal.** The petitioner states if the relief is granted the proposal would provide a significant positive economic benefit in the neighborhood and the city. The application states the proposal would provide new, affordable and market rate residential units in the heart of downtown. Additionally, the petitioner notes the proposed café/restaurant would provide a meeting place for the neighborhood, while the residences will add customers for downtown businesses. Staff acknowledges the proposed use would offer affordable and market rate residential units to the downtown area, in addition to providing restaurant/commercial space.
- b) **Traffic flow and safety including parking/unloading.** The application indicates the development project includes a traffic assessment. The traffic assessment indicates projected trips for each of the proposed uses. The petitioner states that this proposed downtown development is projected to have some residents that do not own vehicles. The proposed residents are projected to ambulate the downtown area and utilize public transportation. As such, the change in downtown traffic is projected to be imperceptible. Additionally, the application indicates the rate of traffic is regulated by traffic signals which are located at the corners of Union, Purchase and South Second Street. There are crosswalks with detectable strips on all street corners with on demand pedestrian cross cycles in the traffic signals and good sight visibility in all directions. Staff acknowledges two parking garages in the immediate vicinity, the Zeiterion Parking Garage to the south of the site and Elm Street Parking Garage to the north.
- c) **Adequacy of utilities and other public services.** The petitioner states the necessity for gas, electric, water and sewer. Staff notes that there are adequate utility services serving this area.
- d) **Neighborhood character.** The petitioner states that the proposed use would fit into the character and social structure of the neighborhood as it will complement and enliven the downtown area. Furthermore, the petitioner states that the proposed redevelopment would be harmonious with the structure of the neighborhood by providing needed and desired services. Staff acknowledges the neighborhood is located in a Mixed Use Business (MUB) zone, Bedford Landing Historic District as well as a Downtown Business Overlay District (DBOD) and the Whaling National Historic Park with a mix of commercial retail, office, and mixed use buildings with residential units on the upper floors. Therefore, the proposed use is not out of character with the neighborhood.
- e) **Impacts on the natural environment.** The application states the site consists of pavement and buildings with no vegetation. The proposed development will be energy efficient and is projected to have no significant impact to the natural environment. Staff acknowledges the impacts on the natural environment are neutral as proposed. Staff does not anticipate a substantial change in the existing impacts on the natural environment at this site.
- f) **Potential fiscal impact, etc.** The application indicates the proposal is primarily comprised of studios and one-unit bedrooms which will add little to no school aged children. The petitioner states the proposal would increase the property value as well as create new jobs and services for the city, specifying employment opportunities for the construction of the new units. Staff acknowledges the proposal would add employment while providing residential uses.

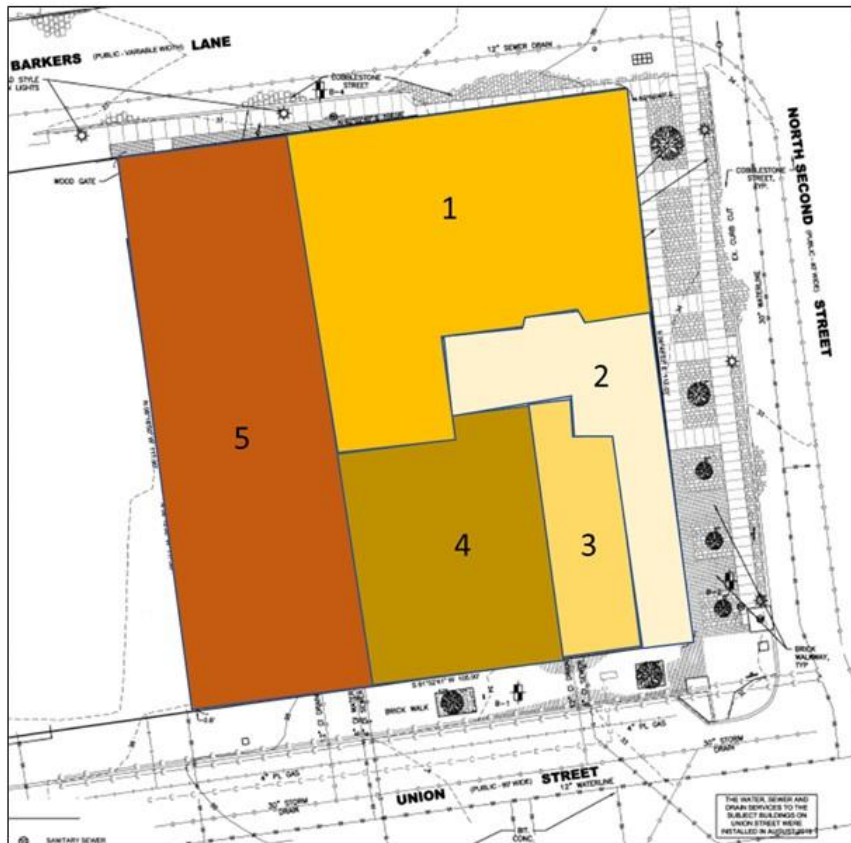
In regard to the specific criteria necessary to grant the Special Permits under the Downtown Business Overlay District, staff offers the following:

g.) The proposed project does not cause substantial detriment to the neighborhood after considering the following potential consequences:

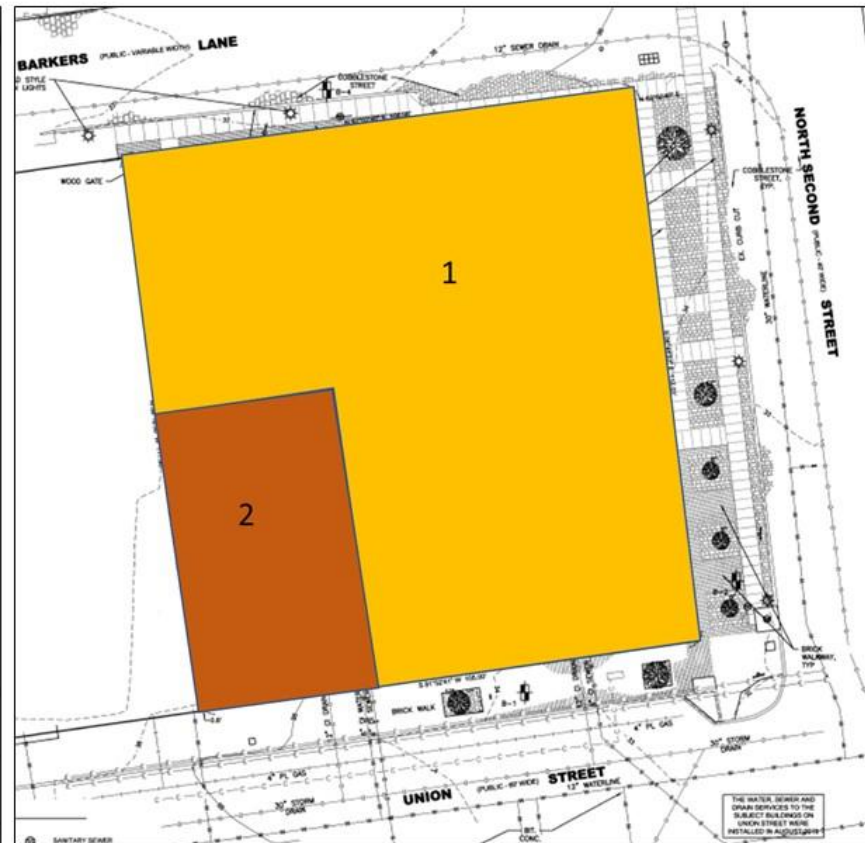
- noise, during the construction and operational phases;
- pedestrian and vehicular traffic;
- environmental harm;
- visual impact caused by the character and scale of the proposed structure(s);
- where relief to parking requirement has been sought, applicant has demonstrated that reasonable efforts have been made to comply with parking requirements;
- For conversions of existing structures, the Zoning Board of Appeals must find that the proposed project protects the City's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. If the building is a municipally owned building, the proposed uses and structures are consistent with any conditions imposed by the Planning Board on the sale, lease, or transfer of the site.

For conversions of existing structures, the Zoning Board of Appeals must find that the proposed project protects the City's heritage by minimizing removal or disruption of historic, traditional or significant uses, structures or architectural elements, whether these exist on the site or on adjacent properties. To this end, staff has attached the staff report from the joint Planning Board/Historical Commission meeting which outlines the project in more detail. Conditions of these decisions will overlap with each other.

Lot Division Diagrams



Existing - 5 Lots



Proposed ANR - 2 Lots (requires variances)

Disclaimer: All lot and building lines shown are approximate and for discussion purposes only.



Existing - 5 Lots

Merged – 1 Lot

(under existing zoning and for review purposes)

Disclaimer: All lot and building lines shown are approximate and for discussion purposes only.

115, 117, 121, 127-129 Union Street, 7 N Second Street, Map: 53 Lots: 40, 41, 215, 216, & 146

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

